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Supreme Court No. 95578-6

In The  
*Supreme Court Of The State Of Washington*

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In Re the Personal Restraint of:

SAID OMER ALI,

Petitioner.

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**PETITIONER'S REPLY BRIEF**

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King County Superior Court No. 08-1-05113-3 SEA

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## I. INTRODUCTION

Said Omer Ali (“Mr. Ali”) filed a personal restraint petition (“PRP”) in November, 2017, seeking resentencing due to the significant changes in the law marked by the Supreme Court’s decisions in State v. Houston-Sconiers, 188 Wn.2d 1, 18, 391 P.3d 409 (2017), (the “mandatory nature” of the SRA weapon enhancement penalties violates the Eighth Amendment when applied to youths), and State v. O’Dell, 183 Wn.2d 680, 693, 358 P.3d 359 (2015) (youth must be taken into consideration as a factor justifying exceptional sentences downward, even for adults). On May 15, 2018, the Court entered a ruling holding that the PRP was neither clearly frivolous nor clearly time-barred and directing the State to file a response brief, in which the State was instructed to address the potential factual issue of Mr. Ali’s age. On July 19, 2018, the State filed its response, conceding that Mr. Ali was born in 1992, making him 16 years old at the time of the offenses. The State argued that Mr. Ali’s case should be remanded to amend the judgment and sentence to reflect his 1992 year of birth, after which RCW 9.94A.730 would allow him to seek parole upon completing 20 years of his sentence, in lieu of resentencing.

In his Petition, Mr. Ali relied in part on the recognition by Division I of the Court of Appeals that the opinion in O’Dell marked a

significant change in the law. See In re Pers. Restraint of Light-Roth, 200 Wash. App. 149, 152, 401 P.3d 459 (2017) (a defendant sentenced prior to O'Dell “deserves an opportunity to have a sentencing court meaningfully consider whether his youthfulness justifies an exceptional sentence below the standard range”). On August 2, 2018, the Supreme Court reversed the Court of Appeals decision, holding that O'Dell did not constitute a significant change in the law for purposes of the RCW 10.73.100(6) exception to the RCW 10.73.90 one-year time bar for filing personal restraint petitions. In re Pers. Restraint of Light-Roth, No. 94950-6, 2018 Wash. LEXIS 509, at \*12 (Aug. 2, 2018). Nonetheless, as set forth herein, (1) Mr. Ali is entitled to resentencing pursuant to the change in law announced in Houston-Sconiers, and RCW 9.94A.730 is an inadequate remedy, (2) Mr. Ali’s PRP is timely under RCW 10.73.100(5) and/or (6), and (3) the State is judicially estopped from arguing in this case that O'Dell did not constitute a significant change in the law, as this argument is diametrically opposed to the State’s position at sentencing.

## II. ARGUMENT IN REPLY

### A. Mr. Ali is Entitled to Resentencing Pursuant to Houston-Sconiers, and RCW 9.94A.730 Provides Inadequate Relief.

In its brief, the State concedes that Mr. Ali was a juvenile at the time of the offenses at issue, and further implicitly concedes that his

sentence is unconstitutional under current law. The State argues instead that the provisions for early release in RCW 9.94A.730, rather than resentencing, is the appropriate remedy to address the constitutional violation. However, RCW 9.94A.730 was enacted to address only unconstitutional *life* sentences imposed on juvenile offenders. Because early release is only permitted under the statute after serving 20 years of the sentence, RCW 9.94A.730 provides grossly inadequate or no relief to juvenile offenders, like Mr. Ali, who are serving unconstitutional mandatory sentences of less than life. Therefore, contrary to the State's arguments, the only remedy available to cure the constitutional deficiencies in Mr. Ali's sentence is remand for resentencing.

In Miller v. Alabama, 567 U.S. 460, 132 S. Ct. 2455 (2012), the U.S. Supreme Court held that imposing mandatory life sentences without parole on juvenile offenders violates the Eighth Amendment. In response to this constitutional ruling, the Washington legislature enacted RCW 9.94A.730, known as the "Miller fix statute," which allows juvenile offenders to petition for parole "after serving no less than twenty years of total confinement." RCW 9.94A.730.

In Scott, the case upon which the State primarily relies, the 17-year-old defendant was convicted of first degree murder and faced a standard sentencing range of 240 to 320 months. State v. Scott, 190 Wash.

2d 586, 588, 416 P.3d 1182, 1183 (2018). Upon the urging of the prosecution, and due to the presence of aggravating factors, the court imposed an exceptional sentence upward of 900 months, a sentence that this Court referred to as a “de facto life sentence.” *Id.* While serving his sentence, the Court stated that “the law of juvenile sentencing changed dramatically,” referencing both *Miller and O’Dell*, as well as Division I’s decision in *State v. Ronquillo*, 190 Wn. App. 765, 774-77, 361 P.3d 779 (2015). *Scott*, 190 Wash. 2d at 589.

Based on this “dramatic change” in the law of juvenile sentencing, the defendant filed a motion for relief from judgment, which was subsequently reviewed by this Court. *Scott*, 190 Wash. 2d at 590. On appeal, the defendant argued he was entitled to resentencing pursuant to the intervening changes in the law, while the State insisted, as it does in the case *sub judice*, that RCW 9.94A.730 provides an adequate remedy for the constitutional deficiencies in the defendant’s sentence. *Id.*

In evaluating these arguments, the Court relied on the following language from the U.S. Supreme Court’s recent opinion in *Montgomery v.*

Louisiana:

Giving *Miller* retroactive effect ... does not require States to relitigate sentences, let alone convictions, in every case where a juvenile offender received mandatory life without parole. A State may remedy a *Miller* violation by permitting juvenile homicide offenders to be considered for parole, rather than by resentencing them.).

Scott, 190 Wash. 2d at 596-97 (quoting Montgomery v. Louisiana, \_\_\_ U.S. \_\_\_, 136 S. Ct. 718, 193 L. Ed. 2d 599 (2016)). Based on this language, the Court held that “Montgomery provides that the Washington Miller fix statute's parole provision cures the Miller violation *in Scott's case*.” Scott, 190 Wash. 2d at 597 (emphasis added). The Court added further that “remand for resentencing is not required by the Eighth Amendment *in this case*.” Id. (emphasis added). Thus, the Court in Scott was explicit that its holding turned on the facts before it. Scott did not hold, as the State suggests, that RCW 9.94A.730 remedies all constitutional violations resulting from cruel and unusual sentences imposed on juvenile offenders. Rather, as explained below it serves as a possible remedy only in the case of life sentences and *de facto* life sentences.

Unlike the defendant in Scott, Mr. Ali is not serving a *de facto* life sentence. Instead, he is serving a sentence of 312 months, or 26 years, which is nonetheless unconstitutional under Houston-Sconiers due to the imposition of mandatory deadly weapon enhancements and the failure to consider youth as a mitigating factor. This difference in the length of the respective sentences is critical.

Whereas the defendant in Scott would be eligible for parole after serving only approximately 27% of his 900-month sentence, Mr. Ali is

required to serve 77% of his equally unconstitutional 312-month sentence before he can seek relief under RCW 9.94A.730. While the potential 73% sentence reduction available in Scott may be an adequate remedy, the 23% reduction available to Mr. Ali under RCW 9.94A.730 is woefully inadequate to remedy the constitutional violation. RCW 9.94A.730 provides a remedy to Mr. Ali in name only. Thus, the holding in Scott that the Miller fix statute provides an adequate remedy must be limited to situations where the defendant is serving an actual or *de facto* life sentence, the only situations the Miller fix statute was designed to address. Indeed, if the Miller fix statute were intended to address all unconstitutional mandatory sentences imposed on juvenile offenders, it would have allowed for parole after a designated portion of a sentence had been served, rather than setting parole eligibility at a flat 20 years.

