

FILED
Court of Appeals
Division II
State of Washington
10/31/2018 2:23 PM

FILED
SUPREME COURT
STATE OF WASHINGTON
11/8/2018
BY SUSAN L. CARLSON
CLERK

THE SUPREME COURT
STATE OF WASHINGTON

No. 96496-3

STATE OF WASHINGTON, PETITIONER,

v.

MARVIN LOFI LEO, RESPONDENT

Court of Appeals Cause No. 49863-4-II
Appeal from the Superior Court of Pierce County
The Honorable Katherine M. Stolz

No. 98-1-03161-3

PETITION FOR REVIEW

Treated as Motion for
Discretionary Review.
See Clerk's
11-13-2018 letter

MARK LINDQUIST
Prosecuting Attorney

By
NATHANIEL BLOCK
Deputy Prosecuting Attorney
WSB # 53939

930 Tacoma Avenue South
Room 946
Tacoma, WA 98402
PH: (253) 798-7400

Table of Contents

A. IDENTITY OF PETITIONER..... 1

B. COURT OF APPEALS DECISION..... 1

C. ISSUE PRESENTED FOR REVIEW. 1

 1. Should this Court accept review when the Court of Appeals erred when it found the State was not a proper party to challenge the underlying decision from the Pierce County Superior Court and not a decision of the Parole Board as stated in the Order? This is an issue of substantial public interest and is a significant question of law under RAP 13.4(b)(3) as to whom is the proper governmental representative. 1

 2. This case also represents an issue of substantial public interest and a significant question of law under RAP 13.4(b)(3) and involves a fundamental and urgent issue of broad public import requiring prompt and ultimate determination necessitating direct review under RAP 4.2(a)(4). Did the resentencing court err when it found it had discretion to impose concurrent sentences for five separate aggravated murder convictions under RCW 10.95.030(3) when it incorrectly applied the exceptional sentence provision of the Sentencing Reform Act to the aggravated murder statute? 1

 3. Should this Court accept review when a resolution here is the natural progression of cases recently decided or accepted for review by this Court pursuant to RAP 13.4(b)(3)-(4)? 1

D. STATEMENT OF THE CASE..... 2

 1. Procedure 2

 2. Statement of Facts..... 2

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED..... 3

1. THE COURT OF APPEALS ERRED IN FINDING THAT THE STATE WAS NOT A PROPER PARTY WHEN THE UNDERLYING DECISION WAS FROM THE PIERCE COUNTY SUPERIOR COURT, NOT THE PAROL BOARD. 3

2. THE RESENTENCING COURT ERRED WHEN IT FOUND IT COULD IMPOSE CONCURRENT SENTENCES FOR DEFENDANT’S FIVE AGGRAVATED MURDER CONVICTIONS BY INCORRECTLY APPLYING THE SRA’S EXCEPTIONAL SENTENCE PROVISION TO RCW 10.95.030..... 5

3. GRANTING REVIEW ON THIS MATTER WOULD BE THE NATURAL PROGRESSION WITH OTHER PETITIONS RECENTLY DECIDED OR ACCEPTED BY THIS COURT. 18

F. CONCLUSION..... 19

Table of Authorities

State Cases

| | |
|--|---------------|
| <i>In re McNeil</i> , 181 Wn.2d 582, 590, 334 P.3d 548, 552 (2014) | 8, 14 |
| <i>In re Rolston</i> , 46 Wn. App. 622, 623, 732 P.2d 166 (1987) | 4 |
| <i>State v. Bassett</i> – Wn.2d –, – P.3d –, Slip Op. at 14 (October 18, 2018)..... | 8, 15, 18, 19 |
| <i>State v. Bassett</i> , review granted, 189 Wn.2d 1008 (2017) | 3 |
| <i>State v. Brett</i> , 126 Wn.2d 136, 184, 892 P.2d 29 (1995)..... | 7, 8, 11 |
| <i>State v. Ervin</i> , 169 Wn.2d 815, 820, 239 P.3d 354 (2010) | 12 |
| <i>State v. Gilbert</i> , No. 95814-9, Slip No. 2018 WL 4770806 | 19, 20 |
| <i>State v. Gregory</i> , – Wn.2d –, – P.3d – (2018) | 6 |
| <i>State v. J.P.</i> , 149 Wn.2d 444, 450, 69 P.3d 318 (2003) | 12 |
| <i>State v. Kron</i> , 63 Wn. App. 688, 694, 821 P.2d 1248, 1252 (1992) | 7 |
| <i>State v. Meas</i> , 118 Wn. App. 297, 306, 75 P.3d 998, 1002 (2003)..... | 5, 9, 11 |
| <i>State v. Ortiz</i> , 104 Wn.2d 479, 485–86, 706 P.2d 1069 (1985)..... | 6, 7, 8 |
| <i>State v. Ramos</i> , 187 Wn.2d 420, 446, 387 P.3d 650 (2017) | 14, 15, 16 |
| <i>State v. Scott</i> , 190 Wn.2d 586, 416 P.3d 1182 (2018)..... | 16 |
| <i>State v. Soto</i> , 177 Wn. App. 706, 713, 309 P.3d 596 (2013)..... | 12 |
| <i>State v. Yates</i> , 161 Wn.2d 714, 784, 168 P.3d 359 (2007)..... | 7, 8, 11 |
| <i>Wahleithner v. Thompson</i> , 134 Wn. App. 931, 936, 143 P.3d 321 (2006)..... | 15 |

Federal and Other Jurisdiction

Bunch v. Smith, 685 F.3d 546 (2012) 16, 17, 18

Close v. People, 48 P.3d 528 (Colo. 2002)..... 17

Contreras v. Davis, 716 Fed. Appx. 160 (4th Cir. 2017) 17

Graham v. Florida, 560 U.S. 48, 130 S. Ct. 2011,
176 L. Ed. 2d 825 (2010) 17

Miller v. Alabama, 567 U.S. 460, 132 S. Ct. 2455, 2469,
183 L. Ed. 2d 407 (2012)..... 2, 3, 5, 8, 10, 11, 12, 13, 14, 15, 16, 17

Pearson v. Ramos, 237 F.3d 881, 886 (7th Cir. 2001)..... 17

State v. Boston, 131 Nev. Adv. Op. 98, 363 P.3d 453,
457 (Nev. 2015) 16

State v. Delgado, 323 Conn. 801, 151 A.3d 345 (2016)..... 17

State v. Kasic, 228 Ariz. 228, 233, 265 P.3d 410 (2011) 17

United States v. Aiello, 864 F.2d 257, 265 (2d Cir. 1988)..... 16

United States v. Jefferson, 816 F.3d 1016 (8th Cir. 2016) 17

Constitutional Provisions

Article I, section 14, Washington State Constitution..... 8, 14, 18, 19

Eighth Amendment, United States Constitution..... 8, 14, 16, 17, 18

Statutes

Former RCW 10.95.030(1)..... 6, 10

Laws of 1981, Ch.s 137 6

Laws of 1981, Ch.s 138 6, 10

RCW 10.95 4, 5, 6, 7, 19

RCW 10.95.030 4, 5, 9, 11, 18, 20

| | |
|----------------------------------|-------------|
| RCW 10.95.030(1)..... | 5, 12 |
| RCW 10.95.030(2)..... | 6, 10 |
| RCW 10.95.030(3)..... | 1, 2, 8, 14 |
| RCW 10.95.030(3)(a)(ii) | 9 |
| RCW 10.95.030(3)(b)..... | 13 |
| RCW 10.95.030(3)(c) | 9, 10 |
| RCW 10.95.030(3)(h)..... | 9 |
| RCW 10.95.030(3)(ii)..... | 13 |
| RCW 2.08.010 | 3 |
| RCW 36.27.020(4)..... | 3 |
| RCW 43.10.040 | 5 |
| RCW 9.94A.535(1)..... | 6 |
| RCW 9.94A.540(3)..... | 14 |
| RCW 9.94A.589..... | 7 |
| RCW 9.94A.701..... | 9 |
| RCW 9.94A.702..... | 9 |
| RCW 9.94A.728..... | 9 |
| RCW 9.94A.730..... | 14 |
| Rules and Regulations | |
| RAP 13.4(b)(3) | 1 |
| RAP 13.4(b)(4) | 1 |
| RAP 4.2(a)(4)..... | 1 |

A. IDENTITY OF PETITIONER.

State of Washington, appellant, in the Court of Appeals.

B. COURT OF APPEALS DECISION.

The petitioner seeks review of *State v. Marvin Lofi Leo*, No. 49863-4-II. The Court of Appeals issued an Order Granting Motion to Modify and Order Dismissing State's Attempt to Appeal. Appendix A.

C. ISSUE PRESENTED FOR REVIEW.

1. Should this Court accept review when the Court of Appeals erred when it found the State was not a proper party to challenge the underlying decision from the Pierce County Superior Court and not a decision of the Parole Board as stated in the Order? This is an issue of substantial public interest and is a significant question of law under RAP 13.4(b)(3) as to whom is the proper governmental representative.

2. This case also represents an issue of substantial public interest and a significant question of law under RAP 13.4(b)(3) and involves a fundamental and urgent issue of broad public import requiring prompt and ultimate determination necessitating direct review under RAP 4.2(a)(4). Did the resentencing court err when it found it had discretion to impose concurrent sentences for five separate aggravated murder convictions under RCW 10.95.030(3) when it incorrectly applied the exceptional sentence provision of the Sentencing Reform Act to the aggravated murder statute?

3. Should this Court accept review when a resolution here is the natural progression of cases recently decided or accepted for review by this Court pursuant to RAP 13.4(b)(3)-(4)?

D. STATEMENT OF THE CASE.

1. Procedure

Marvin Lofi Leo, hereinafter “defendant,” pleaded guilty to five counts of aggravated first degree murder and five counts of first degree assault in January 2000. Appendix B. He was sentenced to five life without parole sentences for the aggravated murders. *Id.*

2. Statement of Facts

Following the United States Supreme Court’s decision in *Miller v. Alabama*, 567 U.S. 460, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012), defendant received a resentencing hearing as required. At the hearing, the State argued that under the provisions of RCW 10.95.030(3) consecutive sentences were mandated. Appendix E at 5-8. The court rejected this argument and found it had the discretion under the Sentencing Reform Act (SRA) to sentence defendant to concurrent sentences only on the aggravated murder convictions. Appendix B; Appendix E at 36, et. seq. Written findings of fact and conclusions of law were issued the following month. Appendix B.

The State filed a timely notice of appeal with the Court of Appeals, Division II. Appendix G. The State subsequently moved to re-designate the notice of appeal as a motion for discretionary review. Appendix H. The Court *sua sponte* stayed the motion for discretionary review pending the

outcome of a matter before this Court (*State v. Bassett*, review granted, 189 Wn.2d 1008 (2017)) and a matter before Division II (*State v. Phet*, No. 488779-1-II, consolidated with *In re Phet*, No. 49508-2-II). Appendix I. Defendant made a motion to modify the ruling. Appendix J. The Court granted the motion to modify and also ordered that because the State was not a proper party the State's attempt to appeal was denied. Appendix A.

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED.

1. THE COURT OF APPEALS ERRED IN FINDING THAT THE STATE WAS NOT A PROPER PARTY WHEN THE UNDERLYING DECISION WAS FROM THE PIERCE COUNTY SUPERIOR COURT, NOT THE PAROL BOARD.

The prosecuting attorney for each county shall prosecute all criminal actions in which the state or a county may be a party. RCW 36.27.020(4). Superior Courts have original jurisdiction over all felony criminal cases. RCW 2.08.010. It is well-known that a sentencing hearing is part of a criminal action. The underlying action here is a *Miller* resentencing hearing. See Appendix D-F. The original case arose from a criminal case before the Pierce County Superior Court in cause number 98-1-03161-3. Appendix B. At all times during the pendency of the underlying action, the Pierce County Prosecuting Attorney's Office (PCPAO) was the State's representative. *Id.* The PCPAO was also the State representative at the resentencing hearing. *Id.* The resentencing hearing was held before Pierce County Superior Court

Judge Katherine Stolz. *Id.* At no time was the Parole Board or the Indeterminate Sentencing Review Board (ISRB) involved in the proceedings nor were they are a party to the action.

The State was not, and is not, attempting to appeal a decision of the Parole Board or the ISRB. The State's appeal deals with an asserted incorrect legal conclusion drawn by Judge Stolz. Appendix B. If the Court of Appeals Order was to be affirmed, the State would not have a possible recourse to appeal an incorrect legal conclusion from Superior Court in similar resentencing cases. If the underlying sentencing decision was a decision granting parole by the ISRB, then the State would likely not be able to appeal their decision. *See In re Rolston*, 46 Wn. App. 622, 623, 732 P.2d 166 (1987).¹ If the State was appealing only the minimum term imposed, the State may not be able to appeal that decision. *Id.* However, neither situation need be considered here. The State is appealing an incorrect legal application of RCW 10.95.030 by a Pierce County Superior Court judge in a matter where it was the proper party throughout the entire course of proceedings. If the matter being appealed was a decision of the ISRB, the Attorney General, not the Pierce County Superior Court, would

¹ It should be noted that *Rolston* dealt with an indeterminate sentence under the Sentencing Reform Act, not the aggravated murder statute, RCW 10.95. The State does not concede the SRA's indeterminate sentence provisions control sentencing under RCW 10.95. The State merely cites such to note how there may be instances where the State could not appeal various aspects of an indeterminate sentence or the ISRB's decision.

be the proper State representative. RCW 43.10.040. But the ISRB had nothing to do with this matter. Appendix B.

This is an issue which may arise again in the future as our courts struggle with *Miller* and resentencing in particular. It is of substantial public interest and a significant question of law for lower courts to have clarity that in a resentencing matter, the prosecuting attorney of the respective county is the proper governmental authority. Because the Court of Appeals, Division II erred when it found that the State was not a proper party, the State urges this Court to accept review or, in the alternative, remand to Division II to allow the PCPAO to act in its governmental capacity as the proper State representative on appeal.

2. THE RESENTENCING COURT ERRED WHEN IT FOUND IT COULD IMPOSE CONCURRENT SENTENCES FOR DEFENDANT'S FIVE AGGRAVATED MURDER CONVICTIONS BY INCORRECTLY APPLYING THE SRA'S EXCEPTIONAL SENTENCE PROVISION TO RCW 10.95.030.

Aggravated murder is Washington's most serious criminal offense and has its own sentencing chapter. RCW Ch. 10.95. "RCW 10.95.030(1) requires trial courts to sentence persons convicted of aggravated first degree murder to life imprisonment without possibility of release or parole..." *State v. Meas*, 118 Wn. App. 297, 306, 75 P.3d 998, 1002 (2003) (citations omitted).

Washington's current aggravated murder sentencing statutes' enactment repealed prior statutory provisions related to punishment of aggravated first degree murder. *See* Laws of 1981, Ch.s 137 and 138. A new section was added to Title 10 governing the imposition of sentencing in aggravated murder cases. Laws of 1981, Ch.s 138. *See also* former RCW 10.95.030(1) and (2). That provision allowed for only two possible sentences for defendants convicted of aggravated murder: life in prison without parole or death. *Id.*²

The resentencing court in this case applied the SRA rather than the aggravated murder sentencing statute. This was error. If the SRA and its exceptional sentence provisions applied to aggravated murder, there would likely be a robust jurisprudence to have developed over the past 35 years regarding "mitigating circumstances" and exceptional sentences "below the standard range" for defendants facing life in prison. RCW 9.94A.535(1). The reason no such jurisprudence has developed is because the two sentencing statutes are separate and apply to different classes of offenses. *State v. Ortiz*, 104 Wn.2d 479, 485–86, 706 P.2d 1069 (1985). The *Ortiz* court made clear its "dissatisfaction" with how RCW 10.95 did not allow

² The State notes that while the original statute also allowed death as punishment, this Court's decision in *State v. Gregory*, – Wn.2d –, – P.3d – (2018) found the statute to be unconstitutional as applied to death sentences. Because of the limited jurisprudence regarding consecutive and concurrent sentences as it relates to RCW 10.95, the State uses death penalty cases only to show our courts' historical interpretation of RCW 10.95 and its interplay with the SRA.

courts any flexibility in sentencing, unlike the SRA. *Id.* Yet, this Court upheld the statute as it was within the legislature's authority to enact such a provision. *Id.*

Our appellate courts have adhered to the *Ortiz* conception of the relationship between the two statutes. See *State v. Yates*, 161 Wn.2d 714, 784, 168 P.3d 359 (2007); *State v. Kron*, 63 Wn. App. 688, 694, 821 P.2d 1248, 1252 (1992). In *Yates*, in response to a request to run the defendant's death penalty sentence consecutive to the defendant's Spokane County life in prison sentences, the Supreme Court stated that "the SRA provisions on concurrent and consecutive sentences (RCW 9.94A.589) cannot be sensibly applied when a jury in a special sentencing proceeding under chapter 10.95 RCW returns a verdict for a death sentence." *Id.* In *Kron*, the court stated,

The Legislature has specified in two separate statutes that death or life in prison without parole will be the only sentencing alternatives for someone who commits aggravated murder. The Legislature could not have intended any other penalty.

Kron, 63 Wn. App. at 694. This Court has also stated, "The SRA and RCW 10.95 serve two separate functions and are consistent." *State v. Brett*, 126 Wn.2d 136, 184, 892 P.2d 29 (1995) (citation omitted) (emphasis added).

The foregoing authorities indicate that the resentencing court incorrectly applied the SRA to this case. Further support for this view are found in the *Miller* fix amendments. Those amendments were passed in 2014 in response to *Miller v. Alabama*, 567 U.S. 460, 132 S. Ct. 2455, 2469,

183 L. Ed. 2d 407 (2012). In *Miller* the Supreme Court held “the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders.” *Id.* The *Miller* fix was enacted in order to provide for less than life, indeterminate sentences for juveniles thereby removing mandatory life imprisonment as a potential punishment for aggravated murder. RCW 10.95.030(3). Aggravated murder sentencing was thus brought into compliance with *Miller*’s requirements. See *In re McNeil*, 181 Wn.2d 582, 590, 334 P.3d 548, 552 (2014) (“The *Miller* fix remedies the unlawfulness of the petitioners’ sentences by providing they must be resentenced in a manner that does not violate the Eighth Amendment, consistent with *Miller*.”).³

If all along Washington’s aggravated murder sentencing statute allowed for an exceptional sentence of less than life in prison, there would have been no need for the *Miller* fix. If a life in prison sentence was not mandatory, *Miller* would not apply. This was not the case, and thus the legislature took appropriate action to ensure Washington’s penalty for its most serious offense did not contravene *Miller*.

In light of the foregoing, the resentencing court’s imposition of an “exceptional sentence” lower than the minimum sentence provided for by RCW 10.95.030(3), was improper. Since under *Ortiz*, *Brett*, *Yates*, and

³ It should be noted that while *McNeil* applies an Eighth Amendment analysis, this Court recently found Article I, section 14 to provide greater protection for juveniles than the Eighth Amendment. *State v. Bassett* – Wn.2d –, – P.3d –, Slip Op. at 14 (October 18, 2018).

Meas, the SRA does not apply to the crimes for which the defendant's minimum term was being set, the trial court erred when it ruled, "The terms of [the exceptional sentence provision of the SRA] govern the imposition of sentences outside the standard range . . ." and therefore "The Court may impose a sentence outside the standard range" Appendix B. For defendants who are ages sixteen to eighteen, RCW 10.95.030(3)(a)(ii) mandates "a maximum term of life imprisonment and a minimum term of total confinement of no less than twenty-five years."

Statutory construction further undermines the resentencing court's ruling. Review of the entirety of RCW 10.95.030 shows that none of the incarceration provisions of the SRA were cross referenced or incorporated by reference. Other provisions were however. *See* RCW 10.95.030(3)(c) ("During the minimum term of total confinement, the person shall not be eligible [for] any [] form of early release authorized under RCW 9.94A.728, or any other form of authorized leave or absence from the correctional facility while not in the direct custody of a corrections officer.")

Other references in RCW 10.95.030 concern post incarceration matters. For example, RCW 10.95.030(3)(h) provides a specific grant of authority for post-incarceration community custody for aggravated murder. Had the SRA already supplemented the aggravated murder sentencing statute, the community custody provisions would already apply and this section would be superfluous. *See* RCW 9.94A.701 and .702. The SRA did not apply and hence this provision was necessary.

The legislature could have cross referenced any of the SRA provisions if it had wanted them to apply. If more than community custody was intended to be part of aggravated murder sentencing, the enactment would have said so. As enacted however, the only actual cross reference to the SRA is the above-referenced provision which specifically states that particular provisions do not apply. *See* RCW 10.95.030(3)(c). These provisions show that if the legislature intended particular provisions of the SRA to apply it specifically would have said so. Because this is an area of substantial public interest and a significant question of law, this Court should accept review. The question presented involves a fundamental and urgent issue of broad public import which requires prompt and ultimate determination so courts know how to interpret the statute and sentence accordingly. These issues will apply anytime a juvenile is convicted of multiple counts of aggravated murder.

- a. The aggravated murder sentencing statute mandates separate, consecutive punishment for each count of aggravated murder.

Until the *Miller* fix was enacted, aggravated murder carried a sentence of either life in prison or death. Laws of 1981, Ch.s 138. *See* former RCW 10.95.030(1) and (2). Perhaps because there have been relatively few cases in Washington involving multiple aggravated murders, there are few references to whether sentences for multiple counts should be served consecutively or concurrently. Statutory text supplemented by case law

discussion indicates that aggravated murder defendants should serve separate, consecutive sentences for each conviction.

Yates supports the view that separate punishment was intended for multiple aggravated murder deaths. *State v. Yates*, 161 Wn.2d at 784. Where the death penalty had been imposed for some of a serial killer's murders, and where life in prison was imposed for others, concurrent versus consecutive sentencing "cannot be sensibly applied." *Id.* The reason is because separate penalties for separate takings of life must be carried out separately. This supports the view that each aggravated murder conviction should carry its own penalty.

Other references lead to the same conclusion. For instance, references to singular "verdicts" or "convictions" supports separate, consecutive aggravated murder sentencing. See *State v. Brett*, 126 Wn.2d 136, 171, 892 P.2d 29 (1995) ("Because we find the same criminal conduct rule inapplicable by its terms, we need not address whether the procedural rules in the Sentencing Reform Act . . . apply to capital cases."); see also *State v. Meas*, 118 Wn. App. 297, 307, 75 P.3d 998 (2003) ("[The defendant] also claims, without citing to authority, that the trial court had an option to sentence him on either of his two convictions. But RCW 10.95.030 does not give trial courts an option in sentencing defendants convicted of aggravated first degree murder.").

Until 2014 there was little cause for the legislature to consider concurrent or consecutive sentencing for aggravated murder. Before *Miller*

each conviction resulted in either a life sentence or death. Concurrent or consecutive sentencing was a symbolic or academic issue at best. Thus, it is important to consider carefully the language adopted by the *Miller* fix because after those amendments, for the first time, less than life sentences became a possibility for aggravated murder.

When the plain language of the statute is unambiguous and the legislative intent is apparent, a court will not construe the statute otherwise. *State v. J.P.*, 149 Wn.2d 444, 450, 69 P.3d 318 (2003). If the meaning of a statute is “plain on its face,” a court must give effect to that plain meaning. *State v. Ervin*, 169 Wn.2d 815, 820, 239 P.3d 354 (2010). Statutory construction is a question of law reviewed *de novo*. *State v. Soto*, 177 Wn. App. 706, 713, 309 P.3d 596 (2013).

The first section which applies to aggravated murder sentencing imposes a life sentence for anyone “convicted of *the crime* of aggravated first degree murder. ...” RCW 10.95.030(1) (emphasis added). The reference to the singular term “the crime” suggests that each crime was intended to receive its own punishment. *Id.* For any court called upon to sentence a defendant convicted of multiple aggravated murders, the reference to having been “convicted of the crime” would naturally lead to imposition of consecutive sentences.

The subsection that applies to defendant adds strength to this interpretation. It provides for twenty-five years to life for any “person convicted of *the crime* of aggravated first degree murder for *an offense*”

committed at ages sixteen to eighteen. RCW 10.95.030(3)(ii) (emphasis added). The singular form of the nouns “the crime” and “an offense” strongly supports the view that the legislature intended a person convicted of multiple counts of aggravated murder to serve a separate sentence for each aggravated murder, or in other words for each death. To find as the resentencing court did that the statute mandates – or even allows – concurrent punishment would be to ignore the deliberate choice of words by the legislature. It would also mandate concurrent punishment for adult offenders. Such an interpretation of Washington’s most serious criminal punishment provision is not warranted either as a matter of statutory construction or for equitable reasons. This is a significant question of law because trial courts need guidance as to how they must structure aggravated murder sentences for juveniles convicted of multiple counts of aggravated murder.

