

FILED
SUPREME COURT
STATE OF WASHINGTON
12/10/2018 8:00 AM
BY SUSAN L. CARLSON
CLERK

NO. 95814-9

SUPREME COURT
STATE OF WASHINGTON

STATE OF WASHINGTON,

Plaintiff/Respondent,

V.

JEREMIAH JAMES GILBERT,

Defendant/Appellant.

SECOND SUPPLEMENTAL BRIEF OF APPELLANT

Dennis W. Morgan WSBA #5286
Attorney for Appellant
P.O. Box 1019
Republic, Washington 99166
(509) 775-0777

TABLE OF CONTENTS

TABLE OF AUTHORITIES	
TABLE OF CASES	ii
STATUTES	ii
OTHER AUTHORITIES	ii
ARGUMENT	1

TABLE OF AUTHORITIES

CASES

Personal Restraint of Mulholland, 161 Wn.2d 322, 166 P.3d 677
(2007)..... 3

Miller v. Alabama, 567 U.S. 460, 132 S. Ct. 2455, 183 L. Ed.2d 407
(2012)..... 2

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

STATUTES

RCW 9.94A.730..... 1

RCW 9.94A.730 (1)..... 1

RCW 10.95.030 2

OTHER AUTHORITIES

ESSB 5064 1

ARGUMENT

The Supreme Court granted the State's Motion to supplement the record with a decision of the Indeterminate Sentence Review Board (ISRB) dated April 13, 2018.

The ISRB determined that Mr. Gilbert was eligible for parole in connection with the charge of aggravated first degree murder. He had served the minimum 25 years and had provided sufficient proof to the ISRB that he was rehabilitated.

As a result of that determination the ISRB released him to the first degree murder conviction and stated: "Mr. Gilbert may petition the Board after he has served 20 years on the Count I Murder in the First Degree, as per ESSB 5064 (early release consideration) that the Legislature passed in 2014."

ESSB 5064 is now codified as RCW 9.94A.730.

RCW 9.94A.730 (1) states:

Notwithstanding any other provision of this chapter, any person convicted of one or more crimes committed prior to the person's eighteenth birthday may petition the indeterminate sentence review board for early release after serving no less than twenty years of total confinement, provided the person has not been convicted for any crime committed subsequent to the person's eighteenth birthday, the person has not committed a disqualifying serious infraction as defined by the department in the twelve months prior to filing the petition for early release, and the current sentence was not imposed under **RCW 10.95.030** or 9.94A.507.

The Supreme Court requested supplemental briefing with regard to the applicability of RCW 9.94A.730 to Mr. Gilbert's case. Mr. Gilbert opines that the statute is inapplicable to his case.

RCW 9.94A.730(1) contains exceptions to the ability to petition for early release. The exceptions include RCW 10.95.030 which is the aggravated murder sentencing statute.

Even though Mr. Gilbert has served the minimum 25 year sentence imposed at re-sentencing, he remains under the auspices of the ISRB.

The trial court, at resentencing, set the minimum term of 25 years for the aggravated first degree murder. It also set a maximum term of life in prison. It then ran the first degree murder conviction consecutive to the aggravated murder sentence. The first degree murder sentence carries a mandatory minimum 20 year sentence.

Mr. Gilbert contends that RCW 9.94A.730 (1) is only applicable to the first degree murder conviction. He has not served the mandatory minimum 20 year sentence on that conviction.

Thus, the ISRB still has authority over Mr. Gilbert for life. It will not be until he completes 240 months of the first degree murder sentence that he will be eligible for parole.

As originally argued, this constitutes a *de facto* life sentence for Mr. Gilbert.

The ISRB's release of Mr. Gilbert from the aggravated murder conviction illustrates his capacity for rehabilitation, as well as actual rehabilitation.