The foregoing conclusion is further necessitated by the holding in Houston-Sconiers. Following enactment of RCW 9.94A.730, the Court in Houston-Sconiers extended the reasoning in Miller to prohibit all mandatory sentences imposed on juvenile offenders that do not allow for consideration of youth as a mitigating factor. Specifically, the Court held that the “mandatory nature” of RCW 9.94A.533, the deadly weapon enhancement statute, violates the Eighth Amendment when applied to juvenile offenders and that “[t]rial 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.” Houston-Sconiers, 188 Wn.2d at 21. Thus, Houston-Sconiers held for the first time that imposition of mandatory adult sentences on juvenile offenders is unconstitutional, irrespective of the overall length of the sentence. Id.

This being the case, a juvenile defendant’s constitutional rights are violated under Houston-Sconiers whenever a mandatory sentence is imposed without consideration of youth as a mitigating factor, even in the context of overall sentences of less than 20 years. In the case of unconstitutional sentences of less than 20 years, the Miller fix statute provides no relief whatsoever. In the case of sentences only slightly over 20 years, such as Mr. Ali’s sentence, the relief provided is grossly deficient. Thus, while RCW 9.94A.730 may suffice to remedy Miller violations, i.e. mandatory life sentences imposed on juvenile offenders, it provides woefully inadequate or no relief at all in the case of other Houston-Sconiers violations, i.e. mandatory sentences imposed on juvenile offenders other than life sentences. When a violation of the rule announced in Houston-Sconiers is at issue, only a full resentencing hearing can serve as a remedy.

Consequently, the State’s position that Mr. Ali’s remedy lies only in seeking parole under RCW 9.94A.730 must be rejected. At sentencing in Mr. Ali’s case, the trial court clearly articulated its belief that it had no discretion to consider Mr. Ali’s youth in imposing his sentence, stating “the sentence that was imposed was the lowest sentence that I legally felt I had the option of imposing in this case.” RP at 1436:1-5.<sup>1</sup> It is therefore beyond dispute, and not seriously disputed by the State, that Mr. Ali’s sentence is unconstitutional. Because RCW 9.94A.730 would only allow Mr. Ali to seek parole after serving 77% of his unlawful sentence, its application will not cure the constitutional defect. The only remedy is to remand for resentencing as requested in Mr. Ali’s Petition.

**B. Mr. Ali’s PRP is Timely Under RCW 10.73.100, and the State Does Not Genuinely Dispute the Timeliness of the PRP.**

**1. Houston-Sconiers Announced a Significant Change in the Law that is Material to Mr. Ali’s Sentence and which Applies Retroactively.**

In its brief, the State does not challenge Mr. Ali’s argument that Houston-Sconiers marked a significant change in the law that applies retroactively and is material to Mr. Ali’s sentence. Instead, the State challenges only the necessity of remanding for resentencing to cure the

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<sup>1</sup> On August 13, 2018, Petitioner filed a motion to transfer the verbatim report of proceedings from the direct appeal to this personal restraint petition and Petitioner has included the verbatim report of proceedings of the sentencing proceedings as Attachment “A” to this Reply Brief for this Court’s convenience. All “RP” citations in this brief refer to the attached verbatim report of proceedings.

constitutional violation in light of RCW 9.94A.730. Therefore, the State should be deemed to have conceded that Mr. Ali's PRP meets the requirements of RCW 10.73.100(6), and is therefore timely. See In re JJ, 96 Wn. App. 452, 454 n.1, 980 P.2d 262 (1999) (failure of reply brief to address findings filed following opening brief constitutes concession that there was no prejudice in the late-filing); see also United States v. Caceres-Olla, 738 F.3d 1051,1054 n. 1 (9th Cir. 2013) (holding the government conceded an issue raised by the defendant because it failed to respond); United States v. Real Property Known as 22249 Dolorosa Street, 190 F.3d 977, 983 (9th Cir. 1999) (failure of government to defend district court's ruling in appellate brief constitutes implicit concession of error).

Irrespective of the State's concession of the issue, Mr. Ali's PRP clearly meets the requirements of RCW 10.73.100(6) on the merits. Prior to Houston-Sconiers, the Court categorically precluded any argument for concurrent imposition of weapon enhancements. See State v. Brown, 139 Wash. 2d 20, 29, 983 P.2d 608, 613 (1999). In Brown, the Court held unequivocally that if the weapons 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 expressly overruled Brown expressly with respect to juveniles, holding "[t]o the extent our state statutes have been interpreted

to bar such discretion with regard to juveniles, they are overruled.”  
Houston-Sconiers, 188 Wn.2d at 21 (citing Brown, 139 Wash. 2d at 29).  
Houston-Sconiers is also the first case to hold that failure to consider youth as a mitigating factor justifying a downward exceptional sentence when sentencing juvenile offenders is an Eighth Amendment violation.  
Houston-Sconiers, 188 Wn.2d at 21 (“[t]rial 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” (emphasis added)). The Houston-Sconiers holding thus marked a significant change in the law.

Even if Houston-Sconiers constitutes new law only with respect to the unconstitutionality of the mandatory consecutive imposition of deadly weapon enhancements, Mr. Ali is nonetheless entitled to a full resentencing, rather than just reconsideration of the enhancements. See State v. Kilgore, 167 Wn.2d 28, 42, 216 P.3d 393 (2009) (the trial court on remand may resentence as to counts that were not impacted by the appellate decision, as well as those that were, pursuant to RAP 2.5(c)(1)); see also U.S. v. Handa, 122 F.3d 690 (9th Cir. 1997) (holding that when any part of a sentence is reversed, the defendant may be resentenced on all counts, as each sentence is a “package” which, when “unbundled,” warrants creation of a new “package.”); United States v. Morris, 116 F.3d

501 (D.C.Cir.1997) (same); United States v. Rodriguez, 112 F.3d 26 (1st Cir.1997) (same); United States v. Davis, 112 F.3d 118 (3rd Cir.1997) (same); United States v. Hillary, 106 F.3d 1170 (4th Cir.1997) (same); United States v. Rodriguez, 114 F.3d 46 (5th Cir.1997) (same); United States v. Smith, 103 F.3d 531 (7th Cir.1996) (same); United States v. Harrison, 113 F.3d 135 (8th Cir.1997) (same); United States v. Pimienta-Redondo, 874 F.2d 9, 14 (1st Cir. 1989) (when part of a sentence is reversed “common sense dictates that the judge should be free to review the efficacy of what remains in light of the original plan, and to reconstruct the sentencing architecture upon remand, within applicable constitutional and statutory limits, if that appears necessary in order to ensure that the punishment still fits both crime and criminal.”)

Houston-Sconiers must further be applied retroactively, as it announced a new interpretation of the Sentencing Reform Act (“SRA”). Finally, this change in law is material to Mr. Ali’s sentence because Mr. Ali in fact requested a downward exceptional sentence based on his youth, but the trial court believed it was prohibited from accommodating this request by then-existing law. Therefore, Mr. Ali’s PRP is timely under RCW 10.73.100(6).

**2. Mr. Ali's PRP is also Timely Under RCW 10.73.100(5) Because the Sentencing Court Exceeded its Jurisdiction.**

Mr. Ali's PRP is also timely under RCW 10.73.100(5), because the sentencing court exceeded its jurisdiction in imposing an unconstitutional sentence that failed to meaningfully take Mr. Ali's youth into consideration as a mitigating factor, as required by the Eighth Amendment. It is not genuinely in dispute that the trial court believed it lacked discretion to impose a downward exceptional sentence based on Mr. Ali's youth, as evidenced by its statement that it imposed "the lowest sentence that [it] legally felt [it] had the option of imposing in this case," following the State's argument that it lacked discretion to consider youth as a mitigating factor. RP at 1436:1-5.