- b. *Miller v. Alabama* does not require a trial court to have complete discretion in setting the minimum term of incarceration contrary to legislatively enacted mandatory minimums for aggravated murder.

The purpose of the *Miller* fix amendments is to require trial courts to consider the “mitigating factors that account for the diminished culpability of youth as provided in *Miller v. Alabama*” when sentencing a juvenile who has committed one or more aggravated murders. RCW 10.95.030(3)(b).

Of the *Miller* fix amendments related to aggravated murder, this Court has stated they were a proper legislative response consistent with the requirements of the Eighth Amendment. *In re McNeil*, 181 Wn.2d 582, 590, 334 P.3d 548, 552 (2014). “The *Miller* fix remedies the unlawfulness of the petitioners' sentences by providing they must be resentenced in a manner that does not violate the Eighth Amendment, consistent with *Miller*.” *Id.*⁴ This sentiment was echoed in the first post-*Miller* fix, non-aggravated murder case, *State v. Ramos*, 187 Wn.2d 420, 446, 387 P.3d 650 (2017). There, this Court paid the legislature a compliment for its responsiveness to fast-developing juvenile justice issues: “We also note our legislature's demonstrated an ongoing concern for juvenile justice issues.” *Id.* (citing *Miller* fix enactments codified as RCW 9.94A.540(3) and .730 and RCW 10.95.030(3)).

In *McNeil* the court discussed the *Miller* fix in the context of its compliance with the Eighth Amendment and noted, “If life in prison without the possibility of early release is not imposed, the offender is given an indeterminate sentence with a minimum term of at least 25 years.” *In re McNeil*, 181 Wn.2d at 589. The court in *McNeil* gave no indication the mandatory minimum 25-year term in the *Miller* fix would violate Article I, section 14 because of its mandatory nature. Nor has this Court given an

⁴ It should be noted how in *McNeil* this Court explicitly declined to consider *Miller* under an Article I, Section 14 analysis as it relates to juveniles being sentenced to life without the possibility of parole due to time-bar issues. *McNeil*, 181 Wn.2d at 593-594.

indication as to what would constitute a life sentence.⁵ If anything, this Court has held that when a juvenile homicide offender receives a constitutionally adequate *Miller* hearing, they can be sentenced to die in prison “without a meaningful opportunity to gain early release.” *Ramos*, 187 Wn.2d at 440 (2017).

Review should be granted as consecutive sentencing for juveniles convicted of multiple counts of aggravated murder is of substantial public interest and is a significant question of law not yet addressed since the *Miller* fix amendments were enacted. This is a question involving a fundamental and urgent issue of broad public import which requires prompt and ultimate determination.

c. Consecutive sentencing would not constitute cruel punishment and is constitutionally permissible.

Except in the rarest of cases, cruel punishment for constitutional purposes is based on a review of each individual sentence, not their cumulative effect. *Wahleithner v. Thompson*, 134 Wn. App. 931, 936, 143 P.3d 321 (2006). This Court has upheld an 85 year sentence for a juvenile finding that there was no constitutional violation. *Ramos*, 187 Wn.2d at 458. The unanimous opinion held that when a proper *Miller* hearing is conducted, the SRA does not undermine *Miller* so that consecutive

⁵ This Court’s holding in *State v. Bassett* – Wn.2d –, – P.3d – (October 18, 2018) did not address such either. See Section E.3 *infra*.

sentences are unconstitutional as applied to juveniles. *Ramos*, 187 Wn.2d at 440. While a proper *Miller* hearing requires a court to consider the attributes of youth and a defendant's upbringing, a court *must* also consider the number of victims in determining an appropriate sentence. *Ramos*, 187 Wn.2d at 439 (emphasis added). So long as all of the constitutional requirements for *Miller* occur in an individualized sentencing hearing, taking into account the facts of this particular case, the particular crime(s) for which defendant was convicted, and defendant's life history, the Eighth Amendment is not offended. *Ramos*, 187 Wn.2d at 455. Similarly, this Court has found that a 75 year sentence is constitutionally permissible under *Miller*. *State v. Scott*, 190 Wn.2d 586, 416 P.3d 1182 (2018).

The federal courts and other state courts have followed a similar approach in determining whether long consecutive sentences for juveniles violates the Eighth Amendment. See *United States v. Aiello*, 864 F.2d 257, 265 (2d Cir. 1988) ("Eighth Amendment analysis focuses on the sentence imposed for each specific crime, not on the cumulative sentence."); *State v. Boston*, 131 Nev. Adv. Op. 98, 363 P.3d 453, 457 (Nev. 2015) (if each individual sentence offers the juvenile nonhomicide offender the opportunity for parole, the aggregate sentence is constitutional); *Bunch v. Smith*, 685 F.3d 546 (2012) (89-year fixed-term consecutive sentence for

juvenile constitutional under *Graham*⁶ and *Miller*); *State v. Kasic*, 228 Ariz. 228, 233, 265 P.3d 410 (2011) (Eighth Amendment is not violated when a juvenile defendant faces a total sentence exceeding life expectancy due to consecutive sentences); *Pearson v. Ramos*, 237 F.3d 881, 886 (7th Cir. 2001) (“If [the defendant] has subjected himself to a severe penalty, it is simply because he has committed a *great many* of such offenses. It would scarcely be competent for a person to assail the constitutionality of the statute...on the ground that he had committed so many [offenses] that, if punishment for each were inflicted upon him, he might be kept in prison for life.” (citation omitted) (emphasis in original)).

This Court has yet to determine what the constitutionally permissible maximum period of confinement would be for a juvenile which would not constitute cruel punishment. Other states and the federal courts have addressed this issue. See *State v. Delgado*, 323 Conn. 801, 151 A.3d 345 (2016) (65 year sentence); *Kasic*, 228 Ariz. 228 (2011) (139.75 year sentence); *Close v. People*, 48 P.3d 528 (Colo. 2002) (60 year sentence); *United States v. Jefferson*, 816 F.3d 1016 (8th Cir. 2016) (600 month sentence); *Contreras v. Davis*, 716 Fed. Appx. 160 (4th Cir. 2017) (77 year sentence); *Bunch v. Smith*, 685 F.3d 546 (6th Cir. 2012) (89 year sentence).

⁶ *Graham v. Florida*, 560 U.S. 48, 130 S. Ct. 2011, 176 L. Ed. 2d 825 (2010).

The Sixth Circuit has made it clear the difficulties which would arise for courts in singlehandedly determining when the Eighth Amendment would be implicated in the sentencing of juveniles

At what number of years would the Eighth Amendment become implicated in the sentencing of a juvenile: twenty, thirty, forty, fifty, some lesser or greater number? Would gain time be taken into account? Could the number vary from offender to offender based on race, gender, socioeconomic class or other criteria? Does the number of crimes matter? ... Without any tools to work with, however, we can only apply *Graham* as written.

Bunch, 685 F.3d at 552 (citation omitted). The *Bunch* court made it clear that under current jurisprudence, consecutive sentences for juveniles will not result in a constitutional violation. *Id.* Thus, consecutive sentencing for juveniles convicted of multiple counts of aggravated murder as mandated by RCW 10.95.030 would not result in an Article I, section 14 violation. As this is an issue of substantial public interest and is a significant question of law not yet addressed by our courts, review here should be granted.

3. GRANTING REVIEW ON THIS MATTER
WOULD BE THE NATURAL PROGRESSION
WITH OTHER PETITIONS RECENTLY
DECIDED OR ACCEPTED BY THIS COURT.

Recently this Court decided *State v. Bassett* – Wn.2d –, – P.3d – (October 18, 2018) finding life without parole sentences for juveniles to be unconstitutional under Article I, section 14. *Bassett*, Slip Op. at 25-26. This Court did not address the maximum term for confinement before a juvenile

is eligible for parole which would not violate Article I, section 14. Pending before this Court is *State v. Gilbert*, No. 95814-9, Slip No. 2018 WL 4770806. One of the issues in *Gilbert* concerns whether a trial court can impose consecutive sentences when there is one count of aggravated murder and other serious violent felonies and the imposition of consecutive sentence may lead to a *de facto* life sentence. *Bassett* did not address nor is *Gilbert* concerned with the issue present here: whether consecutive sentences for multiple counts of aggravated murder committed by a juvenile are both mandated by statute and constitutionally permissible? This is a specific question of substantial public interest and a significant question of law which will arise in any case where a juvenile commits multiple aggravated murders. This question is the next logical one that must be answered. Acceptance of this case immediately and without further intermediate review will be able to be used as guidance for courts in dealing with this unresolved question of law.

F. CONCLUSION.

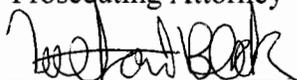
The Court of Appeals erred in finding that the State was not the proper party. The underlying decision from the Pierce County Superior Court, not the Parole Board or the ISRB. To affirm the Court of Appeals would prevent any governmental authority from challenging on appeal an incorrect legal ruling regarding our aggravated murder statute, RCW 10.95.

The resentencing court erred as RCW 10.95.030 requires multiple aggravated murder convictions to run consecutive to each other. Such a holding would not violate the precedent of either this Court or the United State Supreme Court.

This Court should accept review to not only reverse an erroneous decision by the Court of Appeals and resentencing courts respectively, but also because this case represents issues of substantial public interest and significant questions of law regarding an unaddressed issue about juvenile sentencing for multiple counts of aggravated murder. In the alternative, this Court should stay this case pending an opinion being issued in *Gilbert* as a holding there could help resolve the issues present in this case.

DATED: October 31, 2018

MARK LINDQUIST
Pierce County
Prosecuting Attorney



NATHANIEL BLOCK
Deputy Prosecuting Attorney
WSB # 53939

Certificate of Service:

The undersigned certifies that on this day she delivered by ~~U.S. mail or~~ ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

10/31/18 
Date Signature

APPENDIX “A”

*Order Granting Motion to Modify
and
Order Dismissing State’s Attempt to Appeal*

October 2, 2018

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Petitioner,

v.

MARVIN LOFI LEO,

Respondent.

No. 49863-4-II

**ORDER GRANTING
MOTION TO MODIFY AND
ORDER DISMISSING STATE'S
ATTEMPT TO APPEAL**

Respondent, Marvin Lofi Leo, filed a motion to modify the Commissioner's ruling filed on March 1, 2018, staying the petitioner's motion for discretionary review. After consideration, it is hereby

ORDERED that the motion to modify is granted. It is further

ORDERED that because the State was not a party, the State is not a proper party to challenge the Parole Board's decision, and the State's attempt to appeal is dismissed.

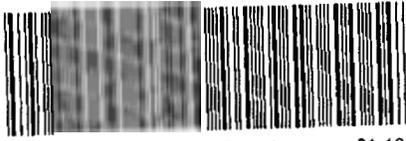
FOR THE COURT: Jj.Worswick, Bjorgen, Lee

 , A.C.J.

Acting Chief Judge

APPENDIX “B”

Findings of Fact and Conclusions of Law in Support of Sentence



98-1-03161-3 48205010 FNFL 01-10-17



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

STATE OF WASHINGTON,

Plaintiff,

vs.

MARVIN LOFI LEO,

Defendant/Appellant.

No. 98-1-03161-3

FINDINGS OF FACT AND
CONCLUSIONS OF LAW IN SUPPORT OF
SENTENCE PURSUANT TO RCW
10.95.030(3)(b) and EXCEPTIONAL
SENTENCE BELOW THE STANDARD
RANGE PURSUANT TO RCW 9.94A.535.

THIS MATTER coming before the Court for sentencing on December 5, 2016, pursuant to *Miller v. Alabama*, 132 S. Ct. 2455, 183 L. Ed2d 407 (2012), *In Re Personal Restraint of McNeil*, 181 Wn.2d 582, 586, 334 P.3d 548 (2014), RCW 10.95.030(3)(b) and RCW 9.94A.535, for resentencing.

Defendant entered pleas of guilty to the original Information charging him with five counts of aggravated first degree murder and five counts of assault in the first degree all with fire arm sentencing enhancements arising from the July 4, 1998 shooting at the Tran Dai restaurant. He plead guilty on January 27, 2000 and was sentenced on February 11, 2000 to life without the possibility of parole on Counts I through V and to 100 months on Counts VI

0093
1/10/2017 15404

1 through X. All ten counts enhanced with a 60 month firearm sentencing enhancement.
2 Finally, all sentences and enhancements were ordered to run ~~concurrent~~ ^{consecutive} to each other with
3 the result of life without the possibility of parole plus 1,100 months consecutive. He was
4 given credit for time served in the amount of 572 days. His case remanded for
5 reconsideration after the United States Supreme Court decision in *Miller v. Alabama*.

6 Defendant was present and represented by Mark Quigley and Mary Kay High, the State
7 being represented by James Schacht, and the Court having carefully considered the factual
8 and legal record, the testimony of Dr. Nathan Henry and the arguments of Counsel and being
9 fully advised in the premises herein, the Court now enters the following Findings of Fact and
10 Conclusions of Law in support of the imposition of 40 year minimum sentences pursuant to
11 RCW 10.95.030(3)(b) and RCW 9.94A.535.

12 **FINDINGS OF FACT**

- 13 1. On July 5, 1998 Defendant Marvin Lofi Leo participated in a shooting at the Trang
14 Dai Café with 7 other young men that resulted in the five deaths and five injuries.
15 2. Defendant Leo was born on February 11, 1981 and he was 17 years old and ~~five~~ ^{four}
16 months at the time of the events.
17 3. Defendant was arraigned on July 20, 1998 on five counts of aggravated murder in the
18 first degree and five counts of assault in the first degree. All counts included firearm
19 sentencing enhancements. The Information was filed the same day.
20 4. Defendant entered pleas of guilty on January 27, 2000, to five counts of aggravated
21 murder in the first degree and five counts of assault in the first degree all with firearm
22 sentencing enhancements as charged in the original Information and was sentenced to
23 life without the possibility of parole and 1,100 months to run consecutive to the life

0094
15404
1/10/2017

1 without the possibility of parole for events occurring the State of Washington on July
2 5, 1998.

3 5. Defendant was incarcerated in the Washington State Department of Corrections after
4 his plea of guilty and sentence was imposed in 2000.

5 6. His case was remanded for resentencing pursuant to RCW 10.95.030(3) and *Miller v.*
6 *Alabama*, 132 S. Ct. 2455 (2012) and he appeared before the Honorable Judge
7 Katherine Stolz, Department 2, Pierce County Superior Court for resentencing on
8 November 28 and December 5, 2016.

9 7. The Court considered the defendant's sentencing memorandum and exhibits, the
10 State's memorandum and 11 exhibits.

11 8. The Court heard the testimony of forensic psychologist Dr. Nathan Henry on
12 November 28, 2016.

13 9. Dr. Henry testified that he found that Mr. Leo presented a low to moderate risk of
14 future dangerousness based on his assessment.

15 10. Marvin's vulnerability and risk level for criminal behavior in 1998 was exacerbated
16 By a confluence of factors leading up to his involvement in the Trang Dai shooting.
17 These factors include:

18 11. His youth and his brain development contributed to his poor decision making and
19 susceptibility to peer pressure.

20 12. He was exposed to a history of domestic violence and conflicts between his parents
21 and alcohol abuse by his parents.
22

0095
15494
1/10/2017

- 1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
13. He was particularly vulnerable because it was a tumultuous time in his life, his family relocated from Hawaii to the Hilltop neighborhood in Tacoma, his parents separated resulting in decreased parental supervision.
 14. He was exposed to environmental violence when his family resettled in the Hilltop neighborhood which was an area known for gang violence and criminal activity. It was around this time he began his own association with gang involved individuals.
 15. Dr. Henry explained that gang association has an important effect on adolescent identity and personality development and often accompanies a disruption in pro-social identity development. Essentially, youth look to other sources of support when they experience family dysfunction and, in this case, major cultural interruption.
 16. The human brain does not fully develop until an individual reaches their early 20s. In his case because he has not continued to engage in violent behaviors lends support to the finding that biology and social pressures played a role in his behavior when he was 17 years old.
 17. As an adult Marvin Leo does not exhibit the traits associated with increased risk of violence and this was consistent with his Washington State Department of Corrections records.
 18. Defendant was classified as a low risk offender by the Department of Corrections on July 21, 2014. This classification is achieved through good behavior and this is a significant reflection on his low risk behaviors and demonstrated low risk behaviors.
 19. There are limitations on any risk assessment instrument, however, having 18 years of information while incarcerated is very helpful and no history of violence for greater than 10 years is very significant. As well, it is very significant that he has not been

0096
15404
1/10/2017

1 diagnosed with anti-social personality disorder and does not have major mental health
2 disorder.

3 20. As supported by the defendant's colloquy at sentencing as well as exhibits and
4 briefing which were filed in support of defendant for sentencing, defendant has
5 matured since the time of the events and engaged in pro-social programs and
6 activities while incarcerated at the Washington Department of Corrections.

7 21. * see p. 11

8 CONCLUSIONS OF LAW

9 1. Miller v. Alabama, 132 S.Ct. 2455, 2467 (2012) guides this court and recognizes that
10 youth does alter the nature of the crime and thus relates directly to the punishment.
11 [Y]outh is more than chronological fact. It is a time of immaturity, irresponsibility,
12 impetuosity, and recklessness. It is a moment and condition of life when a person
13 may be most susceptible to influence and to psychological damage. And its signature
14 qualities are all transient. Based upon this recognition that juveniles are both
15 categorically less culpable and more amenable to rehabilitation, they must be treated
16 differently by the justice system. See *Id.* (barring sentence of life without possibility
17 of parole for homicide for juveniles); J.D.B. v. North Carolina, ___ U.S. ___, 131
18 S.Ct. 2394, 2406, 180 L.Ed.2d 310 (2011) (age must be considered in determining
19 whether child in custody for purposes of Miranda warnings); Graham v. Florida, 560
20 U.S. 48, 130 S.Ct 2011, 176 L.Ed.2d 825 (2010) (barring sentence of life without
21 possibility of parole for 6 juveniles convicted of nonhomicide offense); Roper v.
22 Simmons, 543 U.S. 551, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005) (death penalty
23 unconstitutional as applied to juveniles).

0097
15404
1/10/2017

- 1
2
3
4
5
6
7
8
9
10
11
12
2. Following the Miller decision, the legislature amended the applicable sentencing statute, now codified at RCW 10.95.030(3). This legislation is commonly called the “Miller fix.” *In re Pers. Restraint of McNeil*, 181 Wn.2d 582, 586, 334 P.3d 548 (2014). RCW 10.95.030(3)(b) and requires the sentencing court to “take into account mitigating factors that account for the diminished culpability of youth,” restricts life sentences to older juvenile offenders and then only based on an individualized determination, and requires the court to impose an indeterminate sentence with at least a 25-year minimum term if life without the possibility of parole is not imposed.
 3. Specifically, the Court has been directed by the legislature to consider the following:
 - a) The age of the individual;
 - b) The youth’s childhood and life experience
 - c) The degree of responsibility the youth was capable of exercising; and
 - d) The youth’s chances of becoming rehabilitated.

13 RCW 10.95.030(3)(b).

- 14
15
16
17
18
19
20
21
22
23
24
4. The terms of RCW 9.94A.535 et seq. govern the imposition of sentences outside the standard sentence range (i.e. “Departures from the guidelines). The Court may impose a sentence outside the standard sentence range for an offense if it finds “considering the purpose of this chapter, that there are substantial and compelling reasons justifying an exceptional sentence”. The Court must find that mitigating circumstances are established by a preponderance of the evidence. The statute sets forth a non-exclusive list of mitigating circumstances that will justify an exceptional sentence outside the standard range.
 5. That statute contains a nonexclusive list of circumstances which could justify an exceptional sentence below the standard range, including that “the defendant’s

0098
15404
1/10/2017

1 capacity to appreciate the wrongfulness of his conduct, or to conform his conduct to
2 the requirements of the law, was significantly impaired by youth.”

3 6. In State v. O'Dell the Court found that youthfulness is legally relevant even when the
4 adult sentence is not life without the possibility of parole or a life equivalent sentence.

5 7. The purposes of the sentencing laws set out in RCW 9.94A.010 are “to make the
6 criminal justice system accountable to the public by developing a system for the
7 sentencing of felony offenders which structures but does not eliminate discretionary
8 decisions affecting sentences and to:

- 9 (1) Ensure that the punishment for a criminal offense is proportionate to the
10 seriousness of the offense and the offender's criminal history;
11 (2) Promote respect for the law by providing punishment that is just;
12 (3) Be commensurate with the punishment imposed on others committing the
13 same offenses;
14 (4) Protect the public;
15 (5) Offer the offender an opportunity to improve himself or herself;
16 (6) Make frugal use of the state's and local governments' resources; and
17 (7) Reduce the risk of reoffending by offenders in the community.

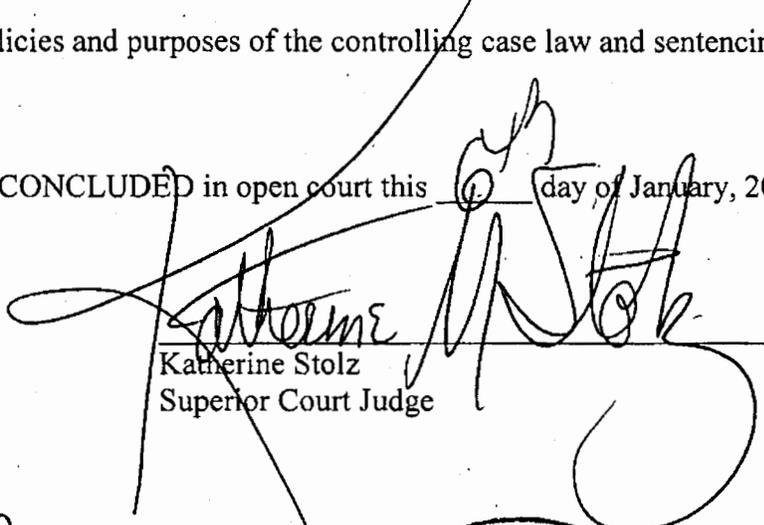
18 8. A sentence within the standard range would not serve the purposes as set forth in
19 RCW 9.94A.010, supra. Further, it has been shown by a preponderance of the
20 evidence, pursuant to RCW 9.94A.535(1)(a), that to a significant degree, the
21 defendant's youth was a significant factor in the offense and that his maturation since
22 that time supports a sentence below the standard range.

23 9. For these reasons the court finds and concludes that it is not appropriate to impose a
24 sentence within the standard range, and that there are substantial and compelling
25 reasons justifying an exceptional sentence below the standard sentence range. The
calculation of a standard range sentence is based upon criminal history score and the
ranking of the offense of conviction. Defendant's presumptive sentence is clearly

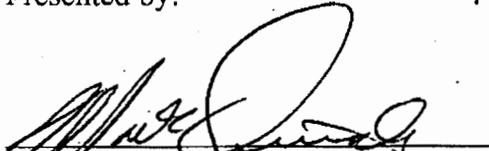
0099
15404
1/10/2017

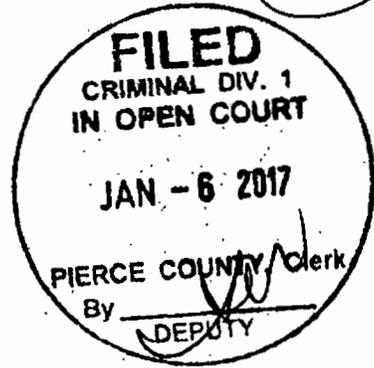
1 excessive when considered in the light of the purposes of the statute as expressed in
2 RCW 9.94A010. In view of this, the Court finds that sentences of a minimum 40
3 years to life with review by the ISRB on counts 1 through 5 and all sentences on all
4 counts and all firearm enhancements on all counts are to run concurrent better serves
5 and vindicates the policies and purposes of the controlling case law and sentencing
6 statutory law.

7 IT IS SO FOUND AND CONCLUDED in open court this 01 day of January, 2017.

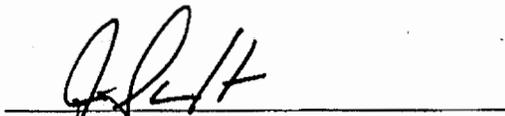
8 
9 Katherine Stolz
10 Superior Court Judge

11 Presented by:

12 
13 Mark Quigley WSBA #17785
14 Mary K. High, WSBA#20123
15 Counsel for Defendant

16 

17 Approved as to form by:

18 
19 James Schacht, WSBA # 17298
20 Deputy Prosecuting Attorney

21 

22 * As to the defendant's capacity for rehabilitation, the defendant
23 undertook a number of self-improvement initiatives while
24 incarcerated and before cases such as Miller v. Alabama opened
25 up for him a possibility of eventual release. These too were
documented in the exhibits and in Dr. Henry's testimony.