It is Mr. Gilbert's position that under the *Miller*¹ decision the ISRB's determination should be the trigger for his immediate release. Nevertheless, due to the trial court running

¹ *Miller v. Alabama*, 567 U.S. 460, 132 S. Ct. 2455, 183 L. Ed.2d 407 (2012)

the first degree murder sentence consecutive to the aggravated first degree murder sentence, he cannot now be released.

As originally argued, the trial court failed to understand the breadth of its discretion and failed to comply with the obligation imposed by *State v. Houston-Sconiers*².

Mr. Gilbert respectfully requests that the sentence imposed at the resentencing hearing be reversed and the case remanded to the trial court with directions to comply not only with *Houston-Sconiers*; but also to exercise the discretion authorized under *Personal Restraint of Mulholland*³.

DATED this 10th day of December, 2018.

Respectfully submitted,

s/ Dennis W. Morgan

DENNIS W. MORGAN WSBA #5286

Attorney for Defendant/Appellant.

P.O. Box 1019

Republic, WA 99166

(509) 775-0777

(509) 775-0776

nodblspk@rcabletv.com

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

³ *Personal Restraint of Mulholland*, 161 Wn.2d 322, 166 P.3d 677 (2007)

NO. 95814-9

SUPREME COURT

STATE OF WASHINGTON

STATE OF WASHINGTON,)	
)	
Plaintiff,)	
Respondent,)	
)	
v.)	CERTIFICATE OF SERVICE
)	
JEREMIAH JAMES GILBERT,)	
)	
Defendant,)	
Appellant.)	
_____)	

I certify under penalty of perjury under the laws of the State of Washington that on this 10th day of December, 2018, I caused a true and correct copy of the *SECOND SUPPLEMENTAL BRIEF OF APPELLANT* to be served on:

WASHINGTON STATE SUPREME COURT
Temple of Justice
Attention: Susan L. Carlson, Deputy Clerk
PO Box 40929
Olympia, WA 98504-0929
supreme@courts.wa.gov

E-MAIL

DAVID QUESNEL
Klickitat County Prosecutor's Office
205 South Columbus Avenue #106
Goldendale, Washington 98620
davidq@klickitatcounty.org
paapeals@klickitatcounty.org

E-FILE

Jennifer Joseph
Jennifer.joseph@kingcounty.gov
paoappellateunitmail@kingcounty.gov

E-FILE

JEREMIAH JAMES GILBERT #709551
Coyote Ridge Correction Center
POB 769
Connell, Washington 99326

U.S. MAIL

s/ Dennis W. Morgan
DENNIS W. MORGAN WSBA #5286
Attorney for Defendant/Appellant.
P.O. Box 1019
Republic, WA 99169
Phone: (509) 775-0777
Fax: (509) 775-0776
nodblspk@rcabletv.com

December 10, 2018 - 6:40 AM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 95814-9
Appellate Court Case Title: State of Washington v. Jeremiah James Gilbert
Superior Court Case Number: 92-1-00108-1

The following documents have been uploaded:

- 958149_Briefs_20181210063956SC877298_7149.pdf
This File Contains:
Briefs - Appellants Supplemental
The Original File Name was Second Supreme Court Supplemental Brief of Appellant Gilbert.pdf

A copy of the uploaded files will be sent to:

- Jim.Whisman@kingcounty.gov
- bannail@seattleu.edu
- changro@seattleu.edu
- cindy@defensenet.org
- davidq@klickitatcounty.org
- greg@washapp.org
- griff1984@comcast.net
- hillary@defensenet.org
- jennifer.joseph@kingcounty.gov
- leeme@seattleu.edu
- levinje@seattleu.edu
- paapeals@klickitatcounty.org
- paoappellateunitmail@kingcounty.gov
- talner@aclu-wa.org
- vhernandez@aclu-wa.org
- wapofficemail@washapp.org

Comments:

Sender Name: Dennis Morgan - Email: nodblspk@rcabletv.com

Address:
PO BOX 1019
REPUBLIC, WA, 99166-1019
Phone: 509-775-0777

Note: The Filing Id is 20181210063956SC877298