It is therefore manifest that the court both abused its discretion and violated Mr. Ali's Eighth Amendment rights. See State v. Bunker, 144 Wn. App. 407, 421, 183 P.3d 1086 (2008), aff'd, 169 Wn.2d 571, 238 P.3d 487 (2010) ("A trial court's erroneous belief that it lacks the discretion to depart downward from the standard sentencing range is itself an abuse of discretion" (citing State v. Garcia-Martinez, 88 Wn. App. 322, 329-30, 944 P.2d 1104 (1997))); Houston-Sconiers, 188 Wn.2d at 21 (sentencing juveniles without consideration of youth as a mitigating factor violates the Eighth Amendment). "A trial court exceeds its jurisdiction when it imposes a sentence contrary to law." State v. Wiley, 63 Wash. App. 480,

482, 820 P.2d 513, 513 (1991), *overruled in part on other grounds*, State v. Moen, 129 Wash. 2d 535, 544, 919 P.2d 69, 74 (1996) (citing State v. Sargent, 36 Wn. App. 463, 464, 674 P.2d 1268 (1984); State v. Silvernail, 25 Wn. App. 185, 193, 605 P.2d 1279, *review denied*, 93 Wn.2d 1021, *cert. denied*, 449 U.S. 843 (1980)). Accordingly, by imposing an illegal and unconstitutional sentence that constituted a manifest abuse of discretion, the trial court exceeded its jurisdiction. See Id. RCW 10.73.100(5) therefore provides independent grounds for excepting Mr. Ali's PRP from the one-year time bar.

**C. Regardless of the Court's Decision in Light-Roth, the State is Judicially Estopped from Arguing that O'Dell Does Not Constitute a Significant Change in Law.**

Having argued at sentencing that the trial court lacked discretion to impose a downward exceptional sentence based on youth, the State is now judicially estopped from taking the contrary position that such discretion was available all along. At sentencing, Mr. Ali requested a downward exceptional sentence based on his youth. In response, the prosecution stated it was "empathetic to the fact that Mr. Ali is a young man," but nonetheless maintained that "there's no legal basis" for imposing an exceptional sentence, adding "the Courts have determined that the bases set forth by [trial counsel] in his brief are, in fact, not a legal justification." RP at 1417-18. The State specifically represented that "youth is not a

factor” justifying a reduced sentence, citing State v. Ha'mim, 132 Wn.2d 834, 940 P.2d 633 (1997), in support of that statement. RP 1418:6-7. The trial court accepted the State’s position, concluding that it lacked discretion to impose an exceptional sentence, and imposing “the lowest sentence that [it] legally felt [it] had the option of imposing in this case.” RP at 1436:1-5.

Mr. Ali asserted in his opening PRP brief that O’Dell marked a significant change in law, holding for the first time that “a trial court must be allowed to consider youth as a mitigating factor when imposing a sentence on a[ young] offender.” O’Dell, 183 Wn.2d at 696. In a stark departure from its position at sentencing, the State now argues that O’Dell was consistent with the Court’s prior jurisprudence in Ha'mim, and that, contrary to its prior representations at sentencing, youth could have formed the basis for a mitigated sentence at the time of Mr. Ali’s sentencing.

Following the State’s submission of its brief, this Court decided in Light-Roth that O’Dell’s holding did not constitute a significant change in the law. In re Pers. Restraint of Light-Roth, No. 94950-6, 2018 Wash. LEXIS 509, at \*12. In reaching this conclusion, the Court reasoned that “[n]either [State v. Scott, 72 Wn. App. 207, 218-19, 866 P.2d 1258

(1993)] nor Ha'mim categorically precludes consideration of youth as a mitigating factor.” Id. at \*10.

Regardless of the Court’s holding in Light-Roth, the State is judicially estopped from arguing now in this case that the trial court had discretion at sentencing to impose a downward exceptional sentence on the basis of Mr. Ali’s youth as a mitigating factor. “Judicial estoppel is an equitable doctrine that precludes a party from asserting one position in a court proceeding and later seeking an advantage by taking a clearly inconsistent position.” Arkison v. Ethan Allen, Inc., 160 Wn.2d 535, 538, 160 P.3d 13 (2007) (quoting Bartley-Williams v. Kendall, 134 Wn. App. 95, 98, 138 P.3d 1103 (2006)). “There are two primary purposes behind the doctrine: preservation of respect for judicial proceedings and avoidance of inconsistency, duplicity, and waste of time.” Anfinson v. FedEx Ground Package Sys., Inc., 174 Wn.2d 851, 861, 281 P.3d 289 (2012). In evaluating whether judicial estoppel applies, courts look to three “core” factors:

- (1) whether the party's later position is clearly inconsistent with its earlier position,
- (2) whether acceptance of the later inconsistent position would create the perception that either the first or the second court was misled, and
- (3) whether the assertion of the inconsistent position would create an unfair advantage for the asserting party or an unfair detriment to the opposing party.

Taylor v. Bell, 185 Wash. App. 270, 281-84, 340 P.3d 951, 958-59 (2014) (citing Anfinson, 174 Wn.2d at 861). Each of these factors applies to the State's new position on appeal.

At trial, the State, in no uncertain terms, took the position that the factor of youth is "in fact, not a legal justification" for imposing a mitigated sentence under the SRA. RP at 1417-18. Now, in its brief, the State argues that O'Dell, which held that "a trial court must be allowed to consider youth as a mitigating factor when imposing a sentence on a [young] offender", is not a significant change in the law. These two positions are clearly inconsistent, as the State's position at trial was diametrically opposed to the holding in O'Dell, telling the court that it was categorically prohibited from considering youth as a mitigating factor in light of Ha'mim.

Furthermore, contrary to the State's representations, Mr. Ali did not simply ask for a reduced sentence on the basis of his youth alone. Rather, he provided extensive support for the mitigating role that his youth played in the commission of the offenses at issue, providing evidence and testimony that Mr. Ali "is seventeen years old without criminal history" and has "endured extreme turmoil in his young life," having been "born into a bloody civil war in his native Somalia," and then having to adapt to American society and culture as an adolescent refugee without the

guidance of his father, who had been killed prior to their flight from violence. RP at 1420:10-24.

He also presented 36 letters and testimony from multiple community members attesting to the difficulties Mr. Ali faced as a refugee, Mr. Ali's demonstrated potential to be rehabilitated and play a positive role in the community, and even specifically identified peer pressure as having influenced his criminal conduct. RP at 1424-30; ***PRP Exhibit "A," at 8-41***; see also O'Dell, 183 Wn.2d at 692 (identifying peer pressure as an indicator that youth played a role in the commission of an offense). If Mr. Ali's presentation at sentencing was insufficient to establish that youth played a mitigating role in the commission of his offenses, then this is a standard that cannot be met. It is clear from the record that the trial court refused to consider Mr. Ali's youth as a mitigating factor not because Mr. Ali's showing was insufficient, but rather because the court accepted the State's argument that it was categorically prohibited from doing so. If this Court now accepts the State's argument in Mr. Ali's case, regardless of its acceptance of a similar argument in other cases, it would clearly lead to the perception that the State misled the trial court into believing it lacked discretion to impose a downward exceptional sentence based on Mr. Ali's youth as a mitigating factor.

The third factor in the analysis is also met here. Accepting the State's inconsistent position at this stage of the proceedings would be an unfair detriment of constitutional magnitude. Mr. Ali was denied his right to have the court meaningfully consider his youth as a mitigating factor at sentencing due to the State's argument that the court was categorically prohibited from doing so. See Houston-Sconiers, 88 Wash. 2d at 21 (recognizing the right to have the court meaningfully consider youth as a mitigating factor on constitutional grounds); O'Dell, 83 Wn.2d at 689, 696 (recognizing the right to have the court meaningfully consider youth as a mitigating factor on non-constitutional grounds). As a result of the court's acceptance of the State's position at sentencing, Mr. Ali is now serving a patently unlawful and unconstitutional sentence pursuant to principles recognized in Houston-Sconiers and O'Dell.