1/10/2017 15404 0100

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 30 day of October, 2018



Kevin Stock, Pierce County Clerk

By /S/Mark Kindig, Deputy.

Dated: October 30, 2018 12:05 PM



Instructions to recipient: If you wish to verify the authenticity of the certified document that was transmitted by the Court, sign on to:

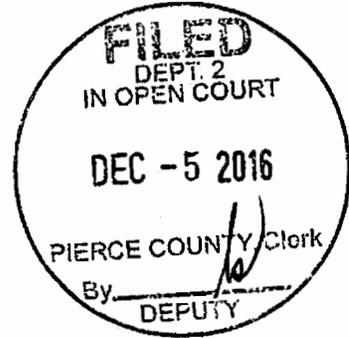
<https://linxonline.co.pierce.wa.us/linxweb/Case/CaseFiling/certifiedDocumentView.cfm>,

enter **SerialID: 99291062-AE64-4B7E-A8E77810053A41B3**.

This document contains 8 pages plus this sheet, and is a true and correct copy of the original that is of record in the Pierce County Clerk's Office. The copy associated with this number will be displayed by the Court.

APPENDIX "C"

Exhibit Record



IN THE SUPERIOR COURT OF WASHINGTON, COUNTY OF PIERCE

STATE OF WASHINGTON,
 Plaintiff

Cause No. 98-1-03161-3

vs.

EXHIBIT RECORD -
 RESENTENCING 11/28/16

LEO, MARVIN LOFI,
 Defendant

Rec'd by Clerk 12-6-16

| P D | No. | Description | Off | Obj | Admitted Agreed Denied Illustrative Published Redacted Reserved Withdrawn | Date | Rec'd by Clerk's Office |
|--------|-----|---|-----|-----|--|----------|----------------------------------|
| P | 1 | SUPPLEMENTAL REPORT 98-1-1860260 | Yes | | Ruling Deferred | 11/28/16 | |
| | | | Yes | No | Admitted | 12/5/16 | |
| P | 2 | OMNI: CHRONOS SEARCH RESULTS | Yes | | Ruling Deferred | 11/28/16 | |
| | | | Yes | No | Admitted | 12/5/16 | |
| P | 3 | COPY OF VERBATIM TRANSCRIPT OF PROCEEDINGS - VOLUME L | Yes | | Ruling Deferred | 11/28/16 | |
| | | | Yes | No | Admitted | 12/5/16 | |
| P | 4 | COPY OF VERBATIM TRANSCRIPT OF PROCEEDINGS - VOLUME LI | Yes | | Ruling Deferred | 11/28/16 | |
| | | | Yes | No | Admitted | 12/5/16 | |
| D | 5 | FORENSIC MENTAL HEALTH EVALUATION BY DR. NATHAN HENRY - DATED 6/30/16 | Yes | No | Admitted | 11/28/16 | |
| D | 6 | FORENSIC MENTAL HEALTH EVALUATION REPORT ADDENDUM BY DR. NATHAN HENRY - DATED 8/18/16 | Yes | No | Admitted | 11/28/16 | |
| D | 7 | MITIGATION REPORT BY INVESTIGATOR, NANCY AUSTRING WITH ATTACHMENTS | Yes | No | Admitted | 12/5/16 | |
| D | 8 | WASHINGTON STATE PENITENIARY STATISTICS | Yes | No | Admitted | 12/5/16 | |

147 11 2016

| P D | No. | Description | Off | Obj | Admitted | Date | Rec'd by Clerk's Office |
|--------|-----|--|-----|-----|--|---------|----------------------------------|
| | | | | | Agreed Denied Published Redacted Reserved Withdrawn | | |
| D | 9 | DOC DOCUMENTS | Yes | No | Admitted | 12/5/16 | |
| D | 10 | CERTIFICATES | Yes | No | Admitted | 12/5/16 | |
| D | 11 | LETTERS IN SUPPORT WITH ATTACHMENTS | Yes | No | Admitted | 12/5/16 | |
| | | | | | | | |

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 30 day of October, 2018



Kevin Stock, Pierce County Clerk

By /S/Mark Kindig, Deputy.

Dated: October 30, 2018 12:05 PM



Instructions to recipient: If you wish to verify the authenticity of the certified document that was transmitted by the Court, sign on to:

<https://linxonline.co.pierce.wa.us/linxweb/Case/CaseFiling/certifiedDocumentView.cfm>,

enter **SerialID: 23B8A763-956E-4E73-B4C5A981575BFAC3**.

This document contains 2 pages plus this sheet, and is a true and correct copy of the original that is of record in the Pierce County Clerk's Office. The copy associated with this number will be displayed by the Court.

APPENDIX “D”

Transcript—November 28, 2016

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

TABLE OF CONTENTS

STATE OF WASHINGTON vs. MARVIN LOFI LEO

No. 49863-4-II

Proceedings of November 28, 2016

| | |
|---------------------------|--------------|
| | <u>Page:</u> |
| Resentencing Hearing..... | 3 |

| | |
|--|--------------|
| <u>Witness Examination</u> | <u>Page:</u> |
| NATHAN HENRY, Ph.D. | |
| Direct Examination by Mr. Quigley..... | 7 |
| Cross-Examination by Mr. Schacht..... | 59 |

E X H I B I T S

| | |
|---------------------------------------|--------------|
| <u>Admitted</u> | <u>Page:</u> |
| Defendant's Exhibit Nos. 5 and 6..... | 57 |

1 BE IT REMEMBERED that on Monday, the 28th
2 day of November, 2016, the above-captioned cause came on
3 duly for hearing before THE HONORABLE KATHERINE M. STOLZ,
4 Judge of the Superior Court in and for the county of Pierce,
5 state of Washington; the following proceedings were had, to
6 wit:

7
8 <<<<<< >>>>>>

9
10 (The defendant was present.)

11 THE COURT: Okay. This is State of
12 Washington vs. Marvin Lofi Leo, 98-1-03161-3. This matter
13 is on for re-sentencing. Counsel, if you'd identify
14 yourselves.

15 MR. SCHACHT: Your Honor, I'll make my
16 appearance. Jim Schacht appearing for the State on this
17 case, and I note that the defendant is present. He's being
18 held in custody and is appearing with Mr. Quigley and
19 Ms. High, and I'm sure they'll make their appearance.

20 Before I sit down and they do so, we'd like to
21 acknowledge that the parties have proposed to the Court that
22 we proceed with a bifurcated hearing, that the Court accept
23 the testimony and other evidence today but that we recess
24 and allow us to come back and argue to the Court about the
25 sentencing, after the Court has had a chance to review all

1 of the materials that have been submitted, and hear the
2 testimony today.

3 THE COURT: All right. Counsel,
4 Mr. Quigley and Ms. High?

5 MR. QUIGLEY: Good morning, Your Honor.
6 My name is Mark Quigley. I represent Marvin Leo. I'll let
7 Ms. High identify herself.

8 MS. HIGH: Mary Kay High. I'm also
9 representing Mr. Leo along with Mr. Quigley.

10 THE COURT: All right.

11 MR. QUIGLEY: Your Honor, we did send your
12 department an e-mail proposing exactly what Mr. Schacht has
13 indicated on the record that we do today. There are several
14 reasons for this. I know that the Court has been on recess
15 for a couple weeks, I think; welcome back.

16 THE COURT: Surgery.

17 MR. QUIGLEY: And so we submitted a rather
18 voluminous set of exhibits about a week and a half ago
19 during the time that your department was on recess, and my
20 assumption is that you did not have a chance to read those
21 before this morning. I also filed a memorandum of
22 authorities and another exhibit attached to that late last
23 week. I'm assuming the Court hasn't had a chance to read
24 that as well. I know Mr. Schacht has filed a sentencing
25 memorandum and some exhibits as well.

1 So, I think our proposal is that Dr. Nathan Henry, who is
2 present today to testify on Mr. Leo's behalf, traveled from
3 Spokane today -- actually yesterday -- be allowed to
4 testify. We'd take his testimony, excuse him, and then
5 recess until -- the proposed date is December 5th --

6 THE COURT: All right.

7 MR. QUIGLEY: -- which, I think, works
8 with your calendar. It works with mine. I'm not sure about
9 Ms. High.

10 MS. HIGH: That will work. Thank you.

11 MR. QUIGLEY: So that would be our
12 proposal, that we just simply take the testimony of
13 Dr. Henry this morning and then recess.

14 THE COURT: All right. I assume you have
15 no problem with that, Mr. Schacht?

16 MR. SCHACHT: No. I'm in agreement with
17 that proposal.

18 THE COURT: All right. That does seem
19 reasonable given the fact that the Court was out for the
20 last two weeks and was out the first two weeks of November,
21 as well, with my broken elbow, which, hopefully, will be as
22 good as new once it heals.

23 MR. SCHACHT: Your Honor, the only thing
24 I'd add to what the parties have presented to the Court,
25 thus far, is that I've asked to have marked four exhibits,

1 which I offer as part of this hearing for re-sentencing. I
2 won't be calling any witnesses at this hearing, just those
3 exhibits and then the memorandum that I submitted.

4 THE COURT: All right. All right, then.
5 Do you have any objections to admission of any of the
6 exhibits?

7 MR. QUIGLEY: Well, Your Honor, I just
8 received them this morning from Mr. Schacht. I'd like to
9 have an opportunity to read them.

10 THE COURT: All right.

11 MR. QUIGLEY: But I don't have -- I don't
12 suspect I'll have any objection. I just need a chance to
13 read them.

14 THE COURT: All right. Well, then, we'll
15 defer that until you've had a chance to go through them.

16 MR. QUIGLEY: Okay. Thank you.

17 THE COURT: All right. Do you want to
18 call your witness?

19 MR. QUIGLEY: Yes, Your Honor. Thank you.
20 The Defense will call Dr. Nathan Henry.

21 (Pause.)

22 THE COURT: And there's a shelf you can
23 pull out, sir.

24 THE WITNESS: Thank you.

25 THE COURT: All right. If you'll raise

1 your right hand. Do you solemnly swear to tell the truth,
2 the whole truth, and nothing but the truth; so help you,
3 God?

4 THE WITNESS: I do.

5 THE COURT: All right. If you'll have a
6 seat. There's water and Kleenex to your right.

7 THE WITNESS: Thank you.

8 THE COURT: You can pull the chair
9 forward, adjust the mic, keep your voice up; and when
10 answering, answer "yes" or "no"; don't nod or shake your
11 head. It makes it easier for the court reporter if we know
12 what everybody is saying.

13 THE WITNESS: Yes.

14 THE COURT: All right. Thank you. Your
15 witness, Counsel.

16 NATHAN HENRY, Ph.D., witness herein, having been sworn
17 under oath, was examined and
18 testified as follows:

19 DIRECT EXAMINATION

20 BY MR. QUIGLEY:

21 Q. Good morning, Dr. Henry.

22 A. Good morning.

23 Q. Could you state your full name.

24 A. Nathan Henry, H-e-n-r-y.

25 Q. And, Dr. Henry, what is your profession?

1 A. I'm a forensic psychologist.

2 Q. Could you give the Court, briefly, your educational
3 background.

4 A. Yes. I did my undergraduate psychology degree at
5 Whitworth -- what is, now, Whitworth University; and after
6 working for approximately a year in an inpatient psychiatric
7 setting, I completed my PsyD, which is a doctor of
8 psychology degree, P-s-y-D, at George Fox graduate school in
9 clinical psychology in Oregon. That included a number of
10 practicums, internships at various settings, including a
11 year at the maximum security correctional facility in
12 Portland.

13 And then my last year of graduate school involved a
14 full-time internship in an outpatient community mental
15 health setting, and that was an internship accredited by the
16 American Psychological Association. My doctoral work was
17 completed in 2005; and shortly afterward, I began private
18 practice work doing various types of things that a clinical
19 psychologist does in private practice; and then in 2006,
20 when I was licensed, I began work as a forensic evaluator at
21 Eastern State Hospital where I've continued to be employed
22 for the last ten years and also continued to do, primarily,
23 forensic mental health assessments in a private practice
24 setting at the same time; and all along the way, most of my
25 continuing education has focused on issues relevant to a

1 forensic mental health assessment.

2 Q. Thank you. Now, as part of your private practice, Doctor,
3 do you conduct independent evaluations?

4 A. Yes, I do.

5 Q. And what is the nature of those evaluations?

6 A. It's a range of issues that I will -- that I evaluate. I do
7 a fair amount of assessments of juvenile offenders for
8 issues such as competency to stand trial, legal sanity,
9 diminished capacity. I do evaluations looking at -- for
10 decline proceedings, looking at the possibility of juveniles
11 being tried in adult criminal court and offering
12 recommendations about those issues. I do forensic risk
13 assessments in the criminal justice setting, offering
14 opinions about violence risk. I also -- I do a range of
15 other work such as disability evaluations, evaluations for
16 guardianship proceedings and looking at cognitive capacities
17 in mostly elderly individuals. It's a range of things that
18 I'm involved with.

19 Q. Speaking of forensic risk assessment evaluations that you
20 conduct, whom do you conduct these for? What is the -- what
21 is your clientele, if you will?

22 A. Typically, this has -- potentially, it could be a wide range
23 of clientele. Typically, in my work, it has been the
24 Courts, looking at possible release conditions, or also in
25 the inpatient psychiatric setting, looking at release

1 recommendations for individuals who have been committed not
2 guilty by reason of insanity.

3 Q. So you evaluate patients at mental hospitals for potential
4 release? That's one of the things you do in assessing risk?

5 A. Right. My primary duty at Eastern State Hospital is
6 conducting forensic mental health evaluations pursuant to
7 RCW 10.77, so competency to stand trial kind of work; but
8 the secondary duty that I have at the hospital is: I'm the
9 psychology representative to the -- what is called the Risk
10 Review Board of Eastern State Hospital.

11 I was involved in a statewide process a few years back
12 when the Washington Institute for Public Policy was looking
13 at attempting to establish some standards and guidelines for
14 forensic risk assessment in the state of Washington. I've
15 participated over at Western State Hospital in some
16 statewide discussions about establishing standards and
17 accepted tools for that purpose, and I continue to serve on
18 that board at Eastern State Hospital where we review cases;
19 and either I do, or review, forensic risk assessments on
20 patients who are being considered for release into the
21 community.

22 Q. So in this case, you were retained by my office on behalf of
23 Mr. Leo to assess his risk of dangerousness; so you do work,
24 both for individuals such as Mr. Leo and also for the State
25 and state mental hospitals; is that correct?

- 1 A. Yes. The -- when my -- I do work in my private practice
2 that doesn't overlap my duties at the state hospital.
- 3 Q. Okay. So you were asked, again, to assess the risk of
4 future dangerousness for Marvin Leo in this matter; is that
5 correct?
- 6 A. Correct.
- 7 Q. And did you prepare a report?
- 8 A. Yes, I did.
- 9 Q. And did you prepare an addendum to that report at my
10 request?
- 11 A. Yes. The report is dated June 30, 2016, and the addendum is
12 dated August 18, 2016.
- 13 Q. All right. I'm going to hand you Defendant's Exhibit 5 and
14 Defendant's Exhibit 6 which are -- I've previously shown
15 these to Mr. Schacht -- which are copies of your initial
16 report and your addendum, and I'll ask you to review those
17 and identify if those are what they purport to be.
- 18 A. (Reviewing.) Yes, this is my report and addendum.
- 19 Q. All right. So during my examination, Doctor, please feel
20 free to refer to your report, if necessary.
- 21 A. Okay.
- 22 Q. So would you explain the evaluation procedures that you used
23 in formulating this report.
- 24 A. Yes. Typical evaluation procedures, when I'm doing a risk
25 assessment of this nature, is a general clinical interview

1 where I gather relevant historical information; and then the
2 information in that clinical interview can, sometimes, help
3 guide subsequent procedures or testing that might be
4 indicated. Sometimes psychological testing is needed, your
5 cognitive testing or personality assessment.

6 In this case, Mr. Leo has little or no significant
7 history of mental illness or expected cognitive deficits, so
8 there wasn't -- additional psychological testing wasn't
9 indicated in his case, but I did conduct a brief screening
10 of cognitive functioning to rule out any obvious deficits in
11 that regard; and then I also utilized the HCR-20, Version 3,
12 which is a risk assessment guide. It stands for historical,
13 clinical, and risk management factors.

14 Q. All right. I'm going to ask you some details about those
15 particular procedures in a bit. Did you take a social
16 history from Mr. Leo?

17 A. Yes. That would be included in what I refer to as the
18 clinical interview.

19 Q. All right. And what was the date of that interview?

20 A. That interview was May 2, 2016.

21 Q. All right. And who attended that interview besides yourself
22 and Mr. Leo?

23 A. Besides myself and Mr. Leo, you were present, Mr. Quigley.

24 Q. All right. And where did that take place?

25 A. That took place at the Walla Walla State Penitentiary.

1 Q. All right. Now, in asking Mr. Leo about his social history,
2 were there significant events that you noted?

3 A. Yes. There are a number of significant factors that are
4 relevant for the discussion today. One is that there was
5 some family history of concerns with domestic violence or
6 conflicts between his parents that he experienced. There
7 was some -- concerning family history of excessive alcohol
8 use on his father's side, and there was a tumultuous time in
9 his very early adolescence in which the family relocated
10 from Hawaii to the Tacoma area. There was a separation
11 between his parents. His mother was working a lot, and
12 there were some concerns about his level of supervision or
13 parent involvement at that time and implications for his
14 social connections in the midst of that difficult transition
15 time.

16 Q. As a result of the things you've just spoke of, did Mr. Leo
17 indicate that he associated, around that time, with a gang?

18 A. Yes. My understanding, that in his early teens, he began
19 associating more with gang-involved individuals, and then
20 more towards his mid teens actually became more officially a
21 member of a gang.

22 Q. And his membership in this gang, why was that significant to
23 you in your social history?

24 A. Well, one of the things I've done in the past, that kind of
25 has been an area of emphasis in my work, is adolescent

1 identity development and just personality development in
2 general. I've taught undergraduate level theories of
3 personality courses and just particularly testifying in the
4 context of juvenile decline proceedings on this issue of
5 adolescence identity development and how significant
6 disruption during this critical period, and difficulty with
7 identification of pro-social family kind of connections and
8 values, can result in leaning towards support and strength
9 where it can be found for adolescents; and that sometimes
10 can result in some serious disruption of pro-social identity
11 development and ultimately some very disruptive behavior on
12 the part of the adolescent during those tumultuous times.

13 The concern for an adolescent is that as they are
14 maturing -- in a normal setting, adolescents experience
15 identity crisis as they compare their family of origin
16 values to those of peers or other influences around them;
17 and they seek to reconcile those. In a healthy development,
18 that tumultuous reconciliation happens, and there is the
19 adoption of pro-social personal identity, meaning, an
20 identity that says I fit into society in a positive way, I
21 can contribute to society in a positive way, I have
22 connections and supports of people who I care about and
23 value and that that's going to carry that person into
24 adulthood in their -- in their sense of their roles later on
25 in life. So, adolescents who are going through difficult

1 transition times, or maybe feel disconnected from primary
2 supports, may be more prone to seek connection and support
3 in ways that can be problematic.

4 Q. So the fact that Mr. Leo had a dysfunctional family life,
5 his father left the home, his father abused alcohol, his mom
6 was, apparently, working long hours, was not providing
7 supervision, would it be surprising, given those factors,
8 that Mr. Leo sought out the acceptance of a gang?

9 A. It's not surprising, particularly given, also, the major
10 cultural disruption of relocating to an unfamiliar area.
11 That adds to vulnerability for an adolescent and a drive to,
12 you know, be liked and perceived as strong and powerful and
13 seek success and power where you see it around you.
14 Apparently, the area where they were living, there was a
15 fair amount of gang-related problems and involvement.

16 Obviously, hindsight is 20/20. You can look back and say
17 this whole developmental sequence makes sense from the
18 clinical standpoint. Clearly, there are people who go
19 through similar disruption in their life and don't have
20 similar problems; but it just makes good clinical sense,
21 when you look at these available circumstances, how those
22 were factors that contributed to the ultimate circumstances.

23 Q. Now, in your report, Doctor, you discuss -- and you were --
24 you interviewed Mr. Leo on some issues regarding his
25 affinity for risk-taking. Could you discuss that.

1 A. Yes. So, one of the things I'm interested in, when I'm
2 evaluating individuals for violence risk, is personality
3 characteristics that are typically associated with more
4 long-term criminological attitudes and behaviors; and so the
5 individual who has a high need for sensation-seeking, in
6 some circumstances, may be more likely to engage in violent
7 behavior in the future. This is a characteristic of what
8 clinical psychologists call psychopathy; which, it is,
9 basically, a characteristic of an individual's personality
10 that is characterized by a decreased sense of, some people
11 call, conscience, sort of a -- sort of a lack of negative
12 feelings associated with hurting other individuals, and is,
13 also, characterized by a strong need for stimulation. These
14 people get bored really easily. They need -- the term you
15 use, sometimes, is "stir up trouble." They get bored, and
16 they -- and they look for stimulation and sensation-seeking
17 in their environment; and oftentimes, that is in terms of
18 criminal behavior or risk-taking behaviors.

19 So, that's more normative in adolescence. Unfortunately,
20 why a lot of adolescents end up getting themselves into
21 trouble is they have these, sort of, blossoming adult drives
22 and inclinations and tumultuous hormonal processes going on;
23 and yet, they lack what is, unfortunately, last to develop,
24 these cognitive capacities of impulse control and good
25 decision-making abilities, what we associate with the

1 frontal lobe brain development that continues into the early
2 twenties; and so you can end up with that kind of behavior
3 being more normative during adolescence, and what is
4 concerning is when that kind of -- those kind of
5 characteristics are prominent later on in life.

6 The long story short, I don't -- I don't see significant
7 evidence of that in Mr. Leo's case. He doesn't describe
8 himself as being highly sensation-seeking or prone towards
9 seeking risk-taking kinds of behaviors. He doesn't -- and,
10 you know, obviously, a person in this setting might be
11 inclined to not endorse those, but I -- also, after
12 interviewing hundreds of people, you get a sense of these
13 characteristics in interacting with individuals, as well;
14 and he presents as a very calm, even-tempered individual
15 during my interactions with him, which, I think, is
16 consistent with his description of himself.

17 Q. So it appears that he, at one time, did exhibit a
18 risk-taking characteristic, as most juveniles do, as you
19 have indicated, and he talked about that during his
20 interview with you; and when he was young, he sought out
21 adrenaline-inducing activities?

22 A. Yes. To some extent, and it's somewhat -- at the same time,
23 he also described himself as being kind of quiet and
24 withdrawn as a youth, too, so it's hard to say in his case
25 how much was, sort of, a natural drive and how much was,

1 like I said, a desire to connect with others who he
2 perceived as strong and who he valued their perceptions of
3 him and wanted to be liked by them and to be accepted and to
4 be supported and so those kind of behaviors, how much of
5 that was, sort of, his own internal drive to do those kinds
6 of things versus acceptance-seeking kinds of behaviors.

7 Q. Nonetheless, currently, in your opinion, he does not exhibit
8 that type of personality trait?

9 A. There just isn't any evidence of it on an ongoing basis from
10 interactions with him or other available information.

11 Q. The next area you talk about, and you asked Mr. Leo
12 questions about during the interview, was his motivation for
13 self-improvement while in the institution. Could you talk a
14 little bit about that.

15 A. Yes. This was something I was -- I was particularly curious
16 about in his case and in similar cases because the scenario
17 that you have is an adolescent who, at a critical period of
18 identity development, was, essentially, told that he's never
19 going to be released from prison; and the clinical
20 psychologist in me would assume that that would result in a
21 pretty severe crisis of identity and self-perceptions and
22 negatively affect internal motivation for self-improvement,
23 at least in the kinds of ways that people in average society
24 would value; so I could certainly imagine an adolescent, who
25 thinks they're going to be living the rest of their life in

1 prison, to want to seek self-improvement in characteristics
2 that would make them successful in that environment. But I
3 found his -- what appears to be his self-motivation towards
4 improvement in terms of his coping skills, value of his
5 culture, and sharing that with other inmates,
6 characteristics like that, completing a number of different
7 courses that he -- that he didn't have to necessarily --
8 and, also, furthering his education when, arguably, that's
9 not particularly valuable to him in that context; that those
10 were positive indicators of internal motivation for
11 pro-social change that was encouraging from a clinical
12 standpoint, particularly given his, what I would assume were
13 perceived to be, pretty hopeless circumstances.

14 Q. And why is that significant in assessing his risk of future
15 dangerousness?

16 A. Well, it speaks to -- it speaks to what he wants to do for
17 himself and for his community, even if he doesn't have to.
18 It speaks to a desire for self-improvement, which really
19 isn't there for very psychopathic individuals. They're not
20 particularly interested in self-help unless it literally
21 just helps themselves, so they might be inclined to learn
22 how to better manipulate other people or that sort of thing;
23 but, you know, furthering his education and learning anger
24 management skills and that kind of thing are good signs.