The State is now seeking to thwart Mr. Ali's attempts to remedy the legal and constitutional deficiencies in his sentence by taking the inconsistent position that youth was available as a mitigating factor from the outset, so O'Dell did not mark a significant change in the law for purposes of the RCW 10.73.100(6) exception to the one-year time bar. If this argument is accepted, the unfair detriment is apparent and severe – Mr. Ali will spend a substantial portion of his life serving an illegal and unconstitutional prison sentence. Under these circumstances, the doctrine

of judicial estoppel must be applied to preclude the State from obtaining an unfair advantage by taking inconsistent positions. See Bell, 185 Wash. App. At 281-84.

Because the inconsistent argument that O'Dell did not mark a significant change in the law is the State's only response to Mr. Ali's argument that he is entitled to resentencing pursuant to O'Dell, as well as Houston-Sconiers, and because the State is judicially estopped from advancing this argument, Mr. Ali is entitled to resentencing in accord with O'Dell for the reasons set forth in his opening PRP brief.

### III. CONCLUSION

For the foregoing reasons, and for the reasons set forth in Mr. Ali's opening PRP brief, this Court should grant the Petition and remand this matter for resentencing in accordance with current law.

Respectfully submitted this 13th day of August, 2018.

LAW OFFICE OF COREY EVAN PARKER

*Corey Evan Parker*  
\_\_\_\_\_  
Corey Evan Parker, WSBA #40006  
Attorney for Petitioner, Said Omer Ali

**CERTIFICATE OF SERVICE**

I, Corey Evan Parker, certify under penalty of perjury under the laws of the United States and of the State of Washington that on August 13, 2018 I caused to be served the document to which this is attached to the party listed below in the manner shown next to their name:

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*Corey Evan Parker*  
\_\_\_\_\_  
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Attachment “A”

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING

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STATE OF WASHINGTON,	)	
	)	
Plaintiff,	)	
	)	COA NO. 63253-1-I
v.	)	
	)	NO. 08-1-05113-3 SEA
SAID OMER ALI,	)	
	)	
Defendant.	)	
	)	

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VERBATIM REPORT OF PROCEEDINGS  
(VOLUME XIII)

Heard Before: The Honorable LAURA C. INVEEN  
March 27, 2009  
1:00 p.m.  
W864, KING COUNTY COURTHOUSE  
SEATTLE, WASHINGTON

APPEARANCES: CORINN BOHN, Senior Deputy Prosecuting  
Attorney, representing the State;  
MICHAEL NANCE, representing the Defendant.

REPORTED BY: TaraLynn A. Bates  
CSR # 2464

WHEREUPON, the following proceedings were had,  
to wit:

1 MS. BOHN: Good afternoon, Your Honor.

2 This is the matter of the State of Washington  
3 versus Said Ali, cause number 08-1-05113-3, Seattle.  
4 Corinn Bohn on behalf of the State. Mr. Michael Nance is  
5 present on behalf of Mr. Said Ali, his client, who is  
6 present, in custody.

7 MR. NANCE: Your Honor, before we go any further,  
8 I'd like to be heard briefly on the issue of filming.  
9 There's a camera in the courtroom and we'd like it known  
10 that the defense objects to the filming of Mr. Ali,  
11 particularly his face.

12 THE COURT: Is there a particular basis?

13 MR. NANCE: The particular basis is that the  
14 public generally has a right to know what happens in our  
15 public courtrooms. That's to be balanced with a  
16 defendant's right to privacy.

17 I believe the story, the essential story of this  
18 case from any objective standpoint can be told without  
19 flashing his face across TV screens. So we would urge the  
20 Court to limit, if it's going to be filmed, to limit it to  
21 a side view or a view of him that does not include his  
22 face.

23 THE COURT: There is a presumption of openness in  
24 the courtroom and I'm going to decline the request to close  
25 the matter. And I'm not going to limit the cameras.

1 MS. BOHN: Your Honor, we have a couple of  
2 threshold legal issues before we proceed to sentencing.  
3 Defense has made a motion for arrest of judgment.

4 THE COURT: Can I interrupt. For the record, I  
5 note that an interpreter is not present today.

6 MS. BOHN: Sorry, I forgot to do that.

7 THE BAILIFF: I was able to reach the  
8 interpreter's office. They indicated the interpreter  
9 checked in with the wrong courtroom and was told they were  
10 not needed.

11 THE COURT: And I note throughout the course of  
12 the proceedings there has always been an interpreter to  
13 assist Mr. Ali. And from my recollection, I never noticed  
14 there was any interpretation done between them. And  
15 Mr. Ali did testify in English without the assistance of  
16 the interpreter. So is there any objection to going  
17 forward without the interpreter?

18 MR. NANCE: No, I would propose we proceed. In  
19 the unlikely event he needs help, we can suspend the  
20 hearing to bring in an interpreter.

21 THE COURT: That would be perfectly fine.

22 MS. BOHN: As I indicated, as a threshold issue,  
23 the defense has made a motion to arrest judgment. This is,  
24 in essence, the same motion that the defense brought at the  
25 close of the State's case and there is nothing different.

1 THE COURT: Why don't I at least let Mr. Nance  
2 make his motion.

3 MR. NANCE: Yes. We did it in writing. I hope  
4 the Court has had a chance to review that.

5 THE COURT: Yes.

6 MR. NANCE: I don't have a lot to add. The  
7 record speaks for itself. Essentially, I think it's fair  
8 to say that the gist of this evidence came from the  
9 testimony of a single witness, single eye witness, Colin  
10 Walker, who, as the Court will recall, had suffered a  
11 severe beating on I think it was the evening or early  
12 morning of May 27th. He described losing consciousness,  
13 losing some memory. He was able in his initial report, was  
14 able only to describe his assailant in the very vaguest of  
15 terms. It was a young black male with a baseball cap with  
16 a big bill on it. He was uncertain about the height. Even  
17 actually described the assailant as shorter than himself,  
18 he was six foot one, and taller than five feet. So not  
19 much in the way of a height description. And a person of  
20 about 180 pounds. This description, it's extremely vague.  
21 Even that does not describe Mr. Ali, who as 140 pounds.

22 He later picked a photograph from a montage  
23 assembled by Detective Craig. We will give Detective Craig  
24 the benefit of the doubt and concede that, at least for  
25 purposes of the argument, that it was probably a fair and

1 nonsuggestive showing of the montage. And from that, even  
2 though he did admit to describing other robberies in the  
3 area, in the vicinity, to Mr. Walker prior to his playing  
4 the montage to him. And from that montage, Mr. Walker made  
5 a pick. He picked the photograph of Mr. Ali. He was 85  
6 percent sure. That would mean he was fifteen percent  
7 unsure.

8           Seven, eight months go by. He appears at trial.  
9 And his trial testimony was interesting because, I guess to  
10 his credit, he didn't pretend or carry on about recognizing  
11 the man that robbed him. He was candid and said, I  
12 recognize him but it could well be from the montage I saw.  
13 And that I'm no more certain at trial than he was at the  
14 time he made the initial montage pick. And really  
15 referred, of course, back to the time of the montage.

16           So that seems to me to be a textbook example of  
17 reasonable doubt. Fifteen percent uncertainty is, I would  
18 submit, pretty high on the chart. And I would further  
19 argue that the other robberies do not -- there really  
20 aren't evidence of Mr. Ali's identity in that robbery.  
21 They happened four weeks earlier. They didn't happen --  
22 this robbery wasn't pared with another robbery occurring at  
23 a contemporaneous time. There was an interruption in  
24 events. He had been arrested back on May the 1st. He had  
25 been interrogated two or three times by the police. They

1 had been to his home on at least two occasions. He had  
2 been to jail. There was a major interruption in events.

3 And so these circumstances, I think combined with  
4 Mr. Walker's admitted uncertainty and his concern, even at  
5 the time he testified, that he was concerned about making a  
6 mistake, suggests reasonable doubt.

7 No reasonable jury under these circumstances, I  
8 believe, could have returned a verdict of guilty beyond a  
9 reasonable doubt.

10 We would further incorporate our earlier  
11 argument. It's pretty much the same as I've just made. In  
12 case I missed something.

13 THE COURT: Thank you.

14 Ms. Bohn?

15 MS. BOHN: And, Your Honor, I would incorporate  
16 my prior response at the conclusion of the State's case.

17 I would also add to the factual rendition  
18 provided by Mr. Nance that Mr. Walker had interacted with  
19 this individual, Mr. Ali, on two separate occasions on this  
20 evening. He'd had a conversation with him, had the  
21 opportunity to observe him. He also described him as an  
22 individual who had an accent and looked as if he was East  
23 African. He knew that because he had spent some time  
24 living in, I believe it was Egypt that he indicated he'd  
25 lived in.

1           Additionally, we learned in the course of the  
2 trial that the bus that was taken by Mr. Walker that  
3 evening, it was the bus that he had gotten off of when he  
4 was immediately attacked, is the similar route and I  
5 believe it was the exact same bus that is often taken by  
6 the defendant. And his family testified what bus he took  
7 to school on a daily basis.

8           I disagree with Mr. Nance's rendition of what  
9 happened at trial and recall specifically that Mr. Nance  
10 asked Mr. Ali to approach the victim in that case and asked  
11 the victim then to take a look at him and to look him in  
12 the eye and ask him if he was something to the effect of  
13 one hundred percent sure. And the victim said that being  
14 that close to his client only increased his level of  
15 confidence.

16           The case law in this area is in favor of the  
17 State. Any benefit has to be given to the State. And two  
18 cases have been cited. I provided Your Honor a very late  
19 copy of those two cases. I apologize for the lateness of  
20 it. But one is cited by the defense, State verse  
21 Hendricks, 50 Wn.App. 510. And that case cites to the  
22 proposition that extrajudicial ID alone is sufficient to  
23 support a conviction.

24           In that particular case, the victim was unable to  
25 make an in court ID and expressed additionally reservation

1 about her prior out of court identification. The Court  
2 held that because of the prior identification and the  
3 immediacy and ability to choose an individual, that any  
4 second thoughts that she had took place after understanding  
5 the serious implications of the charge and determined there  
6 was sufficiency of the evidence when it went to the jury.

7 Additionally, State v. Nettles, 492 P.2d 567,  
8 cites to the proposition that a jury can find that witness  
9 reservation concerning identification is compatible with  
10 careful and conscientious approach on behalf of the victim  
11 and that voicing reservation does not render ID legally  
12 insufficient.

13 Mr. Walker, as the Court can recall, was a very  
14 cautious, careful, conscientious individual. And it was  
15 certainly possible for the jury to conclude that he was  
16 being extremely cautious in his 85 percent basis of  
17 identification.

18 And I don't have anything further. Thank you.

19 THE COURT: I do not find that this is  
20 procedurally different than when the issue was brought to  
21 my attention at the close of the State's case.

22 I do find that a rational trier of fact could  
23 make a finding of guilt, taking all of the evidence in  
24 favor of the State. So I'm going to deny the motion to  
25 dismiss at this time.

1 MS. BOHN: Thank you, Your Honor.

2 And there is one other threshold issue that  
3 Counsel raised in his sentencing memorandum which he  
4 supplied two days ago and that relates to same criminal  
5 conduct. And that is in reference to robbery in the first  
6 degree, count two, and assault in the first degree, count  
7 three. The victim in those particular counts was Carl  
8 Halliburton.

9 Same criminal conduct requires that there be the  
10 same victim, same location and same objective criminal  
11 intent. And in this particular situation, robbery in the  
12 first degree, the intent is to commit theft. Assault in  
13 the first degree, the intent is to inflict great bodily  
14 harm. And whereas the victim is the same and the location  
15 is the same, it is necessary that all three be present and  
16 the objective criminal intent are different in these cases.

17 Counsel indicates, pursuant to a footnote, that  
18 the case of State v. Vike indicates that when determining  
19 whether two crimes share the same criminal intent, courts  
20 focus on whether the defendant's intent, viewed  
21 objectively, changed from one crime to the next and whether  
22 the commission of one crime furthered the other. And he  
23 cites that for the proposition that these have the same  
24 criminal intent.

25 In State v. Vike, that was a situation where a

1 defendant was charged with both possession of I believe it  
2 was heroin and cocaine. He was possessing both at the same  
3 time when he was apprehended. And the issue became whether  
4 or not those were two separate events are the same.

5 The Court determined that that was same criminal  
6 conduct in State v. Vike because of the fact that there was  
7 no intent in a possession case and that it is, in essence,  
8 a strict liability crime.

9 That is significantly different from our  
10 situation in this case, where one intent is to commit theft  
11 and one is to inflict great bodily harm.

12 So the State does not believe that these two  
13 should be scored or that the score of one should be  
14 dropped, because they are not the same criminal conduct.

15 THE COURT: So I will hear the State's  
16 recommendation.

17 MS. BOHN: Your Honor, the defendant was found  
18 guilty in counts one, two, five, seven and eight of robbery  
19 in the first degree. On each one of those, he has an  
20 offender score of 14, seriousness level nine, a standard  
21 sentencing range of 129 to 171 months, with a maximum  
22 sentence of life and a maximum fine of \$50,000.

23 He was found guilty on count four and count six  
24 of attempted robbery in the first degree. Again, an  
25 offender score of 14, seriousness level nine, standard

1 sentencing range of 96.75 to 128.25, with a maximum  
2 sentence of ten years and a maximum fine of \$20,000.

3 On count three, assault in the first degree, he  
4 has an offender score of 14, seriousness level twelve  
5 crime, and the standard sentencing range of 240 to 318  
6 months, with a maximum sentence of life and a maximum fine  
7 of \$50,000.

8 Counts one, two and three have a deadly weapon  
9 enhancement, which calls for 24 months on each one of  
10 those, to run consecutive to all other counts and  
11 consecutive to each other.

12 The State's recommendation, Your Honor, is for  
13 the high end of the standard range. That would be 171  
14 months on counts one, two, five, seven and eight, 318  
15 months on count three, and 128.25 months on counts four and  
16 six. Those counts to run concurrent with each other and  
17 consecutive to 72 months, which is the 24 months each on  
18 counts one, two and three.

19 Mandatory costs of \$600, which includes the \$500  
20 victim penalty assessment and a \$100 DNA fee. Community  
21 custody of 24 to 48 months. Restitution, which is  
22 incomplete.

23 So that would be a total of 390 months.

24 The State also recommends no contact with  
25 Stephanie Walker, Carl Halliburton, Jonathan Douglass,

1 Colin Walker, Mackenzie Rollins, Joshua Longbrake,  
2 Katherine Terpstra.

3 Your Honor, the defense argues in their brief for  
4 an exceptional sentence in this case. There is no legal  
5 basis for an exceptional sentence. There are a number of  
6 specific examples that the statute sets forth for  
7 mitigation. None of those are present in this case.

8 Mr. Ali committed crimes on different dates with  
9 multiple victims. He was the leader of this group. He was  
10 not induced by others but he, in fact, was an individual  
11 who induced others.