25 Q. Okay. Mr. Leo had the opportunity to describe himself

1 during the interview; is that right?

2 A. Yes. I asked him to.

3 Q. So in general, how did he describe himself?

4 A. He described characteristics of being quiet, more
5 self-assured, confident, a loving person. You know,
6 obviously, you don't expect the average person to be
7 necessarily extremely accurate in describing themselves; but
8 in his case, he seems to have a fair amount of insight.

9 He -- I didn't assess his intelligence, but he comes
10 across as a fairly intelligent individual who sees
11 connections with his adolescent circumstances and his gang
12 involvement and how that has affected himself, his family,
13 and society, and he seems to value things like family; and
14 his description of being more assured of himself and more
15 confident came up in a couple of different ways. One was
16 when I asked him -- this -- I ask these kinds of questions
17 because they can help, kind of, bring out -- a person might
18 not expect to be asked things, so they can bring out
19 different attitudes and values when they're not really
20 guarded against those kinds of things; so I'll ask
21 questions, like, what would you like to tell your adolescent
22 self before all this happened? And he talked about a desire
23 to tell himself not to seek approval from other individuals,
24 to be more confident in himself; and that's how he sees
25 himself as being today, more self-assured instead of

1 reassurance-seeking. Some adults, even throughout their
2 lives, continue to have problems with neurotic drive to seek
3 assurance from other individuals and may be inclined towards
4 all kinds of uncharacteristic behavior to meet those
5 neurotic needs. He seems to be in a more stable,
6 self-assured state despite the difficulty of his life
7 circumstances.

8 Q. So his view of himself, how is that significant in assessing
9 his risk of future dangerousness?

10 A. Well, at least in how he describes himself is that he
11 doesn't value violent attitudes or behaviors, that he sees
12 those as being problematic when some people, under similar
13 circumstances, wouldn't. They might outright say ways in
14 which they would, you know, utilize violence to get what
15 they want; so he -- his attitudes and description of himself
16 and values, as he describes them, are geared towards what he
17 sees as ways in which to better his own circumstances and
18 the circumstances of family and others around him.

19 Q. Okay. Now, Mr. Leo discussed his family of origin and
20 extended family. Could you describe that.

21 A. I guess, in general, I would just say that he sees his
22 extended family as a source of support. I got the
23 impression in interacting with him, and also interacting
24 with yourself, that there is a -- that there is a powerful
25 network of people who are -- who are eager to provide him

1 support. I haven't interacted with any of those individuals
2 personally, but the sense I get from him, and from my
3 interactions with you, is that he -- that there are a lot of
4 family members who are positive sources of support in his
5 life, and that historically there were some tumultuous times
6 in his family but that he sees, in general, his family as a
7 positive support system.

8 Q. And why is a large family support system significant in
9 assessing risk of future dangerousness?

10 A. Well, for an individual who's potentially going to be
11 released into society after being incarcerated for a long
12 period of time, one of the primary concerns, that you would
13 have, is there -- the nature and degree of their social
14 support network. You try to manufacture that as much as
15 possible when it's lacking in terms of, maybe, you know, a
16 mental health context or, you know, supervision in the
17 community; but you really can't replace a supportive family
18 who's just going to be there for you. You're not worried
19 about having a place to live or whether you're going to have
20 food and that sort of thing, so social support is one of the
21 important factors that you assess in the -- in the category
22 of risk management factors when you're doing one of these
23 types of risk assessments.

24 Q. Regarding his education, did you ask him to talk to you
25 about his educational background and aspirations?

1 A. Well, in terms of his background, one of the things that was
2 pointed out was this discrepancy between how he was
3 performing at school and how his behavior and associations
4 were deteriorating. He actually -- it sounds like he did
5 fairly well in school. That's a reflection of, as I
6 mentioned, his intellectual capability, which is always a
7 positive indicator; and he, apparently, was able to complete
8 his GED in the correction setting, and he has some career --
9 some kind of general career aspirations of running his own
10 business and that sort of thing.

11 Q. And has he been employed in the institution?

12 A. My understanding is he has been -- has had a number of jobs
13 in the correction setting.

14 Q. Okay. Now, you indicated this at the beginning of your
15 testimony that he has taken opportunities for
16 self-improvement as they've been provided to him.

17 A. (Nods head.)

18 Q. First off, are his opportunities for self-improvement
19 limited by the nature of his sentence?

20 A. My understanding is that there are a number of opportunities
21 that could, potentially, be available to inmates that
22 wouldn't, necessarily, have been available to him given the
23 nature of his sentence. I don't have, sort of, a
24 comprehensive understanding of that; but my general sense is
25 that he's got less opportunities just for the sheer nature

1 of the limited availability of those kind of services and
2 that they are geared towards individuals who are being
3 perceived as on the track of reintegration into society; so
4 my understanding is he's, sort of, had to work a little
5 harder than average to find opportunities like that but that
6 he has capitalized on a number of them.

7 Q. So he has undertaken to complete programs such as the
8 Redemption Project. Did he talk to you about that?

9 A. Yeah. He mentioned that -- he said that it was related to
10 self-awareness and conflict resolution, so it certainly
11 seems like a worthwhile thing to participate in.

12 Q. Did he talk about another opportunity, a class that he took,
13 Restorative Therapy Group? Did he talk about that?

14 A. Yes. He said that that looks at the effects of actions on
15 victims and family.

16 Q. And would that insight and knowledge about the effect of his
17 actions on victims be important in your assessment of risk?

18 A. Yes. It is going back, again, to some of the more
19 concerning long-term characterological personality traits
20 that would be indicative of more concerning violence risk.
21 An individual who lacks that ability is of greater risk; so
22 if you have a really hard time connecting with the feelings
23 of other individuals, the implications of your behavior on
24 other individuals, you are more likely to victimize other
25 individuals because you're just not burdened by those -- the

1 feelings of those -- of those possible negative
2 consequences, and I've interacted with many people who just
3 genuinely cannot answer the question of how your behavior
4 has affected other people. They just -- they don't seem to
5 resonate with that. They resonate with how it's affected
6 them in their life, but they have a very hard time
7 describing how this has negatively affected others.

8 Q. Mr. Leo also took an anger management class, a cognitive
9 behavioral life skills class, but also took a substance
10 abuse class. I'd like to ask you a little bit about your
11 perception of his abuse of substances. Did you ask him
12 about his drug use before entering the institution?

13 A. Yes. So before entering, this is one of those issues that's
14 important in a risk assessment because certain types and
15 severities of substance use are, more or less, associated
16 with increased violence risk; and in his adolescence, it's
17 my understanding that he was using marijuana periodically,
18 which isn't necessarily associated with increased violence
19 but can be, sort of, an early indicator of later substance
20 use problems for some individuals and that he was using
21 alcohol to excess periodically and that he did see a
22 connection actually between his history of violent behavior
23 in associations with the gang and his use of alcohol; and so
24 you hope that an individual, through the course of
25 rehabilitative efforts, gets some education and experience

1 in recovery for substance use issues or even just
2 preventative. In his case, his substance use history isn't
3 severe, you know. Obviously, there's a huge continuum of
4 severity for these kind of issues. What isn't there are
5 things like a history of using more heavier or problematic
6 drugs, particularly stimulants that are associated with
7 higher risk for relapse and increased violence potential;
8 that's not there. Alcohol can be associated with increased
9 violence risk, and so you want ongoing monitoring of that
10 any way that you can; and any kind of relapse prevention
11 education is, potentially, helpful with that too.

12 He seems to exhibit some good insight. I've interviewed
13 individuals who had ongoing problems, significant problems
14 with substance use in a correction setting, so it's not
15 impossible to get things if you really are motivated to do
16 so; and that appears to be minimal in his case. I think
17 there was one incident of -- that he reported alcohol use in
18 the correction setting.

19 Q. Okay. And I -- my memory is that was quite a long time ago
20 and was when he first was brought into the institution?

21 A. That's my memory as well. I don't remember the specific
22 year.

23 Q. Now, did Mr. Leo talk to you about his goals going forward?

24 A. Are you referring to a particular part in my report?

25 Q. Yes, I am. This would be Page 5 of your report, the second

1 to the last paragraph.

2 A. I'm sorry, second to the last paragraph of Page 5?

3 Q. "Mr. Leo talked about his motivation," Page 5.

4 A. It must be a --

5 Q. I'm sorry. I'm looking at the wrong -- I'm looking at a
6 copy. Page 4. Sorry.

7 A. Okay. Yes. (Reviewing.) Well, he talked about ongoing
8 goals of pursuing physical activity, exercise as being
9 important to him and that he sees the benefits of that in
10 his daily life; and he talked about an interest and desire
11 in starting his own business. He shared some thoughts about
12 recent books that he had been reading on motivation and
13 identification of goals and pursuing those and sort of
14 imagining the things that you want to accomplish and some
15 positive things like that. He didn't describe specific job
16 goals or that sort of thing.

17 Q. Right. You may have mentioned this. Did he mention a
18 desire to help at-risk youth?

19 A. Yes, he did. He talked about -- he liked the idea of being
20 able to mentor other kids and be able to help them in his
21 community that way.

22 Q. So why are having goals such as this -- even if they're
23 somewhat general, why is that important in assessing risk of
24 future dangerousness?

25 A. Well, on one level, it's important because it shows future

1 orientation. It shows a person who imagines themselves
2 contributing in some positive way to society in the future.
3 The lack of that is concerning; so the fact that he, without
4 being prompted to do so, describes things that he would like
5 to do to contribute both to his own advancement in life and
6 also to be able to contribute to other people who might
7 have -- be going through similar things that he experienced
8 as a youth, he sees this potentially as an opportunity to
9 help others; and it's what you would hope, in a circumstance
10 like this, that an individual would have come through
11 adversity and these terrible circumstances and be looking
12 for ways that they can use their experience in a pro-social
13 way.

14 Q. Now, did you discuss with Mr. Leo his legal history, his
15 prior criminal history as a juvenile?

16 A. Yes.

17 Q. And did he describe to you what that contained?

18 A. Yes. He described two incidences when he was arrested for
19 stealing a car. He stated that he was arrested for stealing
20 something from a convenience store. He talked about
21 spending approximately three weeks in juvenile detention,
22 and he described a history of violent and assaultive
23 behavior in the context of his involvement with other gang
24 members.

25 Q. And the -- his discussing with you other violence and

1 assaults in the context of gangs, those were uncharged
2 events, is that correct, he wasn't arrested for those?

3 A. My understanding is he wasn't. He was actually openly
4 discussing kind of the -- of the more breadth of his
5 activities in the gang-related behavior, not necessarily
6 things that he was charged with.

7 Q. All right. And your experience is this is an extreme type
8 of criminal behavior for somebody involved in a gang; or is
9 this, more or less, typical? And I'm not -- I'm not asking
10 you to talk about the event that we're here on, the murders
11 here.

12 A. Right.

13 Q. Of course, that's extreme. I'm talking about the other
14 events.

15 A. Right, his prior criminal history before the events
16 resulting in the murder conviction. Of course, you ask
17 forensic psychologists, what's extreme? I see the most
18 extreme cases, so his -- but I also have to rate, fairly
19 frequently, juveniles and their -- and their criminal
20 history compared to other juveniles, so it doesn't stand out
21 as a terribly alarming criminal history.

22 Now, when he starts to describe the involvement in the
23 shootings and carrying a weapon and that sort of thing, it
24 seems as though the gang involvement that he -- that he
25 found himself in was quite severe, and the use of weapons in

1 the course of that was on the more severe end of the
2 continuum; but his other criminal history was not markedly
3 elevated compared to other juvenile offenders.

4 Q. Now, did you discuss with Mr. Leo his version of the events
5 at the Trang Dai Cafe?

6 A. Yes, briefly.

7 Q. All right. And did he express to you any regret or insight
8 into what he had done?

9 A. Yes, he expressed both. He expressed regret in terms of his
10 involvement with it, the consequences. Obviously, he just
11 generally referred to it. He said, quote, "obviously, what
12 I'm here for" -- he was referring to the events -- "being
13 involved with something that I thought was cool at the time,
14 was more cruel than anything, regret disappointing my mom
15 and family and for just being selfish." So, he was pretty
16 open about the guilt that he maintains about those
17 circumstances.

18 Q. And, again, is that an important consideration in assessing
19 risk of future dangerousness?

20 A. Yes. Lack of guilt is a bad sign; so if you do something
21 terrible and somebody dies, you would expect the person to
22 feel guilty; and if they don't, it's concerning in terms of
23 a characteristic of psychopathy.

24 Q. Okay. Let's talk a little bit about what has occurred since
25 he's been in the institution, and it sounds like he's been

1 at several institutions throughout his incarceration. His
2 current classification at the Department of Corrections is
3 "medium" level. Is that -- in working with the Department
4 of Corrections, do you know, is that the highest level that
5 he can obtain given his type of sentence?

6 A. What I was told is that that is the highest level that he
7 can -- that he can obtain given his sentence, and so his
8 current classification is a result of good behavior,
9 essentially, on a long-term basis, and there doesn't
10 appear -- from the -- from the records that I reviewed or
11 information from him, there doesn't appear to be any recent
12 incidences of infractions that would have lowered his
13 classification.

14 Q. Okay. Now, he has had some disciplinary issues at the
15 Department of Corrections. The most significant occurred in
16 2001; is that correct?

17 A. Yes.

18 Q. Okay. And what was the nature of that disciplinary issue?

19 A. So, I reviewed records from the Department of Corrections
20 and also discussed this issue with Mr. Leo, and this was an
21 infraction for what was described as an aggravated assault
22 in which he seriously assaulted another inmate; and there
23 are different stories about what happened in that particular
24 circumstance. The DOC records indicate concerns about
25 possible -- a possible gang-related plan in which he was

1 alleged to have told the individual to assault someone, and
2 they didn't. Mr. Leo's description was that this -- was an
3 argument that occurred in the context of a sport activity.

4 Q. Okay. Now, at the time of this event, which was, I believe,
5 June 2001, how long, approximately, had Mr. Leo been in the
6 institution, do you know?

7 A. From what I can tell, approximately a year.

8 Q. Okay. And he was, approximately, what age at that point?

9 A. About 20.

10 Q. Okay. And so he was disciplined by the Department of
11 Corrections for that event. What was the next event that he
12 was disciplined for at the Department of Corrections, do you
13 know?

14 A. I have -- there's a note of a segregation-designated
15 document in January 2002 -- no, I'm sorry, that's -- I'm not
16 sure if this is -- this is the next incident or that was
17 related to the previous incident. There was a couple other
18 incidences referenced in the -- in the Department of
19 Corrections paperwork. There was an incident where he was
20 found to be in possession of an X-Box console and prohibited
21 games.

22 Q. And what date was that approximately?

23 A. It looks like that was 2007.

24 Q. All right. And he had some other issues back in 2000 and
25 2001. Again, this would be at the bottom of that paragraph

1 you're referring to?

2 A. Right. Back in -- back in 2001, there was a -- there was a
3 document related to reported poor work performance in the
4 kitchen. There was a 2000 document stating that he had been
5 cited for refusing or failing to obey an order, being in an
6 unauthorized area; so there were several incidences, most of
7 which appeared to be quite minor and not violence-related
8 except for the one incident in 2001 when he engaged in
9 violent behavior towards the other inmate.

10 Q. Okay. So no indications of any violent behavior in the
11 institution since June of 2001 --

12 A. Correct.

13 Q. -- in your review of the Department of Corrections records?

14 A. Correct. And that's quite significant for a couple of
15 reasons. One is imagining an adolescent being sentenced to
16 life without the possibility of parole and anticipating a
17 lifetime of living in a correction setting and how that
18 individual is going to survive in that setting and having a
19 history of fairly severe gang involvement; and adolescents,
20 in general, are at an increased risk in that type of setting
21 for victimization. They may feel an increased sense of
22 desperation in terms of their need to assert their dominance
23 and prevent victimization, and they're at an increased risk
24 of identification of antisocial attitudes and values by
25 older, more mature and characterologically criminal inmates;

1 so there are a lot of risk factors and negative outcomes
2 associated with -- in general with adolescent incarceration
3 in the adult criminal setting.

4 And in his case, it's my opinion that it's significant
5 that this violent incident occurred so early on in the -- in
6 his incarceration and that there are no subsequent
7 incidences over a prolonged period of time; and if this was
8 an individual who was continuing to hold and act on violent
9 attitudes, that would be reflected in his -- in his history
10 in this controlled environment where all of his behavior is
11 documented, so -- or at least all of his problematic
12 behavior is documented, and you don't see that in his case.

13 It's actually -- from my perspective, as someone who's
14 done several of these re-sentencing cases, it's one of the
15 cleanest histories that I've seen in terms of long-term
16 incarceration; and I think that speaks to his character and
17 what he's trying to accomplish even when it didn't
18 necessarily seem to be likely to benefit him tremendously
19 other than maybe, you know, somewhat more preferable
20 placement, but even -- you know, the potential benefits
21 associated with that were fairly limited in his
22 circumstances.

23 Q. So one might argue, well, he's in a controlled setting for
24 the last 15 years. We don't know that that necessarily
25 translates to him being in the community. On the other

1 hand, as you indicate, we know -- because of where he's at,
2 we know everything he does. He's in a controlled setting
3 where he's under surveillance virtually 24 hours a day.

4 A. You can make both arguments. You could say, well, he's not
5 acting out because he's in a controlled setting. At the
6 same time, we, of course, know that there's a lot of
7 violence that occurs in prison; and for the people who are
8 inclined towards that type of lifestyle, they find
9 opportunities to be violent and don't -- aren't deterred
10 from doing so despite the high level of control in that
11 setting.

12 And in -- as everyone, I'm sure in this room, already
13 knows, survival in prison is different than survival and
14 success outside of prison; and so you can, actually, make a
15 pretty good clinical argument for necessary aggressive
16 behavior in a correction setting to prevent being victimized
17 by other people. It's a hard world to survive in without
18 resorting to violence under certain circumstances. The fact
19 that he's been able to do that for more than ten years is, I
20 think, an encouraging sign with his functional ability
21 outside of prison where that type of behavior is not
22 necessary or condoned or reinforced.

23 Q. Okay. Now, during the course of your interview with Mr. Leo
24 last May, you conducted a mental status behavior observation
25 which is part of your assessment; talk a little bit about

1 that.

2 A. Yeah, so this is the portion of my report where I,
3 essentially, provide some clinical observations of a
4 person's behavior, demeanor, communication abilities, that
5 sort of thing and, then, also, incorporate the brief
6 screening instrument for cognitive functioning. Mr. Leo was
7 very pleasant to interact with. He was polite, cooperative.
8 There's no -- I'm looking for signs or symptoms of ongoing
9 mental illness and there aren't any. He's not endorsing or
10 describing significant problems with major mood disturbance
11 or perceptual disturbances indicative of a thought
12 disorder. These are all the kinds of things that I'm ruling
13 out and looking at over the course of the assessment. His
14 communication is quite good. He -- his speech is normal.
15 There's no kind of pressure or disorganized nature of his
16 communication. He does not describe or exhibit significant
17 signs or symptoms of anxiety. There's no kind of prominent
18 paranoia or negativistic attitudes in his statements or
19 demeanor. He doesn't describe ongoing thoughts of wanting
20 to harm or kill himself or other people; and his affect, his
21 display of emotion, is consistent with what he describes, so
22 he does -- sometimes people say, I'm perfectly fine, there's
23 nothing wrong with me, and they're, obviously, extremely
24 nervous; so there's congruence between the way that he
25 describes his -- how he feels and his observable behavior.

1 And then completion of the Montreal Cognitive Assessment,
2 which is just a general screener of cognitive functioning,
3 you would expect a person with, you know, a significant
4 history of brain trauma or dementia or some other serious
5 cognitive issue to perform poorly on some or all of these
6 tasks; and his score was in the normal range. There was no
7 obvious indicators of cognitive impairment.

8 Q. So then you administered a risk assessment test, which is
9 referred to in your report as HCR-20, Version 3. First of
10 all, could you explain what the HCR-20 [sic] stands for.

11 A. Yes. HCR-20 stands for historical, clinical, and risk
12 management; and the HCR-20 was, first, published in 1995 and
13 now it's in its third revision. This is a widely accepted,
14 widely used instrument to help clinicians assess violent
15 risk, and it's used in this country widely and other
16 countries; and particularly, it's one instrument that's been
17 held up in the state of Washington for use by state
18 hospitals in assessing violence risk; and so this is a
19 widely accepted, useful tool for this type of evaluation.

20 Q. And would you describe your experience in using this.

21 A. Yes. So I've, over the past five or so years in particular,
22 have routinely used this instrument in violence risk
23 assessment to provide information for the Courts of
24 Washington about violence risk potential; and I like the
25 instrument particularly because it seeks to balance this

1 ongoing debate within the clinical literature between the
2 value of clinical judgment and the value of actuarial data,
3 meaning, historical data points to estimate violence risk.
4 There is this kind of debate within the field about what's
5 the best way to assess violence risk? Some studies look at,
6 and some instruments look at, the use of actuarial data,
7 historical data points to itemize risk and provide an
8 overall sort of percentage of risk for a particular
9 individual. The clinical judgment argument comes in and
10 says, well, that may be true overall when you're doing, for
11 example, a broad study on thousands of people; but when you
12 look at a particular individual, their individual
13 circumstances may have certain details that are actually
14 more important than those historical data points.

15 So, the goal of the HCR-20 is to balance those issues of
16 clinical judgment with historical risk factors associated
17 with increased violence risk and to guide the clinician to
18 look at components of the person's history that are known to
19 be important but, also, to take into consideration this
20 individual's risk profile in understanding their violence
21 risk in a more broad conceptualization of their profile than
22 just simply, you know, a handful of historical data points;
23 so hopefully, that makes sense. It is a combination of
24 clinical judgment and research-based historical factors.

25 Q. Okay. So in assessing his risk under this tool, this

1 instrument, as you've described it, you take into
2 consideration historical risk factors?

3 A. Correct.

4 Q. And how did you rate the risk -- your risk assessment when
5 considering the historical risk factors in this case?

6 A. So to provide a little context, as well, historical risk
7 factors are those that -- basically, these are things that
8 can't change. These are things that have happened. These
9 are -- these are characteristics of his history that are, or
10 are not, present that are associated with increased violence
11 risk; and so when you look at this number of factors that
12 the clinician assesses, there are several which are
13 definitely present, and much of that has to do with the
14 circumstances that led to his life sentence; so
15 specifically, there is a history of prior serious violent
16 behavior and a history of other antisocial behavior. So, on
17 this assessment, both of those are rated at the highest
18 level, not because of behavior in recent years but because
19 of his history.

20 And some of the other elements are a little bit difficult
21 to assess in his case because of his long-term
22 incarceration, so things like the stability of his
23 relationships, employment history, and substance use
24 history, you have to acknowledge, we're somewhat limited in
25 our -- in our knowledge and understanding of those because

1 of his limited opportunities, but they are -- they are rated
2 in my assessment as partially present. He doesn't have any
3 history of major mental disorder which is a risk factor. He
4 doesn't, in my opinion, have a personality disorder, which
5 is a risk factor, particularly if we're referring to
6 antisocial personality or borderline personality disorder,
7 none of which are relevant in his case in my opinion.

8 There is -- a history of traumatic experiences can be a
9 risk factor, and I've rated that as partially present, in
10 his case, primarily because of the circumstances of the --
11 of the crimes that led to his life sentence and also because
12 of the reported history of some domestic violence in the
13 home, though, his personal trauma history appears to have
14 been limited.

15 Violent attitudes were rated as "present" because of his
16 violent attitudes in adolescence, as assumed from the --
17 from the gang involvement and behavior associated with that;
18 although, as I've noted earlier, I don't think that
19 continues to be a concern; and history of poor treatment
20 response was rated as "partially present" because of his
21 prior involvement with the juvenile justice system before
22 his life sentence.

23 So, overall -- and this can be surprising for people when
24 we're talking about an individual who ended up with an
25 extreme crime that resulted in a life sentence -- his

1 overall historical risk factors associated with increased
2 violence risk are rated as "moderate" in terms of the number
3 and degree of those factors that are there, so you can have
4 an incident of extreme violence and still be rated as
5 usually lower than "moderate" in those circumstances, but
6 there are -- the important thing to note is that there are a
7 number of risk factors that are not present which results in
8 the "moderate" rating as opposed to classifying that history
9 as being "severe," even though, of course, the circumstances
10 leading to his life sentence were, of course, severe.

11 Q. Let me back up one step to where you described one of the
12 factors of being this event, of course, what happened at the
13 Trang Dai Cafe. Was the -- I'm not sure if you mentioned
14 this, but was the fact that Mr. Leo was one of the younger
15 members of the group and did not appear to be a leader in
16 this -- you know, in this event, was that significant?

17 A. It's significant in terms of my clinical experience and
18 understanding. It's not specifically coded in the HCR-20;
19 but in another risk assessment tool that I use specifically
20 for adolescents, it guides the clinician to assess the
21 leadership role in the criminal activity as being important.
22 So, given that he was an adolescent at the time, given that
23 he was one of the younger members, and given that available
24 information doesn't suggest a primary leadership role in the
25 behavior, that is a mitigating factor in his case.

1 Q. The next risk factor, under the HCR-20, is clinical risk
2 factors. Could you describe what those are.

3 A. Yes. So we distinguished the next two categories from the
4 historical risk factors in that these are more dynamic
5 factors. Now, arguably, these are -- the dynamic factors,
6 less is known in terms of their specific predictability; but
7 they have been established within the field as being
8 important for consideration and understanding the current
9 risk profile in the light of the available history. So,
10 clinical risk management or clinical risk factors refer
11 to -- primarily to ongoing clinical issues that would be of
12 concern in terms of increasing or reducing the individual's
13 current risk.

14 So, it's probably easiest to understand it -- and if we
15 talk about a hypothetical, let's say we have an individual
16 who has a history of schizophrenia, and when they become
17 psychotic, they break from reality, and this particular
18 individual has a history of -- not Mr. Leo, I want to
19 clarify -- but in this hypothetical example, this person has
20 a history of violence when they became psychotic; so a
21 clinical risk management factor would be important to
22 understand this person's current stability in light of their
23 history and violence in that situation.

24 So most of the clinical risk factors are irrelevant in
25 Mr. Leo's case because he doesn't have a significant history

1 of mental disorder, but some of them are relevant mitigating
2 factors, specifically his level of insight, which appears to
3 be good, and some -- to some extent, you can't really teach
4 insight. Some people have it and some people don't. You
5 can help it along, but you have to have some degree of
6 intellectual capacity to really benefit a lot from education
7 attempts; so, in his case, his insight -- I do -- in my
8 judgment, is a mitigating factor. Lack of current violent
9 ideation or intent, from all available information that we
10 have, that has not been an issue in a number of years, no
11 recent symptoms of a mental disorder instability. He's not
12 requiring -- sometimes people in the correction setting are
13 really struggling day-to-day. They're utilizing a lot of
14 mental health services or needs, may be prescribed
15 medications to help calm their anxieties or improve
16 depression. None of that is the case for Mr. Leo; and from
17 what I can gather in discussing it with him, he seems to
18 have internalized and benefited from a number of treatment
19 or rehabilitative opportunities that he's sought out.

20 So those are all what I would describe as mitigating
21 clinical factors in light of his history.

22 Q. So --

23 THE COURT: Okay. Counsel, it's a quarter
24 till, so we'll go ahead and take the morning recess.

25 MR. QUIGLEY: Thank you.

1 THE COURT: I need to take the brace off
2 for a little bit.

3 (A recess was taken.)

4 (The defendant was present.)

5 THE COURT: You may be seated. Thank you.

6 (The witness returned to the stand.)

7 THE COURT: All right. Are you ready,
8 Counsel?

9 MR. QUIGLEY: Yes, Your Honor. Thank you.

10 DIRECT EXAMINATION (Cont'd.)

11 BY MR. QUIGLEY:

12 Q. So, Dr. Henry, I think, when we left off, I was asking you
13 about your clinical risk factors; and you were describing
14 what those are. Did you -- what was your rating, if you
15 will, regarding Mr. Leo's clinical risk factors?

16 A. The rating was "low," meaning, low presence of any
17 concerning clinical risk factors.

18 Q. The next classification of factors are risk management
19 factors. Will you describe what those are.

20 A. Yes. This pertains, more, to any ongoing difficulties
21 associated with a plan that is in place; so, for example, in
22 a case of a psychiatric inpatient who is being looked at for
23 discharge into the community, what type of setting are they
24 being discharged to; or an individual who is in the
25 correction setting, what type of supervision or checks and

1 balances could be expected to be in place? What types of
2 supports are there? Are there concerns in terms of exposure
3 to destabilizing factors that are important for this
4 individual in assessing their dynamic risk? That sort of
5 thing -- and these also -- acknowledging that rating is
6 somewhat limited in his case because I don't have very
7 specific circumstances laid out in terms of when and how and
8 what kind of specific supervision you would have and
9 specifically who would be -- he would be living with and
10 that sort of thing. We just don't have that information at
11 this point, so it's somewhat vague with the available
12 information; but there aren't any obvious concerns.
13 Assuming that there would be some kind of continuing
14 monitoring in the community for some time after he was
15 released, would, certainly, be recommended given reports of
16 positive support and, you know, extensive involvement with
17 family members, that sort of thing. Those are all positive
18 indicators.

19 Also, his -- just in interacting with him, his response
20 to interventions that he has participated in in the
21 correction setting, he expresses some positive attitudes in
22 that regard and appears to have some increased coping skills
23 and stress management skills that he has either sort of
24 pursued on his own or benefited from some of the
25 rehabilitative opportunities that he has participated in.

1 Q. Okay. So his overall rating in the risk management factor
2 section, if you will, was "low"?

3 A. Right.

4 Q. Doctor, before I move on to your summary and conclusions, I
5 wanted to make one correction to an item you testified to
6 earlier. I'm going to hand you what's been marked as
7 Plaintiff's Exhibit 2. I'll indicate to you that the
8 Prosecutor, Mr. Schacht, brought this to my attention during
9 the break. It's a document from the Department of
10 Corrections which is a chronological summary of Mr. Leo's
11 performance in Department of Corrections and his level of
12 supervision, if you will.

13 You testified earlier that he was "medium" level of
14 supervision. In fact, in reviewing that document in front
15 of you, does it appear that he's actually rated as a "low"
16 level of supervision by the Department of Corrections?

17 A. I'm not sure specifically where -- oh, well, I'm reading a
18 statement here that says, "Static risk assessment updated on
19 June 27, 2013, risk level classification changed from
20 'moderate' to 'low.'"

21 Q. Okay. So, in fact, his classification by the Department of
22 Corrections, at this point, is "low"?

23 A. From this document, that would be right --

24 Q. According to this document which was --

25 A. -- my understanding.

1 Q. -- provided to me by the State?

2 A. Okay.

3 Q. All right. And is that -- I'll take that back. Doctor, is
4 that consistent with all of the facts that you know about
5 what Mr. Leo has done and has not done at the Department of
6 Corrections since he was incarcerated there?

7 A. My knowledge of what, specifically, goes into those ratings
8 is somewhat limited. My minimal understanding of the -- of
9 the internal risk assessment procedures that are done are
10 based on prior criminal history and persisting behavioral
11 indicators, so what that would suggest to me, in reading it,
12 is that he has continued to demonstrate low-risk behaviors
13 for a long enough time that it -- that it trumps some of
14 these concerning historical factors in the -- in terms of
15 their internal risk assessment procedure, and the fact that
16 they would consider him to be low risk is quite significant
17 and generally consistent with my understanding of his
18 current risk, even in light of the concerning history.

19 Q. Okay. Thank you. Now, Doctor, moving on to your summary
20 and opinions regarding this violence risk assessment for
21 Mr. Leo, would you discuss some of the limitations of any
22 risk assessment evaluation.

23 A. Yes. It's always important to acknowledge that no matter
24 how wonderful a clinician may be, prediction of individual
25 incidences of terrible violence are next to impossible,

1 so -- and the reason is because these are extremely low
2 frequency events and an individual may perpetrate a horrible
3 act of violence and have no discernible history of increased
4 risk factors associated with violence; and the opposite is,
5 also, true. A person may have a horrendous historical
6 violence risk history and not perpetrate a subsequent
7 terrible violent act. So we have to acknowledge that what
8 we're talking about are general tendencies based on
9 research. We can talk about increased risk or decreased
10 risk. We can't say this particular individual will, or will
11 not, commit a serious violent act in the future.

12 That being said, the data, in terms of historical risk
13 factors and the dynamic risk factors that we talked about
14 today, there is justification for those being useful in
15 making clinical decisions and decisions in the criminal
16 justice process. We do -- it is a database, research-based
17 process, that is supported and consistently identified as
18 useful; but we have to acknowledge its limitations.

19 Q. So when we do an assessment for future dangerousness, we are
20 trying to assess probabilities, if you will?

21 A. In a sense. That can be, more or less, true depending on
22 the methodology of the particular clinician; so like I said,
23 some risk assessments boil down to, essentially, a review of
24 historical factors and a subsequently derived probability
25 that this person will, or will not, engage in a violent act;

1 and in my opinion, that misses opportunities to identify
2 individual factors that are important to consider that can
3 provide a more useful and specific risk profile for the
4 individual; so, for example, the severity -- research shows
5 us that the severity of an act, a violent act, in some
6 cases, can actually be a mitigating factor for future
7 violence and, in other cases, may be an indicator of
8 increased risk. An actuarial data-driven instrument won't
9 necessarily identify in this particular individual's case
10 which is -- which is more true, so -- I may have gotten off
11 track of the original question on that one.

12 Q. Well, I guess, one of the questions would be: Is this case
13 somewhat unique in your experience, given the fact that we
14 are, today, considering a sentence for Mr. Leo 18 years
15 approximately after this violent event?

16 A. Well, yes. I guess, in some ways, I would say every case is
17 unique and that's what informs my methodology for doing risk
18 assessments, you have to consider the unique individual
19 factors; and I think what you're referring to, and correct
20 me if I'm wrong, but one of the things that's very helpful,
21 in Mr. Leo's case, is that we are not making guesses about
22 whether or not he has, sort of, adopted nonviolent
23 attitudes. We have many years of data to demonstrate that
24 he is not continuing to engage in violent behavior, so
25 that's unique; and then a lot of times we're making these

1 kind of determinations with a lot less of a timeline for
2 offering opinions about continued risk and whether or not
3 these possibly mitigating factors are going to translate
4 into decreased violence risk. I mean, having more than ten
5 years of not engaging in any kind of notable violent
6 behavior is very significant from a clinical perspective.

7 Q. So I'm assuming, if you would have assessed the 18-year-old
8 Mr. Leo, that assessment would be different than your
9 assessment of Mr. Leo at his current age?

10 A. Yes. Well, the -- you know, it's always impossible to, sort
11 of, perfectly put yourself into a different situation; but
12 hypothetically, you could be -- under the circumstances that
13 I'm -- that I'm aware of, you would be left with significant
14 uncertainty as to -- as to the direction that his character
15 and personality and behavioral tendencies was going to
16 unfold; so as I briefly mentioned earlier, there is this
17 phenomenon of adolescent antisocial -- adolescent-specific
18 antisocial behavior in which an adolescent engages in very
19 serious criminal activity and then doesn't continue to do so
20 later on in life; and we would, at that point, be left with
21 the question of whether or not this was, sort of, the first
22 of what was going to continue to come or whether this was a
23 very disrupted period of his life in which he engaged in
24 some horrible acts but that that was not necessarily going
25 to continue to define his character and behavioral

1 tendencies later on in life.

2 Q. So in discussing the adolescent-specific antisocial
3 behavior -- and this is very simplistic, but would it be
4 your opinion that, in essence, Mr. Leo sort of grew out of
5 this behavior?

6 A. I think that's one way of describing it. It's significant
7 that I am -- that I'm not diagnosing him with an antisocial
8 personality disorder. As I'm sure everybody in this
9 courtroom knows, a fairly large percentage of individuals in
10 the correction setting do carry that diagnosis, or should;
11 and essentially, that refers to problematic attitudes and
12 behavioral patterns in a direction of violating societal
13 norms and the rights of other individuals. And it's my
14 opinion that on a -- on a -- for a prolonged period of time,
15 since his adolescence, that hasn't been, sort of, the
16 defining characteristics of his personality.

17 Q. In your report, you discuss the specifics of adolescent
18 brain development. Could you touch briefly on how that
19 occurs and at what age an individual is fully,
20 intellectually mature.

21 A. Yes. So I would -- I would distinguish maybe an annoying
22 psychologist distinction, but it's not so much intellectual
23 maturity -- because your intelligence follows you pretty
24 much throughout your life span because you're comparing that
25 to other same-age individuals, but what we're referring to

1 is neurological development and what, unfortunately -- the
2 unfortunate scenario for adolescents is that our drives, our
3 emotions, our impulses are some of the first things to
4 develop and our higher order cognitive processes like
5 impulse control, having an urge to do something and then
6 being able to control that urge and choose to do the
7 societally appropriate thing, or being able to -- the
8 complex cognitive tasks that adults do every day of looking
9 at the costs and benefits of this particular behavior and
10 whether this is going to work out good for me and everybody
11 else or not, those are some of the last skills to fully
12 mature; so every parent of teenagers has experienced this
13 that their well meaning child may make some terrible
14 decisions or engage in surprising behaviors that reflect
15 that limited capacity, obviously not, you know, typically as
16 severe as what we're talking about in this case; but there's
17 a general lack of fully developed neurological capacity even
18 into the early twenties, and so it's important to remember,
19 when we're talking about adolescents and particularly men in
20 their early twenties, that we're talking about people who
21 haven't fully matured in terms of their neurological
22 development.

23 Q. Are external factors such as peer groups, family dynamics,
24 do those affect this development that you're discussing?

25 A. Well, what I'm discussing, at the moment, is more sort of

1 the biologically driven maturation which some would argue
2 environment does, you know, in some subtle ways, affect
3 actually neurological development; but that issue aside,
4 there is -- there is the biology of development. And then
5 there is, also, the psychosocial aspect of development, and
6 both are important. It's kind of the -- it boils down to
7 the nature or nurture debate; and we say, yes, both are
8 important.

9 So -- I don't know if I'm answering your question, but
10 environmental circumstances very much affect going through
11 the process of these different identity crises that
12 everybody does at different stages, particularly in their
13 early life; and as we mentioned earlier, there are some
14 significant factors for consideration in Mr. Leo's case.

15 Q. Okay. So that was my next question. Do you think that
16 those two factors were at play in considering Mr. Leo's
17 behavior at age 17 and five months when this occurred?

18 A. Well, it's impossible to say with any, you know, perfect
19 certainty; but the fact that he has not continued to engage
20 in those kinds of behaviors in a correction setting or
21 any -- really any violent behavior in the correction setting
22 after the first year or so of his incarceration, speaks to
23 the, at least, hypothesis that his limited development may
24 have -- may have played a role in the poor decisions that he
25 made and the violent impulses that he acted on; and also

1 certainly, I think there is reason to believe that social
2 pressures and desire for social connection, with those who
3 he perceived as powerful and successful, had a significant
4 impact on his behavior at the time. Again, these are --
5 these are hypotheses. We've got good clinical reasons for
6 making them, but it's always impossible to know with any
7 high degree of certainty why a person did a particular thing
8 at a particular time in their life.

9 Q. Okay. So your overall risk assessment of future violence,
10 did you make an assessment regarding that?

11 A. Yes. So when I'm -- when I'm providing a summary of an
12 individual's violence profile, there's a distinction between
13 overall risk of possible future violence and risk of
14 imminent or -- imminent violence or severe violent acts.
15 So -- and there's really only -- when you're using the
16 HCR-20 classification system, there's really only sort of
17 three main categories. "Low" would be -- essentially, there
18 isn't any, you know, serious indicators; and, you know,
19 unfortunately, there isn't a -- something between "low" and
20 "medium," if that makes sense; so I rated his overall -- I'm
21 just going to go for my report just to make sure I'm giving
22 the correction information. Overall risk of future violence
23 is rated as "low to moderate." Risk for serious physical
24 harm is considered to be "low," and risk for imminent
25 violence is, also, rated to be "low."

1 So, what I'm -- and what I'm attempting to communicate,
2 in a more narrative form of my conclusions, is that
3 acknowledging, of course, there are these concerning
4 historical factors that are never going to go away; and yet,
5 in my opinion, those are mitigated by years of data that
6 suggests that that kind of concerning behavior and attitudes
7 has not continued and that there are a number of, what I
8 would opine to be, mitigating factors that suggest "low"
9 imminence. There's no indication of increased imminent
10 risk, and that's supported in the information you showed me
11 earlier from the -- from the correction setting. People
12 whose job it is to maintain the safety and security of that
13 facility take those ratings very seriously for obvious
14 reasons, and I think there are a number of reasons to
15 consider his -- that the imminence and the risk of future
16 serious violence to be "low."

17 Q. Let me make you aware -- thank you, Doctor. I'm going to
18 move on to one other point. I want to make you aware of a
19 fact that you were not aware of at the time you prepared
20 this report. It's come to my attention -- of course, this
21 case is over 18 years old. It came to my attention recently
22 that Mr. Leo was called to testify at one of his
23 codefendant's trials, and I've reviewed the transcript. I
24 know you haven't seen the transcript, but I will make you
25 aware that Mr. Leo testified inconsistent with what he told

1 the police. What he told the police was that two of his
2 codefendants were with him at this cafe when this shooting
3 occurred. On the witness stand under oath, he, at age -- at
4 that time, I believe, age 19, changed his story, was
5 inconsistent, said those two individuals were not with him.

6 So, now that you know that fact, which I've made you
7 aware before you testified, does that change your opinion in
8 any way?

9 A. It doesn't -- it doesn't change my opinion, and I'll try to
10 explain why. Lying, in and of itself, even a pattern of
11 lying, in and of itself, is not an indicator of increased
12 violence risk; so a person's level of truthfulness may be
13 useful information in terms of understanding their
14 personality; and that, in an indirect way, can inform a
15 violence risk assessment.

16 In this case, we're talking about isolated instances, to
17 my knowledge, in the context of the legal situation that he
18 was in, in the context of the gang involvement; that he was,
19 probably, you know, in his mind, still connected with to
20 some extent. There are any number of factors that can
21 affect a person's truthfulness under those circumstances,
22 and what would be more concerning to me, from a clinical
23 perspective, is long term and continuing evidence of a
24 pattern of untruthfulness that characterized more routine
25 interactions. That can be a characteristic of more of

1 antisocial or psychopathic tendencies. That, in and of
2 itself, isn't psychopathy or antisocial personality. It's
3 just one of the characteristics.

4 Q. And if I were to add the fact that at the time that he was
5 called to testify against his codefendants, he had already
6 pled guilty and had accepted full responsibility for these
7 acts and had already been sentenced to the sentence he's now
8 serving, would that change your mind in any way?

9 A. None of it changes my opinions, and these are all -- I'm
10 taking this into consideration in light of all the other
11 available information. You don't need a clinical psychology
12 degree to see the potential concerns about what people in
13 the correction center refer to as "ratting other people out"
14 and trying to survive in that environment. There are a
15 number of factors, certainly, that can contribute to a
16 person's behavior in any given setting. Obviously, we hope
17 everybody tells the truth all the time, but in reality they
18 don't.

19 MR. QUIGLEY: Your Honor, at this time, I
20 would move to admit Defense Exhibits 5 and 6.

21 THE COURT: Any objections?

22 MR. SCHACHT: No objection.

23 THE COURT: 5 and 6 will be admitted.

24 (Defendant's Exhibit Nos. 5 and 6 were admitted.)

25 MR. QUIGLEY: And that's all the questions

1 I have, Your Honor, of Dr. Henry.

2 THE COURT: Can we have the exhibits.

3 MR. QUIGLEY: They're up there on the
4 witness stand.

5 THE COURT: Yes, we want to have those so
6 we can mark them.

7 MR. QUIGLEY: And, Your Honor, before
8 Mr. Schacht conducts his cross-examination, I just want to
9 make one fact clear from the -- where we're at in the
10 courtroom perspective. There's some individuals in the
11 courtroom, approximately seven individuals. I want the
12 Court to know that these are members of Mr. Leo's family.
13 They're sitting on the State's side of the courtroom, but I
14 want to make it clear that they're here to support Mr. Leo.
15 I think it speaks to some of the issues that Dr. Henry
16 talked about regarding family support. I just wanted to
17 make that clear on the record.

18 THE COURT: I rather figured that they
19 were --

20 MR. QUIGLEY: Okay.

21 THE COURT: -- family members.

22 MR. QUIGLEY: Thank you.

23 THE COURT: All right. Cross-examination,
24 Mr. Schacht.

25 MR. SCHACHT: Thank you, Your Honor.

CROSS-EXAMINATION

1
2 BY MR. SCHACHT:

3 Q. I want to start by just drawing your attention to a couple
4 of areas in your report. The first is -- and do you still
5 have a copy up there?

6 A. Yes, sir.

7 Q. Okay. I know it's been admitted as an exhibit, but I'll
8 refer you to Page 8 of 9 under the heading of "summary and
9 opinions," if you could find that for me.

10 A. (Reviewing.) Yes.

11 Q. Okay. Am I correct that part of the limits of what you're
12 doing in a risk assessment is that you can't forecast with a
13 hundred percent accuracy what might happen in the future; is
14 that correct?

15 A. Definitely, that is correct.

16 Q. And am I also correct that the way you put it in the report
17 is, quote, "It is important to note that accurate individual
18 prediction of serious violent acts is next to impossible."
19 Does that continue to be the case?

20 A. Yes.

21 Q. Okay. So you stand by that part of your report --

22 A. Yes.

23 Q. -- as you testify here today? Okay. You -- going back
24 through some of the details of your testimony, you indicated
25 that you had interviewed family members of Mr. Leo?

1 A. Actually, no, I did not.

2 Q. Okay. But you were aware and had access to the mitigation
3 report in which interviews of his family were completed; is
4 that correct?

5 A. Yes.

6 Q. Did you, as part of your assessment, interview anyone from
7 the victim's side of the case?

8 A. No, I did not.

9 Q. Would that be of any interest to you in the risk assessment?

10 A. It's hard to imagine how it would directly inform the issues
11 that are important for me to rate in terms of offering. It
12 certainly would provide some additional information in terms
13 of the magnitude of the implications of the -- of the
14 criminal acts; but in the process of conducting my
15 assessment of the individual's violence risk, I'm --
16 primarily, sources of data would be the individual who's
17 being evaluated, treatment records --

18 Q. Mm-hmm.

19 A. -- and other sources of information that could inform on
20 these issues that are demonstrated by research to help with
21 making these kinds of ratings.

22 Q. Okay. Thank you for clarifying that. The next question, I
23 have, is: You indicated that Mr. Leo had engaged in fairly
24 significant efforts at self-improvement. Do you recall that
25 testimony?

1 A. I don't remember what I specifically said, but I remember
2 saying something to that effect.

3 Q. Yeah, and in your report, you indicated that that's the case
4 that he has done quite a bit in prison in the area of
5 self-improvement and even insofar as trying to prepare
6 himself for eventual release even at a time when he had not
7 expected to have any hope of release. Is that all correct?

8 A. That was my understanding that he had pursued some
9 opportunities for rehabilitation even though the
10 opportunities for that had been limited.

11 Q. Mm-hmm. And you indicated that was one of the factors that
12 weighed in his favor in the risk assessment; correct?

13 A. It doesn't weigh in terms of the historical risk factors
14 that I mentioned, but it does speak to more of these issues
15 of the -- of the clinical and risk management factors when
16 we take into consideration efforts that the individual has
17 made to positively participate in the rehabilitative
18 services that could be available to them.

19 Q. And actually in his case, the fact that he had done so
20 without any hope that it was going to actually benefit him
21 in any way weighed in his favor; is that correct?

22 A. I believe I did mention that you could imagine a scenario
23 where an individual, under similar circumstances, might not
24 be as motivated to pursue those kinds of rehabilitative
25 opportunities.

1 Q. But it is true that within a correction setting that
2 self-improvement, self-motivation, completing classes,
3 engaging in employment and those types of opportunities in a
4 correction setting do directly benefit him while he's in the
5 correction setting?

6 A. You could certainly make an argument that there would be
7 direct benefits to especially employment opportunities and
8 also, obviously, engaging in inappropriate behavior in the
9 correction setting to avoid punishment associated with
10 acting out behaviors. It speaks, I think, a little bit more
11 to character when you're talking about pursuing some of
12 these other kind of self-improvement interventions --

13 Q. Mm-hmm.

14 A. -- anger management, that sort of thing. A lot of
15 individuals in a correction setting are not as motivated to
16 capitalize on those kind of opportunities.

17 Q. But you also, in your direct testimony, indicated that
18 people in a correction setting who have -- who have a risk
19 assessment by Department of Corrections at "medium" or
20 "high" don't have the same kinds of opportunities that
21 someone who is assessed as "low" would have; is that
22 correct?

23 A. My understanding, admittedly of the opportunities that are
24 available to him, is limited. Primarily, that was
25 information that was presented to me by Mr. Leo that he had

1 mentioned that there are a number of things that other
2 inmates may have access to that he didn't by the nature of
3 his sentencing.