12 These crimes escalated in violence over time.  
13 And he was armed with a knife, he was armed with what  
14 appeared to be a handgun.

15 He has an offender score now of 14. Had his  
16 offender score been only nine, he would already be at the  
17 maximum. So he is, in essence, receiving what has often  
18 been referred to in the case law as no sentence for the  
19 free crimes above the offender score of nine.

20 Counsel cites to a number of reasons why he  
21 should receive an exceptional sentence downward. As I  
22 indicated, there's no legal basis. Additionally, the  
23 Courts have determined that the bases set forth by  
24 Mr. Nance in his brief are, in fact, not a legal  
25 justification. For example, lack of criminal history is

1 not a basis for an exceptional sentence. State v.  
2 Kennamar, 120 Wn.App. 328, a 2003 case. And the reason for  
3 that is because a lack of criminal history is already  
4 included in the presumptive standard range.

5 A conservation of resources is not a basis.  
6 State v. Pascal, 108 Wn.2d 125, a 1987 case. And youth is  
7 not a factor. State v. Ha'Mim, 82 Wn.App. 139.

8 Your Honor, and I will not reiterate the facts of  
9 this case as Your Honor sat through it and sat through each  
10 and every victim's rendition of what happened to them and  
11 the impact that this has had on their lives.

12 The State understands that Mr. Ali has  
13 significant family support and is empathetic to the fact  
14 that he is a young man and this is a request for a  
15 significant period of time. But Mr. Ali needs to be held  
16 accountable for his behavior as anyone would be held  
17 accountable.

18 Thank you.

19 THE COURT: Thank you.

20 Mr. Nance?

21 MR. NANCE: Thank you, Your Honor.

22 I'd first like to briefly address the same  
23 criminal conduct of counts two and three. The gist of the  
24 rule is that same criminal conduct should not be double  
25 punished. And the test is when you view it objectively,

1 whether the two crimes had the same criminal intent,  
2 occurred at the same time and place and involved the same  
3 victim. I think it's pretty clear that it was the same  
4 time and place and there was one victim, Mr. Halliburton.

5 The stabbing here was the essence of the assault.  
6 And the stabbing was done in furtherance of the robbery.  
7 The weapon, the knife, apparently was never observed,  
8 actually never recovered. The actual stabber was never  
9 identified. In fact, Mr. Ali was convicted on an  
10 accomplice theory. But the intent of this group was to rob  
11 and the stabbing helped accomplish the robbery of the cell  
12 phone and the personal property of Mr. Halliburton.

13 The intent was to steal and the use of force  
14 necessary to accomplish the theft. So it was, in essence,  
15 the same criminal conduct. One use of one knife in a  
16 single act shouldn't be the basis for two separate deadly  
17 weapon enhancements. That's the basic idea.

18 I'll proceed to the actual sentencing position.  
19 Your Honor, we feel that there is a basis, a legal and  
20 factual basis, to support an exceptional sentence,  
21 something below the stratospheric SRA range. It's in the  
22 clouds. It's just way up there.

23 This case has -- and we're in the position, of  
24 course, of having, for the sake of argument, having to  
25 concede that these things happened. They were contested at

1 trial but he's been convicted. So for purposes of this, we  
2 assume that they did, in fact, happen.

3 We believe the multiple convictions result in a  
4 presumptive range that is grossly excessive in light of the  
5 SRA purposes and that the Court does have legal and factual  
6 basis to impose something exceptional below that.

7 The statutory factors that are listed are  
8 nonexclusionary, if that's the word. It doesn't say that  
9 they have to be in the list.

10 Mr. Ali, as the Court is aware, is seventeen  
11 years old without criminal history. Now, that may not be  
12 an expressed statutory mitigating factor, but it is a  
13 circumstance that I think softens his position a bit.

14 His background, I believe, is compelling. It's  
15 something the Court should consider. He's endured extreme  
16 turmoil in his young life. He was essentially born into a  
17 bloody civil war in his native Somalia and he was forced  
18 with his family to flee with the clothes on their back. He  
19 lived briefly in a Kenyan refugee camp.

20 As a young adolescent, the time that most of us  
21 find socially awkward anyway under normal circumstances, as  
22 a young adolescent, he's suddenly thrust into the  
23 mainstream of American culture without proper language  
24 skills at the time, without a father figure in his home.  
25 He lived in a family home surrounded by a loving mother, he

1 had five sisters, but no other males. And in his culture,  
2 males weren't even permitted to come to the house. So it's  
3 little wonder that he might have experienced adjustment  
4 problems in school and in the greater community.

5 You can look out and see overwhelming community  
6 support. We've submitted a number of letters. And that  
7 support was there during the trial, as the Court will  
8 remember. There were a number of letters that we received  
9 that I attached to the sentencing memorandum.

10 One of the things that's striking to me about  
11 this is the tone of the letters talk to his character.  
12 He's the good son, he's honest, he's respectful, he's kind,  
13 he's peaceful, he's resourceful, he's motivated. And so  
14 the defense -- and by the way, before I leave that, there  
15 are three or four individuals in the courtroom today who  
16 would, if the Court will permit it, would like to be heard  
17 briefly to speak on Mr. Ali's behalf. I've identified most  
18 of the them in the brief in a footnote.

19 We're in a difficult position because we're  
20 dealing with unanimous guilty verdicts on multiple counts  
21 of unquestionably serious crimes. Which we contested but  
22 which we know the Court will consider as verities at the  
23 hearing. The Court assumes they happened.

24 And the difficulty is that it may be, probably  
25 is, impossible to reconcile some of the glowing

1 testimonials that you're seeing, that you've read about and  
2 that you'll hear from the letters and in the actual  
3 testimony, with the events at trial and with these  
4 verdicts.

5 And I think at the risk of overgeneralizing and  
6 simplifying it, I would suggest that it's evidence of this  
7 very vast cultural divide that exists today as we stand  
8 here and existed throughout these events that led to these  
9 charges, throughout the investigation. Some of the things  
10 we tried to point out during the trial. But they were  
11 there, this vast cultural divide, a lack of understanding  
12 on either side and just polar opposite perceptions on what  
13 is and what isn't.

14 Your Honor, even if these crimes for which he's  
15 been convicted occurred in fact, the Court still should  
16 consider exercising its discretion, which we believe that  
17 you have, and find that the SRA presumptive range is  
18 clearly excessive in light of the purposes set forth in the  
19 statute. Very little will be gained by crushing his hope  
20 and spirit by sending him away for two lifetimes, which is  
21 what the State is asking for. He's seventeen. If you  
22 follow the State's recommendation, you'll give him two  
23 times that. It keeps him off the street, but it does  
24 little else but that.

25 We ask the Court to consider a major departure

1 from the range and we've asked for ten years. But the  
2 Court can pick its own number.

3 THE COURT: I just want to make sure that I  
4 understand your position with respect to the legal, same  
5 criminal conduct argument. You are arguing that with  
6 respect to counts two and three, the allegations that were  
7 sustained where C. J. Halliburton was the victim, that  
8 those are based upon the same criminal conduct so the  
9 deadly weapon enhancement should only be one?

10 MR. NANCE: One time.

11 THE COURT: And that's the legal effect that  
12 exists, you're arguing.

13 MR. NANCE: That's right. So instead of 72  
14 months consecutive, it would be 48 months.

15 THE COURT: Could I ask for a brief response on  
16 that issue only?

17 MS. BOHN: On that issue only, Your Honor, I  
18 don't think that changes the matter. I've not seen any  
19 legal basis for that submitted by Mr. Nance. They are two  
20 separate crimes with two separate intents, and both of them  
21 had a deadly weapon enhancement appropriately attached to  
22 them. So I do not believe that there's a basis to reduce  
23 72 months to 48.