4 Q. But now the fact that he's -- he has been reclassified as
5 "low" risk, he should have opportunities available to him
6 that he didn't before and that those -- the fact that he's
7 been a good prisoner, if you will, are things that will open
8 doors for him within the prison setting?

9 A. And my knowledge of that, directly, is somewhat limited; so
10 I don't know what additional opportunities would,
11 potentially, be available to him on that basis or if the
12 nature of the sentence of life without the possibility of
13 parole still -- with good behavior still limits the
14 available rehabilitative services for him. I don't have
15 very specific information about that.

16 Q. Okay. Very well. The last area of your direct testimony
17 that I wanted to ask you about is: You were asked about the
18 circumstance where someone is lying as being an indicator
19 that they, perhaps, are engaging in antisocial behavior;
20 correct?

21 A. I'm sorry. Can you ask --

22 Q. Maybe I'll finish that question this way and say an
23 indicator of not necessarily a diagnosis of antisocial
24 personality disorder, but it's certainly antisocial
25 behavior?

1 A. Yes. I would make the distinction between antisocial
2 behavior, which can be even an isolated incident. I would
3 describe antisocial behavior as any behavior that violates
4 societal norms or the rights of other individuals; whereas,
5 an antisocial personality is characterized by pervasive and
6 persistent behaviors that violate the rights of other
7 individuals.

8 Q. Okay. So if Mr. Leo had a persistent history of lying,
9 particularly in a formal setting such as a courtroom, lying
10 under oath, that would tend to weigh against him in the risk
11 assessment, would it not?

12 A. Not directly. As I indicated in my original testimony, the
13 HCR-20 does not even have a specific category for
14 truthfulness or history of lying behavior. It doesn't
15 directly factor into any of the most salient historical risk
16 factors associated with increased violence risk. I believe
17 I mentioned that it would, potentially, indirectly inform --
18 if you were doing, for example, a more detailed assessment
19 of psychopathy, for example, persistent untruthfulness,
20 persistent lying behavior, can be one of the many
21 characteristics of -- more of an antisocial or psychopathic
22 personality, in and of itself, particularly when occurring
23 in a specific context is not.

24 Q. Okay. I want to ask you just a few questions about that
25 aspect of your testimony. I'll be showing you Exhibit

1 Nos. 1, 3, and 4. The first one I'll hand you is Exhibit
2 No. 1. If you would, would you take a look at a few pages
3 of that to familiarize yourself with it. Then the first
4 question I'll have for you is: Is this the interview that
5 you were provided that you referenced in your report as
6 having reviewed, which consists of Mr. Leo's interview by
7 the police?

8 A. I believe that's correct. I don't have it in front of me,
9 but I'm assuming that's the case.

10 Q. Okay. If you could just take a look at the text on that
11 transcript, and does it appear to be the same interview that
12 you reviewed by Tom Davidson, which you list on Page 6 of
13 your report?

14 A. Without having it in front of me, my assumption is that's
15 the case.

16 Q. Okay.

17 A. I don't specifically remember the specific --

18 Q. Okay.

19 A. -- content of the interview.

20 Q. I don't think I'll need to refer you to any specific page of
21 that interview, but you recall that Mr. Leo gave a fairly
22 detailed account of the transcript actually consisting of 32
23 pages, but he gave a --

24 THE COURT: Is the transcript No. 1?

25 MR. SCHACHT: I'm sorry?

1 THE COURT: Is the transcript Plaintiff's
2 No. 1?

3 MR. SCHACHT: Yes, it is.

4 THE COURT: Okay.

5 Q. (By Mr. Schacht) He gave a detailed account of the
6 shooting, itself, his role in the shooting, and the shooting
7 of his codefendants; is that correct?

8 A. That's my understanding.

9 Q. And, in fact, he identified the people who went along on the
10 shooting specifically to have included John Phet and Jimmie
11 Chea, do you recall that?

12 A. I don't -- I don't specifically recall that.

13 Q. Do you believe that he did not identify Jimmie Chea or John
14 Phet?

15 A. I'm assuming that you're asking the question that he did.
16 I'm just saying without being directed to the specific -- I
17 don't -- I don't have a specific recollection of that.

18 Q. Okay.

19 A. My assumption is you're asking that because he did, but I
20 don't -- I don't have a specific memory of it.

21 Q. Okay. I'm going to direct you to a couple of pages, first
22 of all, and ask you to read those to yourself and see if it
23 refreshes your memory.

24 A. (Reviewing.)

25 MR. SCHACHT: Your Honor, pardon me for

1 just a moment.

2 THE COURT: That's quite all right. I'm
3 writing very slowly at the moment. I'm trying to keep it so
4 I can actually read it.

5 Q. (By Mr. Schacht) Okay. The first page that I'll direct
6 your attention to is Pages 4 and 5. Starting towards the
7 bottom of Page 4, there is a line that indicates, "Jimmie's
8 car, okay." And Jimmie is Jimmie Chea. Do you see that --

9 A. Yes.

10 Q. -- on Page 4? And continuing over onto Page 5, down to
11 about the middle of the page, would you go ahead and read
12 those lines to yourself, please.

13 A. Okay. (Reviewing.) Okay.

14 Q. Would you agree with me that in his interview with the
15 police, he identified Jimmie Chea as driving Jimmie Chea's
16 car and John Phet as having been in Jimmie Chea's car at the
17 time of the shooting at the Trang Dai?

18 A. Yes.

19 Q. Okay. With that in mind, I'm going to hand you what has
20 been marked for identification as Exhibit Nos. 3 and 4; and
21 I know in your direct testimony, you indicated that you've
22 never seen these, and these were not items that you took
23 into account during your risk assessment; is that correct?

24 A. Correct. I did not take them into account until prior to
25 court today.

1 Q. Okay. In that event, what I'll do is: I'll represent to
2 you that the first transcript, which is Exhibit No. 3, was
3 the first day of his testimony; and he was called to the
4 stand by one of the defendants, so he was not called as a
5 State's witness. He was called as a Defense witness. So,
6 I'll just represent that to you; and I'll further represent
7 that he testified more directly to the facts of the case
8 during his second day of testimony, which is Exhibit No. 4.
9 Okay. And with that in mind, I'm going to direct your
10 attention to Page 6016 of Exhibit No. 4.

11 A. (Reviewing.) Okay.

12 Q. Okay. Now, first of all, looking on Page 6016, do you see
13 that the cross-examination is continuing by Mr. Staurset,
14 who is one of the defense attorneys?

15 A. Okay. I don't know that Mr. Staurset is a defense attorney,
16 but I see that -- I see what you're referring to --

17 Q. Okay.

18 A. -- by Mr. Staurset.

19 Q. And if you would read the first couple of lines up there, up
20 until the objection, to yourself. Let me know when you've
21 finished.

22 A. (Reviewing.) Okay.

23 Q. Do you see in that part of his testimony, he was testifying
24 that Mr. Phet wasn't present at the Trang Dai?

25 A. Okay. I must not have gotten far enough here. Okay. Yes,

1 I see he said, "No, he wasn't."

2 Q. Okay. Now, that would be a direct inconsistency with what
3 he told the police when he was interviewed by the detective
4 and that was two year -- I'm sorry -- almost four years
5 before; correct?

6 A. Yes.

7 Q. Okay. And continuing over to the next page, do you see,
8 towards the middle of the page, referencing Jimmie Chea,
9 that he denied that Jimmie Chea was at the Trang Dai that
10 night?

11 A. That's what I see there.

12 Q. And you have no reason to believe that this was not
13 testimony under oath?

14 A. No. I'm assuming it was.

15 Q. Right. And do you see the date of this testimony, June 13,
16 2002?

17 A. Yes.

18 Q. So this would have been while he's in prison; correct?

19 A. Yes. It's my understanding he was in prison at that time.

20 Q. And had actually been in prison for about two years, having
21 been sentenced, I believe, in early 2000; is that correct?

22 A. That's my understanding also.

23 Q. Okay. So having been in prison for two years, having
24 nothing to gain by it, he comes to court and denies that the
25 two men who were on trial, who were his compatriots the

1 night of the shooting at the Trang Dai, denies that they
2 were even there?

3 A. It appears that he denies that they were even there. I
4 don't know that I can say with confidence that he perceived
5 that he had nothing to gain by it without knowing all the
6 circumstances. I hadn't talked to him about that situation
7 or why he did or didn't give accurate testimony on that --
8 on that date.

9 Q. Mm-hmm. Well, he was being called by a defense attorney, so
10 you would think that insofar as the prosecutors are
11 concerned, he's not going to get any benefit from them,
12 wouldn't you believe that?

13 A. Yes. My only hesitation was if he would perceive --
14 hypothetically -- I don't know this to be true with his
15 case. I would -- I would be concerned about a person's
16 perception of how they may be perceived if they provided
17 information about another individual, and they were in the
18 criminal justice setting, if they thought that might come
19 back to cause them problems.

20 Q. Mm-hmm. So --

21 A. I don't know if that was particularly true or not in his
22 case.

23 Q. Okay. So he might derive some benefit in terms of whether
24 he is or is not a snitch in prison by testifying falsely in
25 favor of two people who were on trial for aggravated murder?

1 A. Again, that would be guesswork as one possible motivating
2 factor. I don't know. I didn't talk to him about what
3 motivated or didn't motivate his testimony on that day.

4 Q. Okay. Now, a couple of additional questions that I'll ask
5 you about is: Referring to the date of the interview, this
6 is Exhibit No. 1, I believe it was. Can you look at the
7 first page of that and tell us, what was the date of that
8 interview?

9 A. (Reviewing.) I'm sorry. For some reason, I'm having a hard
10 time finding it.

11 Q. Does it appear to be July 19, 1998?

12 A. I don't see where the date is.

13 Q. On the first page, down at the bottom, there's a date
14 listed --

15 A. Oh, okay.

16 Q. -- reporting time and date.

17 A. Yes.

18 Q. July 19, 1998?

19 A. Yes.

20 Q. Okay. Now, the testimony that you just referred to, could
21 you look at the first page of that and tell me, what are the
22 two dates that Mr. Phet appeared in trial and testified --
23 I'm sorry -- Mr. Leo appeared in court and testified?

24 A. (Reviewing.) So, is it June 13, 2002, and June 12, 2002?

25 Q. Mm-hmm. So what we're talking about in terms of the timing

1 of this testimony that he gave during the aggravated murder
2 trial of John Phet and Jimmie Chea, it happened almost four
3 years after the shooting, itself, and after his initial
4 interview with the police; is that correct?

5 A. Yes.

6 Q. Wouldn't that say to you that that's fairly persistent
7 antisocial behavior?

8 A. No. What I mean by "persistent antisocial behavior,"
9 specifically in terms of lying, is over the course of a
10 person's life, they are shown by others around them -- or
11 examples like this -- repeatedly shown to exhibit a
12 consistent characteristic of not telling the truth, so what
13 this tells me is that there was this two days in court where
14 he provided information that was inconsistent with what he
15 had originally provided to police; and it doesn't tell me
16 whether or not he continues to exhibit a persistent pattern
17 of being untruthful.

18 Q. Okay. Could you give the Court a working definition of
19 "antisocial behavior" insofar as a psychologist is
20 concerned.

21 THE COURT: As if we haven't seen that.

22 All right.

23 MR. QUIGLEY: Your Honor, first of all, I
24 believe this has been asked and answered.

25 THE COURT: "Antisocial"?

1 MR. QUIGLEY: "Antisocial behavior." I
2 think Dr. Henry has already testified in response to one
3 of --

4 THE COURT: He did go into it at one
5 point, but I'll -- if you're objecting to that?

6 MR. QUIGLEY: I'm objecting that it's been
7 asked and answered.

8 THE COURT: All right. I'll overrule the
9 objection. He can answer that.

10 THE WITNESS: And just to clarify, are you
11 asking me to define "antisocial behavior" or "antisocial
12 personality?"

13 Q. (By Mr. Schacht) Not personality, "behavior," as that term
14 would be used by a forensic psychologist.

15 A. Okay. Which is a -- which is a good way to ask the question
16 because, in and of itself, antisocial behavior is not a
17 diagnosis. It's not a -- it's not a clinical syndrome.
18 It's more just a description of behavior, so how I would use
19 the term "antisocial behavior" is to refer to "a behavior"
20 or "a pattern." So, antisocial behavior could be an
21 isolated incidence of behavior that violates societal norms
22 or the rights of other individuals.

23 Q. Okay. Committing perjury in court on purpose, certainly,
24 would fit that definition, wouldn't it?

25 A. Yes.

1 Q. Okay. Now, again, returning to the timeline, you talked
2 about the interview with the police in July of 1998, the
3 testimony at the Phet trial in 2002; correct? Both of those
4 events happened in that sequence, so approximately four
5 years apart.

6 A. Okay.

7 Q. And in between that time, he actually committed a major
8 infraction which was described by the records from DOC as
9 beating up another inmate?

10 A. That's my understanding, in 2001.

11 Q. And in the reports of that incident, he was accused of
12 having beat up the inmate for gang-related reasons; is that
13 correct?

14 A. That was the information that I reviewed from the Department
15 of Corrections.

16 Q. Mm-hmm. And I'm not asking you to comment one way or the
17 other which is true, but his account of it was different
18 than what the corrections officer's account was; is that
19 correct?

20 A. There was a discrepancy in the way that he described the
21 incident --

22 Q. Mm-hmm.

23 A. -- as opposed to the DOC reports.

24 Q. Now, the violence, itself -- and, I guess, returning to the
25 timeline, the time frame for that was June of 2001; is that

1 correct?

2 A. Yes.

3 Q. So that's approximately a year before he appeared in court
4 and gave that testimony that you just referred to?

5 A. Right.

6 Q. Okay. So in that setting, would you not agree with me that
7 there's fairly well documented, serious incidents of
8 antisocial behavior on the part of Mr. Leo during the first
9 four years of his incarceration?

10 A. There is a well documented incident of serious violent
11 behavior within approximately a year of his incarceration,
12 and it has been pointed out this incident of him giving
13 testimony that was inconsistent with his previous
14 statements.

15 Q. Mm-hmm. So none of that changes your opinion as to the risk
16 assessment? You had him at "low to moderate." Shouldn't he
17 be a little higher than that given that degree of antisocial
18 behavior?

19 A. That would not change the rating. Had I been aware of this
20 information, I would, certainly, mention it. It is not --
21 but as I mentioned, when you go through the historical risk
22 factors associated with increased violence risk, there
23 isn't -- there isn't an item for "have they ever told the
24 truth in court or have they ever not told the truth in
25 court?"

1 Q. Mm-hmm.

2 A. It's relevant to consider, particularly if you have recent
3 data to suggest that a person continues to exhibit a pattern
4 of untruthfulness. What that tells you is -- what it's most
5 informed of is how to cautiously interpret the information
6 that they provide you; but, again, these examples that are
7 being discussed are in the context of a time period in his
8 life where he had engaged fairly recently in very serious
9 antisocial behavior that I don't believe there's any
10 question or discrepancy about that issue. And that was
11 definitely factored into my assessment of his current risk,
12 the severity of the antisocial behavior around that time --
13 and I would say, you know, within a period of years around
14 that time -- was very concerning, and that is, definitely,
15 taken into account in my -- in my current assessment.

16 THE COURT: All right. Counsel, it's just
17 before noon.

18 MR. SCHACHT: I just had one final
19 question.

20 THE COURT: All right. One final
21 question.

22 Q. (By Mr. Schacht) How does -- the HCR-20, the instrument
23 that you relied upon, how does it take into account perjury?

24 A. It doesn't directly, and I guess my answer to that would be
25 that I'm not aware of any research or data to suggest that

1 perjury is an indication of future violence.

2 Q. Mm-hmm. Would perjury, though -- I think you acknowledged
3 that it is antisocial behavior?

4 A. And -- yes.

5 Q. Okay. And would that be a factor that you would take into
6 account in your clinical assessment? If I understood, you
7 had the historical assessment, and you had the clinical
8 assessment; and that would be something you would take into
9 account in your clinical assessment?

10 A. Well, not necessarily directly, so, again, part of the -- I
11 think the confusion and the difficulty comes with
12 understanding the difference between isolated behaviors and
13 a personality characteristic.

14 Now, a person can engage in an antisocial act and not
15 have antisocial personality; and the difference is that in
16 an antisocial personality, these behaviors and attitudes
17 characterize the person in their ongoing and up to current
18 attitudes and behavioral patterns towards other individuals.
19 And so isolated behaviors, in and of themselves, are not
20 particularly informative in terms of the person's current
21 functioning or behavior patterns; and they are
22 circumstantial, so there are circumstances that drive a
23 person to engage in this particular behavior at a particular
24 time that may or may not be indicative of future concerning
25 behavior.

1 In this regard, what we could only talk about with
2 confidence is the question of his truthfulness which, as I
3 indicated, is not specifically informative to the issue of
4 violence risk. If we're talking about the issue of violence
5 risk, a person can be a pathological liar and not be violent
6 at all, so -- and I'm not saying that Mr. Leo is at all in
7 this case. I'm just saying hypothetically, that could be
8 true.

9 MR. SCHACHT: Mm-hmm. Your Honor, that
10 response actually opened one other area that I'd like to go
11 into; but I'd ask Mr. Quigley if he has extensive redirect
12 and that maybe that we could finish it.

13 THE COURT: Well, it's noon.

14 MR. QUIGLEY: Well, Your Honor, I don't
15 have any cross-examination -- redirect questions -- based
16 upon what's been elicited so far; so if Mr. Schacht has got
17 something really brief, I would ask that we finish it. I
18 know Dr. Henry wants to get back to Spokane, and I would ask
19 the Court's indulgence.

20 MR. SCHACHT: I beg the Court's
21 indulgence. I really do believe that it will be brief.

22 THE COURT: All right. Just a second.

23 (Interruption.)

24 THE COURT: All right. Well, okay, then.
25 Now, saying you had one more question morphed into three,

1 so --

2 MR. SCHACHT: I'll keep it brief, Your
3 Honor.

4 THE COURT: I've heard that before.

5 Q. (By Mr. Schacht) Referring back to Exhibit No. 1, which I
6 believe you acknowledged reading as you prepared your
7 report, do you recall that Mr. Leo's account of his own acts
8 in the shooting consisted of emptying his weapon and firing
9 it through the open door of the front door of the Trang Dai
10 Cafe into the interior?

11 A. I believe that is correct.

12 Q. Okay. So in terms of a violent indication, he indicated
13 about the ultimate violence that one could participate in,
14 would you agree?

15 A. You can make an argument about "what is the ultimate
16 incident of violence?" No one would disagree that that is
17 an extreme act of violence that poses a substantial danger
18 to other persons, potentially contributed to the death of
19 other persons, and was certainly something that I factored
20 into the maximum degree in my overall assessment.

21 Q. And he indicated -- and at this point, I'm referring to Page
22 5 of your report -- this wasn't the first time?

23 A. My understanding in interactions with him is that there had
24 been prior incidences of carrying weapons, prior incidences
25 of shooting weapons, and that was factored in as well.

1 Q. Mm-hmm. From Page 5 of your report, I believe you will
2 agree with me that this is an accurate statement. You
3 wrote, quote, "Mr. Leo acknowledged that during his teenage
4 years, he was involved in violence, assaults, beating up
5 people, shooting up houses, stealing cars." Is that
6 accurate in terms of what he told you was his history of
7 violence?

8 A. That was the information that he provided to me during our
9 interview.

10 Q. Then the last question I have for you, how many times did he
11 do acts of that kind?

12 A. I don't have a specific number, and to his credit, this was
13 some information that isn't necessarily documented in any
14 kind of criminal history; but he was acknowledging that
15 there was extensive violence involved in his gang
16 associations, and that was taken into account and factored
17 into my current overall assessment that he presents
18 "moderate to low" risk of future dangerousness and "low"
19 risk of imminent dangerousness and "low" risk of serious
20 future physical harm.

21 Q. None of us were present during your interview of him, so we
22 have to rely on you to characterize it; and was it your
23 impression, from what he told you, that it happened just
24 once or more than once?

25 A. I don't know that I could give a detailed account of that

1 because I did not attempt to parse out individual instances.
2 He described types of activities that occurred in the
3 context of his gang involvement.

4 Q. Mm-hmm. So you're not able to tell the Court whether your
5 impression was that it happened more than one time besides
6 the Trang Dai shooting?

7 A. Well, he's referencing various types of things that
8 occurred; and I don't know if any of those are particular
9 one-incident-type things or if they occurred multiple times.

10 Q. So it could be up to four? I mean, you have four different
11 types of behaviors; and they could be individual incidents
12 that he's referring to?

13 A. I just don't know how many individual incidences he's
14 referring to.

15 MR. SCHACHT: Your Honor, thanks for the
16 Court's indulgence; that's all I have.

17 THE COURT: All right. So at this point,
18 then, we're going to recess this and do argument on the
19 following Monday.

20 MR. QUIGLEY: Monday, December 5th.

21 THE COURT: December 5th.

22 MR. QUIGLEY: At 9:00 a.m.?

23 THE COURT: 9:00 a.m.

24 MR. QUIGLEY: I'm asking, is it 9:00 or

25 9:30?

1 MS. HIGH: 9:30.

2 THE COURT: 9:30.

3 MR. QUIGLEY: 9:30 that day. Okay.

4 Great.

5 MR. SCHACHT: I'll be here.

6 MR. QUIGLEY: Thank you, Your Honor.

7 THE COURT: All right. Court will be at
8 recess on this case, then, until December 5th at 9:30.

9 THE WITNESS: Thank you.

10 THE COURT: Did you want to admit your
11 Nos. 3 and 4?

12 MR. SCHACHT: Your Honor, I offered 1
13 through 4. I believe they should be admitted.

14 THE COURT: He hadn't taken a look at
15 them.

16 MR. QUIGLEY: Right, I wanted to look at
17 them first. I won't have an objection.

18 THE COURT: All right. So we'll deal with
19 that, then, on the 5th.

20 MR. QUIGLEY: We'll just remember to --

21 THE COURT: Bring it up on the 5th.

22 MR. QUIGLEY: -- offer them.

23 MR. SCHACHT: Your Honor, Counsel is
24 indicating that subject to, you know, the correct number of
25 pages or something --

1 MR. QUIGLEY: Yeah.

2 MR. SCHACHT: -- it sounds like he won't
3 object to them being admitted.

4 THE COURT: All right. So --

5 MR. QUIGLEY: No, I won't.

6 THE COURT: All right. So, tentatively,
7 it looks like they will be admitted without objection; but
8 Counsel wishes to actually take a look at them. Is that an
9 accurate summary?

10 MR. QUIGLEY: There we go, yes.

11 THE COURT: All right.

12 MR. QUIGLEY: Thank you.

13 MR. SCHACHT: Thank you, Your Honor.

14 (Court adjourned for the day.)

15 / / /

16 / / /

17 / / /

18 / / /

19 / / /

20 / / /

21 / / /

22 / / /

23 / / /

24 / / /

25 / / /

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

| | | |
|----------------------|---|------------------|
| STATE OF WASHINGTON, |) | |
| |) | |
| Plaintiff, |) | Court of Appeals |
| |) | No. 49863-4-II |
| vs. |) | |
| |) | Superior Court |
| MARVIN LOFI LEO, |) | No. 98-1-03161-3 |
| |) | |
| Defendant. |) | |

REPORTER'S CERTIFICATE

| | | |
|---------------------|---|-----|
| STATE OF WASHINGTON |) | |
| |) | ss. |
| COUNTY OF PIERCE |) | |

I, Kimberly A. O'Neill, Court Reporter in the state of Washington, county of Pierce, do hereby certify that the foregoing transcript is a full, true, and accurate transcript of the proceedings and testimony taken in the matter of the above-entitled cause.

DATED this 28th day of March, 2017.

KIMBERLY A. O'NEILL, CCR
License No. 1954

APPENDIX “E”

Transcript—December 5, 2016

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE SUPERIOR COURT IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON

| | | |
|----------------------|---|--------------------|
| STATE OF WASHINGTON, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| vs. |) | No. 98-1-03161-3 |
| |) | COA No. 49863-4-II |
| MARVIN LOFI LEO, |) | |
| |) | |
| Defendant. |) | |

VERBATIM REPORT OF PROCEEDINGS

December 5, 2016
Pierce County Courthouse
Tacoma, Washington
before the
HONORABLE KATHERINE M. STOLZ

Carla J. Higgins, CCR
Official Court Reporter
930 Tacoma Avenue South
334 County-City Building
Department 18
Tacoma, Washington 98402

A P P E A R A N C E S

1
2
3
4 For the Plaintiff:

MR. JAMES SCHACHT
Deputy Prosecutor
930 Tacoma Avenue South
Suite 946
Tacoma, Washington 98402

5
6
7
8 For the Defendant:

MR. MARK QUIGLEY
MS. MARY KAY HIGH
Attorneys at Law
949 Market Street
Suite 334
Tacoma, Washington 98402

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 BE IT REMEMBERED that on the 5th day of
2 December, 2016, the above-mentioned cause came on duly for
3 hearing before the HONORABLE KATHERINE M. STOLZ, Superior
4 Court Judge in and for the County of Pierce, State of
5 Washington; the following proceedings were had, to-wit:

6 * * * * *

7 DECEMBER 5, 2016

8 MORNING SESSION

9 MR. QUIGLEY: Good morning, Your Honor.

10 THE COURT: Good morning.

11 MR. QUIGLEY: Thank you for the Court's indulgence.

12 I had another matter in CD2 that went slower than I
13 anticipated.

14 THE COURT: I'm aware of how that goes, Counsel.
15 There's too many places to be and there's only one of you.

16 We're back on the record in State of Washington
17 versus Marvin Leo, Cause No. 98-1-03161-3. The matter was
18 set before the Court for a re-sentencing.

19 State?

20 MR. SCHACHT: Your Honor, we're prepared to go
21 forward. Jim Schacht appearing for the State. The
22 defendant is present, held in custody, appearing with
23 counsel.

24 THE COURT: All right. Anything from the defense?

25 MR. QUIGLEY: Well, Your Honor, as far as the order

1 of presentation, this is a re-sentencing so I wasn't sure
2 how the Court wanted to proceed. Do you want to hear from
3 Mr. Schacht first or from me?

4 THE COURT: Why don't we go in the usual order.
5 Mr. Schacht first and then the defense.

6 MR. QUIGLEY: Before we start, I would like to move
7 to admit Defense Exhibits 7, 8, 9 and 10, which I
8 previously provided to the Court and to Mr. Schacht. I
9 would ask that those be admitted for the purposes of this
10 hearing.

11 THE COURT: Any objection counsel? What about 11,
12 Letters in Support with Attachments? They may have been
13 attached to the mitigation report.

14 MR. QUIGLEY: Okay. Yes, that as well, Your Honor.

15 THE COURT: So No. 11?

16 MR. QUIGLEY: Yes. Sorry. It was caught underneath
17 10.

18 THE COURT: So 7 through 11.

19 MR. SCHACHT: No objection.

20 THE COURT: Then we will admit 7, 8, 9, 10, and 11.

21 (Exhibit Nos. 7 - 11 are
22 admitted.)

23 MR. SCHACHT: Your Honor, for our part we had moved
24 to admit 1 through 4 last week. I believe the defense does
25 not have an objection to admitting those.

1 MR. QUIGLEY: That's correct.

2 THE COURT: All right. So that would be 1 through
3 4?

4 MR. SCHACHT: Yes.

5 THE COURT: All right. 1 through 4 will be admitted
6 as well.

7 (Exhibit Nos. 1 - 4 are
8 admitted.)

9 THE COURT: All right. Let me start with the State.

10 MR. SCHACHT: Thank you, Your Honor.

11 Your Honor, may I suggest to the Court that we
12 present our arguments concerning whether the Sentencing
13 Reform Act applies to these proceedings or whether the
14 aggravated murder sentencing statute is the applicable law,
15 and have the Court rule on that aspect of the case first
16 before we present our recommendations insofar as sentencing
17 is concerned.

18 There are two aspects to the legal question. Number
19 one, the defense is asking for a concurrent sentence, and I
20 believe citing the SRA as its authority for the Court to
21 have the discretion to impose a concurrent sentence for
22 five crimes.

23 For our part, of course, we oppose that. We believe
24 that the law does not allow the Court to apply the
25 Sentencing Reform Act to a sentence for Aggravated Murder.

1 That instead, the provisions of 10.95.030 apply to these
2 proceedings, and that there's no authority under 10.95.030
3 for the Court to impose a concurrent sentence.

4 In fact, the statute itself is fairly clear that any
5 person committing a crime of Aggravated Murder shall be
6 sentenced to one of two things: Either the death penalty,
7 if someone is an adult and there are no mitigating
8 circumstances, or under subsection 3 of that statute, to
9 either life in prison or to a determinate minimum term
10 under the provisions of subsection 3. It does not cross
11 reference the SRA.

12 And I would add that we cited to the Court, State
13 vs. Ortiz, which fairly clearly states that the Sentencing
14 Reform Act does not apply. Quote from page 485: "Unlike
15 the Sentencing Reform Act of 1981, RCW 9.94A, which allows
16 the Court to depart from the prescribed sentencing range
17 when the prescribed sentence would impose excessive
18 punishment on a defendant, the Aggravated Murder statute
19 allows for no such flexibility."

20 I would note for the Court that two Division II
21 cases subsequent to Ortiz reiterated what Ortiz said.
22 Specifically, State vs. Meas, which is 118 Wn. App. 297 at
23 page 306, states explicitly quote, "Unlike the Sentencing
24 Reform Act, the Aggravated Murder First Degree statute does
25 not allow a trial judge flexibility to depart from the

1 prescribed sentencing range." That was State vs. Meas.

2 And State vs. Cummings reaches the same conclusion,
3 and that was at 44 Wn. App. 146.

4 Your Honor, the bottom line is that the black letter
5 law as interpreted by the Supreme Court and Division II is
6 presently that the Aggravated Murder Statute applies to
7 these proceedings because these are Aggravated Murder
8 convictions. The Sentencing Reform Act does not.

9 Now, not knowing which direction the Court is going
10 to go with this particular sentencing, I would add just a
11 couple of thoughts about the SRA. If the Court were to
12 apply the SRA to these proceedings, which we urge the Court
13 not to do as being inconsistent with the statutes and with
14 Ortiz and Meas and Cummings, but if the Court were to apply
15 the SRAs, the serious violence sentencing provisions
16 provide for consecutive sentences for serious violent
17 crimes as these would be under the SRA. So that would call
18 for a consecutive sentencing.

19 Now, the defense would argue that the Court has
20 discretion, even though these are serious violent crimes,
21 to apply the mitigation parts of the SRA and sentence below
22 the standard range or to run these sentences concurrent.
23 We believe that since these are serious violent crimes, No.
24 1, the Court should not exercise that discretion. And No.
25 2, that it's not clear to us that the mitigation provisions

1 -- and I note just as an aside, the defense has not
2 submitted authority indicating that the mitigation
3 provisions override the consecutive sentencing for serious
4 violent crimes. But over and apart from that, our first
5 and strongest position is that the Aggravated Murder
6 sentencing statute is the law to be applied to these
7 proceedings and that the Court should not adopt the SRA
8 provisions to allow for concurrent sentencing.

9 Your Honor, I would ask for brief rebuttal after the
10 defense has made their position clear about that. And
11 then, of course, we will have our sentencing
12 recommendation.

13 THE COURT: All right. Defense.

14 MR. QUIGLEY: Thank you, Your Honor.

15 Your Honor, we're here today because of the Supreme
16 Court decision of Miller vs. Alabama, which I know we have
17 all read and we're familiar with.

18 Clearly, that decision indicates that life sentences
19 for juveniles is an unconstitutional -- in the right
20 circumstances, is an unconstitutional sentence. So because
21 of that, of course our Legislature enacted the Miller Fix,
22 as it's been called, RCW 10.95.

23 The main crux of this argument, Your Honor, is that
24 if you were to impose consecutive sentences, if you were to
25 do anything but an exceptional sentence downward, you're

1 violating Miller, because it would be a de facto life
2 sentence.

3 So, I think the Court can approach this two
4 different ways. First of all, this exact issue has not
5 been decided by our courts. I think the Court can approach
6 this two ways. One, the Court could find that the SRA does
7 apply here, that the language of 10.95, by itself, does not
8 obviate the SRA. It does not indicate that this is an
9 exclusive sentencing remedy, that the Court could, after
10 the Miller Fix, after meeting this language, could impose
11 an exceptional sentence downward under the terms of the
12 SRA. The basis for the exceptional downward under the SRA
13 would be this is an excessive punishment, that life without
14 the possibility of parole for a person who was 17 years old
15 at the time of the commission of this crime is excessive.

16 The other approach is the Court could again read the
17 plain language of RCW 10.95, and it gives the Court great
18 latitude in fashioning a sentence. If you read subsection
19 3(ii) it talks about what the Court's able to do in a case
20 where a person has been convicted of Aggravated Murder
21 First Degree during the time period, the age period that
22 Mr. Leo was convicted. So clearly that section applies to
23 Mr. Leo's circumstances here.

24 So the Court can do anything between a 25 year
25 minimum or a lifetime minimum. The Court could do that

1 given all the factors you're going to hear later this
2 morning.

3 So there's nothing in here that says the Court has
4 to run these sentences consecutive under the terms of RCW
5 10.95. It gives the Court great latitude. And the reason
6 for that is it is a statute that was enacted to give weight
7 and give legal credence to Miller vs. Alabama. Our state
8 is bound to follow the terms of that decision.

9 I think the Court could go either way on this.
10 Ultimately, I think whatever the Court decides today,
11 somebody is going to appeal this and some other court is
12 going to decide how this particular circumstance gets
13 decided.

14 The unfortunate thing for Mr. Leo, of course, is
15 that he's got what amounts to ten different convictions for
16 serious violent offenses, five of them Aggravated Murder
17 convictions and five of them Assault First Degree
18 convictions.

19 The easy thing to do is say, "Okay, we're not going
20 to give him life without the possibility of parole, but
21 I'm going to run all of these consecutive and I'm going to
22 give him," whatever that turns out to be, probably over 100
23 years. That is a de facto life sentence and that violates
24 Miller vs. Alabama.

25 I think this Court has great discretion under the

1 language of 10.95, and I think the Court could also use the
2 SRA. I think you can go either way on this. I don't think
3 10.95 -- 10.95 was an exclusive sentence when it came to
4 Aggravated First Degree Murders before the Miller Fix. But
5 if you read the statute in total, subsection 3 carves out
6 an area of great discretion for sentencing courts in this
7 situation. And that's what I would ask the Court to do.

8 Thank you.

9 THE COURT: All right. Response, counsel?

10 MR. SCHACHT: Your Honor, first of all, the notion
11 that consecutive sentencing here would violate Miller is
12 contrary to Miller's express terms. Miller dealt with a
13 single conviction for a single murder; not five convictions
14 for five separate murders. So it's distinguishable to that
15 extent. But the Miller court itself indicated that life in
16 prison without the possibility of parole is not a violation
17 of the Eighth Amendment. What is a violation of the Eighth
18 Amendment is if that sentence is mandatory for a single
19 crime committed by a single defendant and is automatically
20 imposed without taking into account the attributes of
21 somebody who's a juvenile.

22 So Miller does not support the defense's position
23 that consecutive sentences for five separate crimes
24 violates the amendment.

25 I would also note that there is a wealth of federal

1 authority, not necessarily the Supreme Court but from the
2 circuit courts, to the effect that the Eighth Amendment
3 applies for each individual crime. So a cruel and unusual
4 punishment analysis applies to each individual crime, not
5 to a grouping of crimes, which is committed in a short
6 period of time.

7 So I cite to the Court those cases, which include
8 United States vs. Shell, which is 692 F2d 672, which is a
9 1982 case. 1988 case, which is State vs. Aiello, 864 F2d
10 257. And also Pearson vs. Ramos, which is at 237 F3d 881.
11 That's a 7th Circuit case from 2001 in which the court
12 stated quote, "In any event, it is wrongful to treat
13 stacked sanctions as a single sanction. To do so produces
14 the ridiculous consequence of enabling a prisoner to
15 simply, by recidivating, to generate a colorable Eighth
16 Amendment claim." Which, you know, certainly passes the
17 common sense test that if you go commit a series of crimes,
18 it's a little more serious than if you commit a single
19 crime. And under the Eighth Amendment analysis, the courts
20 have applied it to each individual crime as opposed to the
21 total punishment for a series of crimes.

22 So those authorities, plus Miller itself, do not
23 support the defense position that Miller makes it mandatory
24 that the Court run these concurrent. So that the total
25 sentence for all five of the Aggravated Murders is less

1 than life in prison.

2 This second thing is that do -- did the Miller Fix,
3 in any way, incorporated the SRA into the Aggravated Murder
4 statute? There is nothing in the Miller Fix amendments
5 that indicates that it did. And we have, as I cited to the
6 Court from Ortiz and from the other two cases from Division
7 II, that the SRA and 10.95.030 are two separate sentencing
8 provisions. And that we have, in the State of Washington,
9 Aggravated Murder is our most serious crime. And insofar
10 as the term of incarceration is concerned, it's controlled
11 by 10.95.030 not by the SRA.

12 So we don't believe that the Miller Fix statute in
13 any way changed that aspect of 10.95.030.

14 Lastly, the suggestion that 10.95.030 provides the
15 Court discretion to run these concurrent or consecutive,
16 the plain terms of the statute belie that. Section 3A(1)
17 reads specifically, quote, "Any person convicted of the
18 crime of Aggravated Murder for an offense," so it
19 specifically states "for an offense." This defendant, like
20 the other Trang Dai defendants, was not convicted of an
21 offense. He was convicted of five separate Aggravated
22 Murder offenses. So by its plain terms, the statute itself
23 belies any claim that there should be concurrent sentencing
24 here. And we urge the Court not to find that certainly
25 there is any requirement of concurrent sentencing.

1 And in the event the Court disagrees with us,
2 certainly to exercise the Court's discretion and not impose
3 a concurrent sentence, that would be contrary to the
4 interest of justice, certainly the interest of the victim's
5 families and the people of the State of Washington.

6 So for all of those reasons, we ask the Court to
7 rule as follows:

8 First of all, that the statute to be applied is
9 10.95.030, and that that provision does not provide for
10 concurrent sentencing; that the SRA provisions do not apply
11 to this sentencing proceeding, at least insofar as the term
12 of the defendant's sentence is concerned.

13 And for that reason, the sentence that the Court
14 imposes is governed by 10.95 and applies to each individual
15 crime. And it's therefore -- it would be inconsistent with
16 the statute to return them concurrent with each other.

17 Thank you.

18 MR. QUIGLEY: Your Honor, can I make two points?

19 THE COURT: Yes.

20 MR. QUIGLEY: I never indicated that Miller mandates
21 -- what I said several times is the Court has discretion
22 under Miller. Miller was different than our case. Miller
23 was a singular conviction and Mr. Schacht is right,
24 obviously, this is multiple counts under one cause number
25 in this particular case. We have a different scenario

1 here.

2 But the bottom line is that was a life without
3 possibility of parole case, Miller was. This is a life
4 without possibility of parole case. Miller found that the
5 Court must take into consideration the mitigating factors
6 before that type of a sentence is imposed. That's what
7 we're asking you to do here today.

8 The second point I would make is that, you know, if
9 you read the language of 10.95, and specifically subsection
10 3, there's no language in there -- if the State says the
11 SRA doesn't apply, then why is it mandated that we have
12 these sentences served consecutively? Again, this statute
13 carves out a means by which the Court can sentence an
14 individual in a unique situation, in this age group, with
15 this type of an offense, so there's no mandatory language
16 in here that says you have to follow any sentence
17 guidelines other than what is in this paragraph. And this
18 paragraph, again, gives the Court wide discretion. We have
19 a minimum of 25 years. We have a maximum of life. You can
20 do anywhere in the middle.

21 I'm asking you today, and I'll give you reasons in a
22 minute, I'm asking you to impose a 30-year minimum, as my
23 brief indicated, and set the maximum at life. This is
24 essentially an indeterminate sentence, much as we have in
25 Class A sex offenses. And I'll talk a little bit about the

1 safeguards that are going to be imposed by the Department
2 of Corrections in a bit.

3 This language gives you the authority to do what
4 we're asking you to do. And it's consistent with Miller.
5 Miller is why this was enacted. Miller is cited directly
6 in the statute.

7 Thank you.

8 THE COURT: All right. I'm going to want to
9 consider on this. Why don't you go ahead and give me your
10 recommendations under any and all scenarios.

11 MR. SCHACHT: Your Honor, I will -- if the Court
12 were to disagree with us as to the legal part of this, I
13 would be making the same recommendation to the Court. So
14 I'm just going to go ahead and make that recommendation and
15 not really couch it in terms of whether it's the Court
16 applying the statute 10.95.030 or the provisions of the
17 SRA.

18 Your Honor, in order to do concurrent sentencing,
19 that, we believe, would be inconsistent with the beams of
20 justice in this case. I would like to talk first of all
21 about the features of Mr. Leo as a juvenile at the time
22 these crimes were committed. And he was. The defense
23 expert who testified last Monday I think gave an excellent
24 description of what his mental status and capabilities were
25 back then. And, Your Honor, I think you can draw from that

1 testimony the fact that Mr. Leo was a fairly good student.
2 You know, if you looked at the ranking of him versus other
3 children, juveniles, adults, young people in our community,
4 and set aside the fact that he was involved with a gang, by
5 his own admission, engaged in gang activities to include
6 other drive-by shootings where he was shooting guns at
7 people, together with the Trang Dai where he was
8 responsible for, at least as an accomplice, killing five
9 people and shooting five others. Set all that aside and he
10 looks like your average kid back then. For all the world,
11 he's a good student. I think school records indicate he
12 was making As and Bs in school.

13 If anyone who is attending the schools of our
14 community could conform his actions to the requirements of
15 the law, not to mention the moral compass of not shooting
16 people, this person had that capacity. And I don't think
17 the defense expert would really contradict that.

18 So in terms of how does his youth play into these
19 cases or the ends of justice in this case, I think the fact
20 that he's a good kid, the fact that he's been able, over 20
21 years, to conform himself to the fairly stringent
22 requirements of the Department of Corrections as contrasted
23 with the fairly loose requirements of being at large and
24 living free in the community, he has the capacity now, he
25 had the capacity then, to conform himself to the

1 requirements of the law. He just elected not to do so, and
2 he elected to go along as an accomplice.

3 So looking at the features of youth, I would suggest
4 to the Court that what the Court heard from the defense
5 expert, what you read in the mitigation package, what you
6 read in the defense mental status report, all suggest that
7 this defendant, in particular, is at the upper end of a
8 young person who is accused of a very serious crime who had
9 the capacity back then to conform himself to the
10 requirements of our community, the requirements of society,
11 the requirements of the law.

12 Now, over and apart from the fact that he was a
13 17-year-old at the time he fired the shots into the Trang
14 Dai, looking at the features of this particular case, I've
15 already touched on the point that this was not a single
16 killing.

17 The Miller case is a real interesting case because
18 it's a heinous crime. Miller itself involved the robbery
19 of a man in his trailer, I believe it was over drugs but I
20 can't recall exactly what the motive was. But the young
21 men were 14 years old, so three years younger than Mr. Leo
22 is. And what they did is they robbed this man, they beat
23 him half to death, left him alive but then set fire and
24 burned him alive in his trailer. That's a heinous crime
25 but that's a single death.

1 By contrast, what Mr. Leo and the other Trang Dai
2 defendants did in our community is this: They went to the
3 Trang Dai that night after calling ahead to make sure that
4 Sunny Kim, I believe is his name, was there. He was the
5 target of Ri Le. But Ri Le was going to make a statement,
6 not by shooting Sunny Kim, but by shooting anyone who
7 happened to be in the Trang Dai, and that's exactly what
8 they did.

9 Now, it's also important to note that Mr. Leo was
10 one of the three guys who took a gun and went to the front
11 door of the cafe. And, in fact, he was in the lead. He
12 was ahead, according to his taped statement which he gave
13 to Detective Davidson, which the Court has read from the
14 exhibits.

15 He went and opened the door for the other two. The
16 other two go inside, one with an assault rifle -- that's Ri
17 Le -- and the other with a nine millimeter -- that was Sam
18 Mom. They opened fire inside the Trang Dai, indiscriminate
19 killing.

20 We have a current case that's been all over the news
21 from France where somebody goes into a nightclub and opens
22 fire on the people in the nightclub. This is different
23 because there weren't as many people inside. But it's the
24 same in that it's exactly the same type of action insofar
25 as opening fire on a crowd of indiscriminate, unrelated

1 people. These are people who were just wrapping up the 4th
2 of July, sitting in a cafe socializing with each other.

3 Now, this is heinous in itself. Probably those
4 first shots from Sam Mom and Ri Le account for the majority
5 of the carnage inside the Trang Dai that night.

6 But this defendant, Mr. Leo himself personally, then
7 opened fire from his gun. And, Your Honor, from his
8 statement it's very important to look at what he did that
9 night. From page 15 of 32 from his statement he said the
10 detective asked: "Okay. What? They get done shooting.
11 What -- what happens then?"

12 Answer from the defendant: "Then I started
13 shooting, like towards the door."

14 The detective goes on, on page 16: "Okay. So where
15 were you shooting?"

16 Answer from the defendant: "I was shooting inside,
17 but I was outside, but I was shooting inside."

18 And a little bit further the detective asked him,
19 "Okay. Did you empty your clip?"

20 Answer from the defendant: "Yeah."

21 That's what he did that night, and that's what
22 brings him ultimately before this Court, is that five
23 people lost their lives. He was one of the three that went
24 around to the front of the building through the front door
25 and actually opened fire outside the front door.

1 Acknowledging that Ri Le shooting an assault rifle probably
2 did a lot more actual damage to people and Sam Mom, because
3 he was ahead of the defendant in terms of the doorway,
4 probably likewise. But the defendant opened fire inside
5 that restaurant the same as the other two.

6 Now, also recognize that in terms of culpability of
7 the people involved in this, he was one of the three that
8 went through the front door. There were two stationed at
9 the back to fire at anyone that comes out the back door and
10 one of them was John Phet, who went through to trial and
11 was convicted of the same crimes that this defendant is
12 appearing before this Court on.

13 Now, those two also fired shots that night. There
14 were three others who stayed at the car and did not
15 personally fire shots. One was Jimmee Chea, who went to
16 trial as a co-defendant with John Phet. And then there
17 were there were two others who likewise stayed in the cars
18 and didn't fire a shot, at least as far as the forensic
19 part of the case could tell.

20 So the bottom line is we have what nowadays can be
21 characterized as actions that are similar to what we would
22 think of as random shootings and called terrorism. But we
23 have in this case a young man who was 17 at the time he
24 engaged in that type of a behavior.

25 So what is it that should be done with him? What is

1 justice in this case? If we return these concurrent, it
2 can be said that there is no punishment for four of the
3 offenses. We have five counts of Aggravated Murder. Run
4 them all concurrent, and we just say that four of them
5 really didn't matter. It was just the one that really
6 mattered here.

7 I submit to the Court that justice in this case may
8 be a long-term process. The appropriate sentence here is
9 five consecutive terms. I suggest that 25 years
10 consecutive to each other is the appropriate justice.

11 As I pointed out in the brief, what happens here and
12 what happens at the Court of Appeals is not the end of the
13 story, insofar as Mr. Leo is concerned, because there is
14 nothing that the Court does here and knowing what the Court
15 of Appeals can do, which overrides the governor's right to
16 grant clemency at some point. And I suggest that given
17 that Mr. Leo was 17 at the time he committed these crimes
18 and given that he will have an extremely long sentence, if
19 the Court goes with consecutive sentencing, that at some
20 point the governor may choose to commute some or all of the
21 time that he's serving for some or all of these crimes.
22 There's nothing that I as the prosecutor or this Court or
23 the Court of Appeals can do to prevent that from happening.
24 And I suggest that the appropriate sentence in this case
25 then should take that into account and should look at this

1 case of what are the requirements of 10.95.030.

2 I submit that consecutive sentencing is suggested by
3 that statute.

4 Over and apart from that, I suggest the facts of
5 this case, what this defendant personally did and what his
6 individual circumstances did, also suggest that consecutive
7 sentencing is appropriate.

8 And the last thing that I point out is that this is
9 not the end of the line. This defendant will have the
10 option for mercy or clemency or whatever may come his way.
11 He has the option of petitioning the governor and he always
12 will.

13 The victims also have the option of participating in
14 that. And, the governor's office will take input from
15 anyone that cares to speak to it. And ultimately, I think
16 that's probably the end of the line.

17 But I suggest that for these proceedings, the Court
18 should just simply impose the 25, which is the minimum, but
19 consecutive for each of the five counts of Aggravated
20 Murder, thereby imposing a sense of justice for each of the
21 victims who lost their lives.

22 The last thing I'll say before I sit down in support
23 of this sentence is this: You know, a movie that I really
24 like is The Unforgiven. In that movie, Clint Eastwood
25 reminisces on just how serious taking another life is. And

1 he says something to the effect of when you kill someone,
2 you take away everything that you are and everything that
3 they ever will be.