24 THE COURT: And I will allow you briefly up to  
25 four people to speak for up to a minute each.

1 MR. NANCE: Apiece?

2 THE COURT: Yes. They would need to stand over  
3 to my far right.

4 MR. NANCE: All right.

5 THE COURT: And if you could each give your name  
6 and your relationship to Mr. Ali. And keep in mind the  
7 time parameters.

8 MR. IMAN: Okay. My name is Mohamed Iman, Somali  
9 community elder.

10 And I would like to share the defendant. The  
11 family of Said, members of the Somali community and I share  
12 similar experiences and stories of a deadly world that is  
13 not ended.

14 In late 1990, a civil war erupted in Somalia and  
15 spread throughout the country. The opposition forces  
16 needed to defeat the government had no long-term agenda,  
17 overran the government and captured the capital and much of  
18 the legal, major cities. The downfall led to lawlessness  
19 and destruction. The opposition forces fought each other  
20 for power and money. They destroyed the country, looted  
21 the cities and we witnessed the collapse of everything we  
22 cared for.

23 In the process, we've lost our savings, property  
24 and our personal effects. We became exposed to violence  
25 and were forced to flee from our villages and to

1 neighboring countries in search of peace and safety. Some  
2 made the journey but many died in the streets of Mogadishu  
3 or along the way. We physically escaped, but to date, we  
4 do not know the psychological impact on us.

5 In Somalia, the fighting still continues to this  
6 day.

7 With this tragedy in mind, our community  
8 understands the importance of peace, security, and we  
9 always have our memories and abide by the laws of this  
10 country and contribute to the worth of this society. This  
11 country granted us permanent residency and education. It  
12 also offered us the opportunity to follow our own  
13 potentials and compete with our fellow American citizens.  
14 Most of us thrived and prospered because of the generosity  
15 and courtesy of its government and people.

16 We are a peace loving community, law abiding  
17 citizens who just want to live peacefully with our  
18 neighbors and friends. However, like other communities,  
19 some of our members may confuse the street culture with  
20 American mainstream culture and may encounter with the law  
21 and hence face consequences.

22 The defendant in this case, Said, is a young,  
23 inexperienced man who was in this country for a few years.  
24 And it's extremely unfortunate that he arrived into legal  
25 problems. Incarceration is an option but it's not the

1 solution. Imprisonment will negatively impact his single  
2 mother, who is trying to make ends meet, as well as his  
3 family members. I believe this young man needs support.

4 I take this opportunity to request you, Honorable  
5 Judge, for leniency in sentencing this young man, giving  
6 consideration as to the following: The tender age of the  
7 defendant, the inexperience of the defendant, his single  
8 mother who is struggling to make ends meet, learning his  
9 lesson and to make better choices in future.

10 Thank you.

11 THE COURT: Thank you.

12 And again, keep in mind we're going to have to  
13 narrow the time limits, because the first speaker did go  
14 over time.

15 MR. BOOKH: My name is Mohamed Bookh and I'm a  
16 student at the University of Washington.

17 THE COURT: And you wrote a letter, as well.

18 MR. BOOKH: So I'll be reading that letter to  
19 you.

20 Dear Judge. Said Ali has been attending some  
21 sessions of my media class last year. Contrary to his  
22 record at the moment, he is an individual who has shown  
23 great success inside and outside the walls of my classroom.  
24 As an immigrant coming from a refugee background, he has  
25 dealt with gang dealing and peer pressure.

1           With regards to his faith, I know this young  
2 man's ability and I clearly believe he deserves a second  
3 chance. He showed great improvement and critical thinking.  
4 Please understand that he has a lot to offer to our  
5 society. And I have seen his utmost ability of serving the  
6 social good.

7           His mother is a woman who has grown up in a  
8 gruesome, dangerous life of a refugee mother. But her  
9 beginning struggle has been to see her son serve time in  
10 jail. And I am helping him through my efforts addressed by  
11 the Court.

12           So I work with Hassan and I'm also here to work  
13 with the Court to see if any monitoring is needed and any  
14 community service, any other option besides serving time in  
15 jail.

16           THE COURT: Thank you.

17           MR. SAIREH: Yes, Your Honor, my name is Mohamed  
18 Saireh. I'm speaking on behalf of the family.

19           And I'm a family friend. And I briefly to speak  
20 for my dear family friend and a community member, Safia  
21 Nur, her son, Said Ali.

22           I have known Safia since childhood. During the  
23 time, I witnessed her tremendous growth and development.  
24 This development came not only in the area of scientific  
25 growth, but in maturity and character as well. Her son,

1 Said Ali, achieved from the family trait.

2 On her arrival to Seattle, Ms. Nur adjusted  
3 herself into the community, registered to North Seattle  
4 Community College and prepare herself to contribute to the  
5 community. At first, she had difficulty accepting her  
6 place as an immigrant, less experienced member, but soon,  
7 she learned the valuable trait of humility and enjoyed the  
8 opportunity to learn from former immigrants. Ms. Nur is a  
9 well respected leader in the community, along with her  
10 children, who motivate the community to participate in  
11 local activities and state wide affairs.

12 And Said has carried excellent qualities from his  
13 mother and is recognizable among the community. According  
14 to his close friends, he's a boy of integrity, truthful,  
15 respectful, and generous to women, children and the  
16 elderly. He's a good soccer player and trains his peer  
17 groups.

18 Your Honor, I am here to request your kindness to  
19 look this young boy on a keen eye, give him another chance  
20 to rebuild his life, become an active citizen again. And I  
21 am sure he will thrive and grow up with dignity and respect  
22 with others and to himself.

23 To conclude my statement, as a father, a parent,  
24 and a humanitarian, our children make mistakes. And he's  
25 one of those. Said made a wrong choice, as we all do.

1           Your Honor, I assure you the time he spent in  
2 jail taught him already a great lesson and he has gained a  
3 great experience to shape up his life in a better way.  
4 Therefore, I am here, Your Honor, to ask you one more time  
5 to be lenient, compassionate and feel sympathy for this  
6 young boy and commute his sentence today.

7           Thank you, Your Honor.

8           THE COURT: Thank you.

9           MR. JAMA: Your Honor, my name is Abdurahman  
10 Jama, and I'm an East African Community Services Program  
11 coordinator.

12           I'm here to ask you to give him a lesser sentence  
13 because of the challenge that Ali faced in his entire life.  
14 He was born in a civil war, one year after the civil war.  
15 He grew up in refugee camps. His father was killed in the  
16 civil war. He has seen all that tragedy in thirteen years.

17           When he came here, he came to another age. And  
18 they put him in a higher schooling instead of putting him  
19 in middle school. So in his adjustment here, he faced also  
20 many problems besides the barriers, cultural barriers,  
21 language barriers. It's like somebody put him in an ocean  
22 without learning to swim in his case.

23           Once again, Your Honor, I ask you to give him a  
24 lesser sentence and sympathy for a young boy who is a  
25 victim for his whole life, back at home and here.

1 Thank you, very much.

2 THE COURT: Thank you.

3 And, Ms. Bohn, are any of the victims present?

4 MS. BOHN: I do not believe so, Your Honor.

5 THE COURT: And, Mr. Nance, I just wanted to make  
6 sure that I had considered any case authority that you have  
7 to support your argument that the use of the knife in the  
8 robbery in the first degree and assault in the first degree  
9 was the same criminal conduct. Any case authority?

10 MR. NANCE: Just the general authority I cited,  
11 the Vike case.

12 THE COURT: And where is your reference to the  
13 Vike case? I'm sorry.

14 MR. NANCE: It's page, I'm sorry, page two.

15 MS. BOHN: I have a copy, Your Honor, if you'd  
16 like to see that case. That's the one I referenced  
17 regarding the possession.

18 THE COURT: Okay. So that's the heroin and  
19 cocaine case?

20 MS. BOHN: Correct.

21 MR. NANCE: There was another case, I don't  
22 remember the name of it, that was a robbery/assault that  
23 was not the same criminal conduct. But it was factually  
24 distinct. I didn't cite it because it didn't really  
25 support our position. But it was factually distinct in

1 that there was a clear difference of intent there. Whereas  
2 here, I think it's much closer.

3 MS. BOHN: Your Honor, I think what the Court  
4 needs to do is to look at whether or not the robbery in the  
5 first degree and the assault in the first degree is the  
6 same criminal conduct, which the State disputes that it is.  
7 And then if that were to be the case, then of course you  
8 would not score both of the deadly weapons. I don't think  
9 you can look at the deadly weapon aspect of it independent  
10 of the underlying cause of action.

11 THE COURT: Mr. Ali, what would you like me to  
12 know before I impose the sentence today?

13 THE DEFENDANT: Your Honor, I have nothing to  
14 say.

15 THE COURT: Well, it's very clear that Mr. Ali  
16 has wonderful community and family support. These are  
17 individuals of great stature in the community and it is  
18 clear that he has a lot of folks looking out for him.

19 But I can't simply look at the popular support, I  
20 have to look at the law. And the question is what does the  
21 law require me to impose and is there any justification  
22 under the law for imposing a sentence below the standard  
23 range. And I cannot find that there is any legal  
24 justification that would allow that. So I find that the  
25 law requires me to impose a sentence within the standard

1 range.

2 So with respect to the robbery in the first  
3 degree counts, which are counts one, two, five, seven and  
4 eight, I will impose 129 months in prison. With respect to  
5 the count three assault in the first degree charge, I will  
6 impose 240 months in prison. With respect to the attempted  
7 robbery in the first degree charges, and that's counts four  
8 and six, I will impose 96.75 months in prison.

9 All of those sentences are served on top of each  
10 other. That's called concurrent. The law requires that I  
11 impose 24 months for each of the three deadly weapon  
12 findings and that those be consecutive. That means that  
13 they be served after the initial sentences, after one  
14 another. So that's 72 months. I do not find that the law  
15 supports a finding that these were same criminal conduct.

16 That is a total sentence, from my calculation, of  
17 312 months. Which is a huge sentence for someone of your  
18 age. And I'm very mindful of that. But the law does not  
19 allow me to depart from it simply because of your age,  
20 whether you're seventeen or eighteen or nineteen, which I'm  
21 not sure was ever actually established.

22 The law also require that I impose community  
23 custody upon your release for a period of time from 24 to  
24 48 months. It also requires that you submit to DNA  
25 testing. And that you no longer have the right to possess

1 a firearm. And that's forever, unless a judge signs a  
2 court order that gives you the right back.

3 There is likely an issue of restitution, that is,  
4 damage for injuries to the victims. And I think it's very  
5 important for us to keep in mind the faces of the victims  
6 that testified. None of those people were in a situation  
7 where they had anything to do with what happened. None of  
8 them were vindictive. They were all credible, candid  
9 individuals. They were very cautious about making sure  
10 that the right person was identified.

11 In addition, there is a \$500 victim penalty  
12 assessment and a \$100 DNA processing fee that's required by  
13 law.

14 And the costs will be paid at a rate of fifty  
15 percent while in custody, and then afterwards, as set out  
16 by the King County Clerk's Office.

17 And there's not HIV testing?

18 MS. BOHN: No, there is not.

19 THE COURT: And I didn't specifically indicate,  
20 but obviously, Mr. Ali is to have no contact with any of  
21 the named victims in this case.

22 Was there anything else?

23 MS. BOHN: Is the defendant waiving his presence  
24 at a restitution hearing?

25 (Defense counsel conferring with defendant.)

1 MR. NANCE: Mr. Ali would waive his presence.

2 MS. BOHN: The only other additional thing, Your  
3 Honor, is that I realized in the course of preparing today  
4 for sentencing, that I had not taken Your Honor's findings  
5 regarding the 3.6 motion and put them into official form.  
6 I wasn't sure if Your Honor intended me to do that, which I  
7 assumed you did.

8 And so my request would be that I do that, share  
9 that with Mr. Nance. If we can, we will submit agreed  
10 findings. In the event we have to argue that issue, I was  
11 wondering if Mr. Ali wishes to waive his presence at that  
12 hearing.

13 MR. NANCE: I thought there was something in  
14 writing.

15 THE COURT: I think I probably gave you, as is  
16 often my practice, just my draft findings that I read.

17 MS. BOHN: Right. And I didn't formally put them  
18 into writing.

19 MR. NANCE: He would waive.

20 MS. BOHN: Thank you.

21 THE COURT: And, Mr. Ali, I'm going to read to  
22 you your rights to appeal. And we will give you a written  
23 copy, as well.

24 You have the right to appeal your conviction.  
25 You have the right to appeal your sentence if it were to be

1 imposed outside of the standard range. But this was not.  
2 Unless a notice of appeal is filed within thirty days from  
3 today, the right to appeal is lost.

4 The Superior Court Clerk will, if requested by  
5 you, supply you with a notice of appeal form and fill it  
6 out upon completion.

7 You have a right, if you cannot afford it, to  
8 have a lawyer or attorney appointed and have portions of  
9 the trial record necessary for review transcribed at public  
10 expense for an appeal.

11 There are certain other time limits that are set  
12 forth, as well.

13 MR. NANCE: Your Honor, regarding the potential  
14 appeal, we anticipate that he would be filing an appeal. I  
15 will not personally be involved in that. I've already  
16 talked to Mr. James Bible, who has indicated he would be  
17 doing that and would be filing the notice of appeal.

18 And I'm not certain about what -- there's a  
19 couple of loose ends that I would like to remain available  
20 to do even if he's doing that. One would be to clear up  
21 the findings. But additionally, there's just a  
22 housekeeping matter. There's an unpaid expert witness fee  
23 that I think we're going to be able to resolve with OPD.  
24 If not, I'd like to be able to bring it back to the Court.

25 THE COURT: That seems appropriate.

1 I just would like to note, for the record that  
2 the sentence that was imposed was the lowest sentence that  
3 I legally felt I had the option of imposing in this case.  
4 I recognize Mr. Ali's young age and that is primarily the  
5 reason why that was imposed.

6 MR. NANCE: I understand.

7 MS. BOHN: I'm providing to Mr. Ali his copy of  
8 notice of ineligibility to possess a firearm and loss of  
9 his right to vote.

10 Mr. Ali, do you understand that that remains in  
11 effect for the rest of your life. You actually have to  
12 come back into a court of law to have that right restored.  
13 Do you understand that?

14 THE DEFENDANT: (Witness nods head.)

15 MS. BOHN: Could you say that audibly, please?

16 THE DEFENDANT: Yeah.

17 THE COURT: Thank you.

18 MS. BOHN: I've also provided to Mr. Ali the  
19 Court Clerk's rules regarding payment of his financial  
20 obligation.

21 MR. NANCE: I have approved the form, Your Honor.

22 THE COURT: I've signed the judgment and sentence  
23 and the attached orders.

24 Do you have any questions?

25 THE DEFENDANT: No.

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THE COURT: All right.

We will be in recess.

MS. BOHN: Thank you, Your Honor.

MR. NANCE: Thank you.

(Court adjourned at 2:00 p.m.)

**LAW OFFICE OF COREY EVAN PARKER**

**August 13, 2018 - 8:55 AM**

**Transmittal Information**

**Filed with Court:** Supreme Court  
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**Appellate Court Case Title:** Personal Restraint Petition of Said Omer Ali  
**Superior Court Case Number:** 08-1-05113-3

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