4 Now, to take one of the victims in this case
5 individually, that is the young woman who ran out the back
6 door and she was 21 years old and it was the first night of
7 working at the Trang Dai. We'll never know what she might
8 have accomplished in life because her life was taken from
9 her, and that sense of justice also should play into the
10 Court's decision here. And the Court should take that into
11 account in deciding the concurrent versus consecutive
12 sentencing and how much time should be imposed for each of
13 these deaths.

14 Thank you.

15 THE COURT: Defense.

16 MR. QUIGLEY: Your Honor, let me start with
17 something that Mr. Schacht said toward the end of his
18 presentation that this language of this statute suggests
19 that these sentences must be run consecutive. It may
20 suggest it. It doesn't mandate it. So I would ask you to
21 consider a 30-year minimum sentence as being the
22 appropriate sentence for what occurred at the Trang Dai
23 Cafe in 1998.

24 It's important for the Court to understand, and I
25 know the court does, but it needs to be said that a 30-year

1 minimum doesn't mean that he gets out in 30 years,
2 necessarily. He has to go through a board hearing. The
3 statute lays out significant safeguards, including his risk
4 of dangerousness, which Dr. Henry has opined but the
5 Department of Corrections is going to do their own risk
6 assessment. The victims have a right to be heard at the
7 time the board convenes to consider Mr. Leo's release. If
8 Mr. Leo is released, he can be pulled back into the
9 institution, quite easily. Again, read the language of the
10 statute.

11 We're asking you to give him a 30-year minimum
12 sentence with the knowledge that he isn't necessarily
13 guaranteed a release at that point.

14 Why is 30 years appropriate in this case? I can't
15 dispute anything that Mr. Schacht said about the nature of
16 this offense, other than to say that I think Mr. Leo's
17 participation was less than others, perhaps more than
18 others, as well. I've read the police reports. There's no
19 indication that any of the shots he fired hit anybody. And
20 as Mr. Schacht indicates, it's likely that the person who
21 did most of the carnage were the persons that came in right
22 after Mr. Leo came into the cafe with automatic weapons and
23 discharged them in front of all of those people and killed
24 all of these people.

25 I understand that Mr. Leo was part of this and

1 there's no question that with accomplice liability he's
2 certainly responsible for the death of these people, and
3 the assault of others. This was a horrendous event and it
4 was traumatic for our community and traumatic for the
5 victims and their families.

6 The fact is, Mr. Leo was young. He was 17. He
7 wasn't the youngest member of this group and he certainly
8 wasn't the oldest. It's undisputed he was not leading this
9 at all.

10 What's also important to understand is that he
11 basically gave a full confession to this when he was
12 contacted by the police. I'm sure you've read it.
13 Mr. Schacht talked about.

14 Mr. Leo, at age 17, in talking to detectives about
15 this case, admitted fully his involvement at a time period
16 when, frankly, he didn't have to, but he did. I think that
17 needs to be taken into consideration.

18 The other thing that's important to understand about
19 this case is, as Mr. Schacht has indicated, you have
20 several individuals in the case who went to trial. You
21 have several individuals that were convicted of lesser
22 charges. You have several individuals in this matter that
23 died right before trial. Mr. Leo pled guilty as charged to
24 five counts of Aggravated First Degree Murder with a life
25 without possibility of parole sentence. That was 18 years

1 ago. To be honest, there's not a lot of evidence of
2 significant investigation that went on by his defense
3 attorney. Perhaps this was Mr. Leo's desire just to
4 resolve this quickly. But it can't be escaped -- can't be
5 overlooked, I guess, that Mr. Leo at age 17 basically
6 admitted he did it to the police, admitted he did it to the
7 judicial assistant and signed up for a life without
8 possibility of parole. I question whether Mr. Leo fully
9 understood the magnitude of what he was doing. I'm not
10 saying he was incompetent. I'm saying at that age it sort
11 of boggles my client that this case was resolved as a plea
12 as charged. It's a little mystifying.

13 Mr. Schacht didn't mention this in his remarks, but
14 he did -- this was a significant part of the
15 cross-examination of Dr. Henry so I want to address it.

16 This notion that Mr. Leo has been untruthful in
17 court so therefore has an anti-social personality of some
18 sort, Mr. Leo was brought back to court two years after he
19 pled to testify on behalf of one of the co-defendants. He
20 was subpoenaed. He was brought back from the prison
21 system, brought into court in front of one of his
22 co-defendants, one of his fellow former gang members. He
23 was asked to basically rat that person out, and he didn't
24 do it. And that's not surprising. Given how old he was at
25 that time, which was 19 years old, in a prison setting

1 where he was going to be there for the rest of his life,
2 it's not surprising that he wouldn't want to be classified
3 as a snitch when he went back to prison.

4 The other thing to look at here, Your Honor, and
5 Dr. Henry testified about this, the records that we
6 provided to you bear this out, Mr. Schacht is right.
7 Mr. Leo is an above-average intelligence person. He got
8 good grades in school, by and large. He, in the prison
9 system, with the knowledge that he would never get out, has
10 still persevered to get further education, further job
11 training. It's somewhat remarkable that he's been able to
12 navigate the last 18 years with a minimal number of
13 infractions. He had a serious one when he was in there
14 after a couple years, but since that time what I would
15 classify as very minimal violations. He's displayed a
16 positive attitude. He's displayed motivation in the face
17 of utter hopelessness, which I think speaks well of his
18 rehabilitative possibilities, which is one of the factors
19 to consider under Miller.

20 Dr. Henry, Your Honor, I know you heard his
21 testimony and I'm not going to belabor it. I will
22 highlight a couple of things. Given Mr. Leo's family
23 dynamics at the time, back in 1995, '96, '97, leading up to
24 this, his involvement in a gang is not surprising. It's
25 unfortunate, it's bad judgment. But the fact that he

1 sought out support in another area than his own family,
2 given what was going on with his mom and dad, is not
3 surprising. It's interesting that Mr. Leo is of Samoan
4 descent. This is a Cambodian gang, they sort of took him
5 in under their wing, I guess.

6 I know you read Nancy Austring's mitigation report
7 which kind of lays out the family history. And Dr. Henry
8 testified that his involvement in this gang is not
9 surprising.

10 Dr. Henry talked a lot about adolescent development.
11 I think this ties into a little bit about what Mr. Schacht
12 was talking about with good grades, good student, had the
13 capacity to do well, had the capacity to conform to, you
14 know, our societal norms and laws. True, true
15 academically, but what that ignores is his development, his
16 brain. That's what Dr. Henry talked about. Specifically,
17 the adolescent's specific anti-social behavior, which we
18 see in this system quite often. I know the Court is very
19 familiar with it. That needs to be factored into what was
20 going on in 1998 when he was 17 years old.

21 Dr. Henry finds that, in general, Mr. Leo has a low
22 overall risk for future violent acts. It would be
23 completely low if not for the facts of this case, which
24 Dr. Henry cannot ignore and did not ignore. So that
25 elevates him in some areas to low or moderate.

1 Dr. Henry did a thorough evaluation of both
2 Mr. Leo's personality, his mental capacity, the history of
3 this case. And I agree with Dr. Henry. I think Mr. Leo is
4 a very low risk for future dangerous violent acts.

5 So, Your Honor, under the statute, you are asked,
6 directed to take into consideration the Miller factors but
7 you are not limited to those. You can take in other
8 factors. They are age, and we have already talked about
9 how old he was. He was clearly a minor. His childhood
10 life experience. I would direct you to the mitigation
11 report and what was going on in his home. The degree of
12 responsibility that he was capable of exercising. That's a
13 tough one because, again, we're going back 18 years and
14 trying to sort of reconstitute what was going on there.

15 His chances of being rehabilitated is a factor in
16 this. I think that's an area that actually we do have a
17 lot of information about. This is a unique case in a way.
18 We don't have the opportunity to re-sentence somebody 18
19 years later where they have been in a controlled setting
20 and, quite frankly, we have known what they have done
21 virtually every day.

22 What we do know about Mr. Leo is he has navigated a
23 very difficult setting at a very young age in a way that
24 you would not expect. Again, his behavior has been by and
25 large good. He's sought out employment opportunities.

1 He's tried to better himself.

2 We don't have a crystal ball into the future, but we
3 do have a looking glass backwards, I guess. And what I can
4 say is that I know that's in a controlled setting but as
5 Dr. Henry points out, sometimes that's our best insight and
6 window into what a person is going to do in the future. We
7 know what he's done.

8 This is not the same individual today that was at
9 the Trang Dai Cafe in 1998. He's matured. He's
10 persevered. He's been productive.

11 Some of these letters from inmates I thought were
12 interesting. You know, they all say the same thing. Of
13 course, cynically you can say, well, they are from inmates.
14 What incentive do they have to say something bad about him,
15 maybe just trying to help themselves out. These letters
16 were well written. They speak of his giving of his time to
17 other people and being a positive influence on people,
18 again in a really negative violent setting. And I think
19 that speaks well of Mr. Leo.

20 He has good family support. There are many family
21 members in the courtroom behind me. Mr. Leo is going to
22 speak in a minute here. I think he has insight and remorse
23 about what happened. He can't take it back, but he wants a
24 chance for redemption. He wants a chance to give back at
25 some point in his life to the community and try to make

1 amends,

2 I agree with what Mr. Schacht says about taking
3 somebody's life. It's our most serious crime. And I've
4 seen that movie and I remember that quote. And I
5 understand that more than one person died here. There were
6 five. And there were also five other people that were
7 injured and it's had a huge impact on our community. But I
8 don't think you can say, well, we're going to give him 30
9 years, or 25 years, and that ignores the other four people
10 that died, that ignores the other five people that were
11 hurt. It doesn't. It doesn't. It is a sentence that
12 takes into consideration not only what he did, but the
13 other factors that we have been talking about today and
14 last Monday.

15 So I think it's the wrong way to look at things
16 that, well, you're giving him the maximum sentence you can,
17 or essentially a standard range type of a sentence for this
18 one victim, and then the other four victims we're just
19 giving him a pass, and that's not what I'm asking you to
20 do. I'm asking you to fashion a sentence that takes into
21 consideration the totality. And considering that five
22 people died, yes. I'm not asking you to give him the
23 minimum of 25 years, which under the statute I could at
24 least ask. I'm acknowledging that this was a horrendous
25 event. Mr. Leo's participation was less than others. But

1 he was there and he helped and he held the door and he
2 emptied his clip, as he said. He bears responsibility for
3 these people dying.

4 But we're not ignoring their other deaths by giving
5 him a 30-year minimum sentence. That's taking into
6 consideration everything, including his youth at the time.

7 In total, Your Honor, I would ask you to exercise
8 your discretion, which I believe you have under 10.95, and
9 sentence Mr. Leo to a 30-year minimum sentence in this
10 matter.

11 Thank you.

12 THE COURT: All right. Mr. Leo, do you have
13 anything to say?

14 THE DEFENDANT: Your Honor, first of all, thank you
15 for allowing me this time to speak.

16 When I was originally sentenced, I said that I was
17 truly sorry for the pain and suffering that I caused.
18 Today is no different. Only now I feel that apologies
19 can't even begin to express my remorse. There's no excuse
20 for what I've done. I was an irresponsible kid at the
21 time, but I know that is not an excuse for taking someone's
22 life. I made a choice to live a life that ultimately cost
23 the lives of innocent people.

24 I committed this crime not realizing the impact it
25 would have on the victims and their families, and those of

1 my family as well.

2 In 2002, I testified at my co-defendant's trial. At
3 the time, I believed that I was never getting out, and I
4 acted as such. And while I took full responsibility for my
5 part, my mentality at the time was surviving in an
6 environment where snitching was not an option. Today, I
7 still take full responsibility for my actions and know that
8 punishment is necessary.

9 My mentality now is still of survival, by being the
10 change I want to be seen in my environment in spite of the
11 negative circumstances.

12 Your Honor, I'm asking for the chance to prove that
13 I'm no longer the kid that once was, that I have turned my
14 life around, and that I can be a productive member of
15 society.

16 My behavior since my incarceration has been far from
17 spotless but my record shows my evolution over the years.
18 I received my GED and have tried to apply for other
19 educational and vocational programs, only to be denied. I
20 completed courses that were not offered to me in prison but
21 were obtained through my own efforts. These courses were
22 based on anger management, cognitive behavior and substance
23 abuse. I've also participated in classes that encouraged
24 an honest look into one's self and recognizing and dealing
25 with one's own faults. Classes such is the Redemption

1 Project, the Restorative Therapy Group and the
2 Communication Breakdown Class were created by individuals
3 who were currently incarcerated and recognize the need for
4 changes in prison culture with its effects reaching out to
5 society, as well. These classes have had a tremendous
6 influence on my life. I've come to realize that I can have
7 an influence on the younger guys coming in, so I try to be
8 a positive one by using my experience as a cautionary tale,
9 and I plan to do the same for at-risk youth when I'm
10 released.

11 Your Honor, I ask that you please have mercy and
12 give me that chance to redeem myself.

13 Thank you.

14 THE COURT: Mr. Schacht, anything else?

15 MR. SCHACHT: No, Your Honor. I have nothing to
16 add.

17 THE COURT: All right. I'll see you at two o'clock
18 and I'll give you my decision then. All right.

19 MR. SCHACHT: Very well.

20 (Recess.)

21 \\\

22 \\\

23 \\\

24 \\\

25 \\\

AFTERNOON SESSION

1
2 THE COURT: This is obviously one of those cases
3 where the Court wants to temper mercy with reality, and at
4 one time courts had wide discretion in their sentencing.
5 But over the years, the Legislature has cut that away from
6 us, since apparently they don't trust us further than they
7 could throw an elephant against the wind. But the Supreme
8 Court of the United States has spoken and said that a
9 juvenile should not be sentenced to life in prison without
10 any possibility of parole.

11 Now, young men, and that includes young men and
12 juveniles in groups, doing extremely stupid, wicked things
13 is nothing new. One of my aunt's great uncle by marriage
14 was 15 when he and some friends went out to rob a local
15 candy store back in the '30s. Tom was the lookout in the
16 alley. One of the kids had a gun, shot and killed the
17 owner of the store. He went into Joliet State Penitentiary
18 at the age of 17 and did not get out for a long, long time.
19 Like Pliny the Elder in Rome wrote letters complaining
20 about the gangs of youth terrorizing Rome; it's nothing
21 new. And unfortunately, at least from where I sit, and
22 have been sitting for the last 16 years, the IQ of a group
23 of a bunch of young males is probably 40 points lower than
24 the stupidest idiot in the group. So individually they may
25 not do things, or they might pause and ask themselves if

1 this is a good idea, but collectively, no.

2 But on the other hand, we now know that the
3 adolescent brain is not necessarily the same as that of an
4 adult. And particularly the centers regarding impulse
5 control, rationality and other things are, shall we say,
6 compromised seriously. And there's no doubt that in
7 Mr. Leo's life there were a lot of stress factors over and
8 above the sheer fact that you have to go through
9 adolescence: Broken home, mother working to support the
10 family, missing father. All of which are and have been,
11 probably for centuries, reasons why young men and boys get
12 themselves involved in gangs.

13 So I've been thinking about this long and carefully
14 and what I'm going to do is this: I am going to sentence
15 him to 40 years to life, but I will run them concurrently.
16 And after he's served the 40 years, the board can determine
17 whether or not he should be released.

18 I looked at the higher figure than the ones that
19 were argued because, quite frankly, I do think he should
20 have a chance to get out at some point in his life.

21 On the other hand, even if you're spending 40 years
22 in prison, you will emerge at some point. Whereas if
23 you're dead and in the grave you have no option and you'll
24 be there. He took -- or helped to take five people's lives
25 away from them. So there must be expiation of some sort.

1 But he is a juvenile and it is undoubted that their ability
2 to think rationally, no matter how good of students they
3 may be, is compromised simply by the fact that they were
4 adolescents with a surge of chemicals while their brain
5 continues to develop. And obviously that is being
6 recognized.

7 Now, I assume that when sentenced earlier, that the
8 costs that were assessed at that time will remain in
9 effect. That would include any restitution, which was
10 probably previously court ordered.

11 MR. SCHACHT: Your Honor, if I could speak to that
12 issue. It's our view of how the statute works that the
13 only issue before the Court is setting the minimum term and
14 that the rest of the sentencing from, I guess it was 2000,
15 remains in effect. And, in fact, the proposed sentencing
16 order and judgment that I prepared reflects that -- that
17 version or that view of how the statute works. So I think
18 the rest of the sentencing from 2000 still remains in
19 effect.

20 THE COURT: I rather figured it did, but I just
21 thought I would throw it out there, since no one was
22 arguing it, I didn't think they wanted me to actually make
23 a decision.

24 Perhaps the fact that he does have a release date of
25 some sort will allow him to take other classes while he is

1 serving his remaining time out.

2 MR. QUIGLEY: Thank you, Your Honor.

3 The only other issue I guess on costs would be, of
4 course, subsequent to this Judgment and Sentence, we just
5 had the Blazina case coming down, so I think under that
6 holding I would ask the Court to waive any nonmandatory
7 fines. I'm looking at his original J & S and frankly in
8 only includes court costs and the victim assessment so...

9 THE COURT: Sounds like those were the mandatory at
10 that time.

11 MR. QUIGLEY: And the court costs were lower than
12 they are now, it's \$110.

13 THE COURT: Well, it sounds like they were
14 mandatory. It doesn't sound like they imposed anything
15 else.

16 MR. QUIGLEY: Yes. Thank you.

17 MR. SCHACHT: Your Honor, may I clarify a couple
18 aspects of the Court's sentence?

19 THE COURT: Certainly.

20 MR. SCHACHT: First of all, the question I'm sure
21 will be raised in the Court of Appeals concerning whether
22 the Court's decision today is the result of your
23 interpretation of RCW 10.95.030 or whether instead it is
24 the Court's judgment that the Sentencing Reform Act
25 provisions apply to this sentence. Obviously, running the

1 terms concurrently with each other, the Court's decided
2 against the State on that issue. And I think it would be
3 important for the Court to articulate for what reason the
4 Court deems that to be the case.

5 THE COURT: All right. The Court finds that the
6 Sentencing Reform Act allows the Court the authority to
7 deviate in this case, coupled with State vs. -- or Miller
8 vs. Alabama.

9 MR. SCHACHT: Okay. I have prepared the Judgment
10 and Sentence addendum consistent with the Court's order.

11 Your Honor, paragraph 2.4 indicates that this is an
12 exceptional sentence, that it's below the standard range
13 for Counts I through V. Under the SRA, it's incumbent that
14 the Court enter Findings of Fact and Conclusions of Law in
15 support of an exceptional sentence. And I'm wondering if
16 the Court would give us a deadline by which to submit
17 proposals for that. I would anticipate the defense would
18 be the proposing party, since they are going to want this
19 upheld on appeal if they can manage that. So I would ask
20 that the Court just simply set a date by which the parties
21 appear to deal with the findings and conclusions.

22 THE COURT: 16th of December, next Friday?

23 MR. QUIGLEY: I would ask for a little more time,
24 only because I'm gone the rest of this week.

25 THE COURT: We're on recess the last two weeks of

1 this month, however I will be back the first week of
2 January.

3 MS. HIGH: Your Honor, I think I will be able to get
4 them done by the 16th. Mr. Quigley will be gone. If I run
5 into a log jam, I'll let everybody know.

6 MR. SCHACHT: I'm available so I'll be here.

7 THE COURT: All right. Anything else?

8 MR. SCHACHT: No, Your Honor. Passed the Judgment
9 and Sentence addendum and the Warrant of Commitment over to
10 the defense for review.

11 THE COURT: All right. Court will be at recess

12 Oh, I have to sign the J & S. Sorry. Premature.

13 I did want to add that while I was listening to all
14 of the testimony, I found it interesting that the
15 Department of Corrections themselves had rated him as a low
16 risk to reoffend. And, obviously, given their experience
17 with individuals not adapting well to prison life, I found
18 that quite significant.

19 MR. SCHACHT: Thank you, Your Honor.

20 THE COURT: All right.

21 MR. QUIGLEY: Thank you, Your Honor.

22 THE COURT: Good luck, Mr. Leo.

23 (Adjourned.)

24 \\\

25 \\\

SUPERIOR COURT OF THE STATE OF WASHINGTON

FOR THE COUNTY OF PIERCE

DEPARTMENT NO. 2

HON. KATHERINE M. STOLZ, JUDGE

STATE OF WASHINGTON,)
)
 Plaintiff,)
)
 vs.)
)
 MARVIN LOFI LEO,)
)
 Defendant.)

No. 98-1-03161-3
COA No. 49863-4-II

STATE OF WASHINGTON)
) ss
 COUNTY OF PIERCE)

I, Carla J. Higgins, Official Reporter of the Superior Court of the State of Washington, County of Pierce, do hereby certify that the foregoing comprises a true and correct transcript of the proceedings held in the above-entitled matter.

Dated this day of 2017.

 Carla J. Higgins, CSR
 Official Reporter

APPENDIX “F”

Transcript—January 6, 2017

APPELLATE DIVISION
COPY RECEIVED
MAR 10 2017
PIERCE COUNTY
PROSECUTING ATTORNEY

IN THE SUPERIOR COURT IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON

STATE OF WASHINGTON,

Cause No. 98-1-03161-3

COA No. 49863-4

Plaintiff,

vs.

Findings of Fact and
Conclusion of Law

MARVIN LOFI LEO,

Defendant.

VERBATIM REPORT OF PROCEEDINGS

BE IT REMEMBERED that on the 6th day of January, 2017, the above-captioned cause came on duly for hearing before the HONORABLE KATHERINE M. STOLZ, Superior Court Judge in and for the County of Pierce, State of Washington; the following proceedings were had, to-wit:

Transcription by:
Harmony Transcription Services
valerie J. Meade
valeriejea~616@gmail.com
253-312-6484

ORIGINAL

1 THE COURT: All right. The next matter is
2 state of Washington versus Marvin Lofi Leo, who we will
3 need. Is he --

4 FEMALE: Is he in custody?

5 THE COURT: No, he's not in custody. He
6 got transported back to

7 MR. SCHACHT: No, he's at DOC. My
8 recollection, and Mr. Quigley can correct me if I'm
9 wrong about this, is that he waived his presence at
10 Findings.

11 MR. QUIGLEY: He did.

12 THE COURT: Okay.

13 MR. SCHACHT: (Unintelligible.)

14 THE COURT: All right.

15 MR. SCHACHT: Your Honor, may I make a
16 record that

17 THE COURT: Yes.

18 MR. SCHACHT: each of us have proposed
19 Findings and Conclusions and we have submitted those to
20 the Court for review.

21 I think I could speak for Mr. Quigley, at
22 least this far, to say that he would advocate for his,
23 I would advocate for mine. I would note that on mine
24 there are areas where the Court can add to them if the

25 st. vs. Marvin Lofi Leo
Pierce Co. Cause No. 98-1-03161-3
Findings of Fact & Conclusions of Law
January 6, 2017

1 Court feels that they are not as complete as the Court
2 would like. But we urge the Court to enter our Findings
3 and complete this matter. Thank you.

4 THE COURT: All right.

5 MR. QUIGLEY: Good afternoon, Your Honor.

6 THE COURT: Mr. Quigley?

7 MR. QUIGLEY: For the record, I'm Mark

8 Quigley representing Marvin Leo who's not present. |

9 believe it has already been indicated.

10 Your Honor, I apologize for the late receipt
11 of the proposed Findings and Facts and Conclusions of
12 Law from the defense. My co-counsel, Ms. High, prepared
13 these in the back of the CDs this morning and there was
14 some pretty small changes to be made so I provided those
15 to you this afternoon. Again, I apologize for the late
16 receipt.

17 I do think they appropriate in a more
18 detailed fashion the facts that were presented and the
19 summation of your oral ruling which forms the basis for
20 this (Unintelligible.) Downward, and I would ask the
21 Court to enter those.

22 I'm going to file, Your Honor, whether you
23 choose to go with these proposed Finding of Fact or not,
24

25 st. vs. Marvin Lofi Leo
Pierce Co. Cause No. 98-1-03161-3
Findings of Fact & Conclusions of Law
January 6, 2017

1 a blank copy of our proposed Findings, and I put that on
2 (Unintelligible.)

3 THE COURT: All right. That's

4 MR. QUIGLEY: on the top that they're
5 proposed.

6 THE COURT: That's a pro that's
7 proposal. We'll file that one.

8 MR. QUIGLEY: Yeah, just have those filed
9 for the record.

10 THE COURT: All right.

11 All right. Going to go with defense but
12 there's something from the State's that I want put in.

13 Your Section 10, as to the defendant's
14 capacity for rehabilitation.

15 MR. QUIGLEY: Mm-hmm.

16 THE COURT: The defendant has undertaken a
17 number of self-improvement (sic). Can we incorporate
18 that language into the defense order?

19 MR. QUIGLEY: You're talking about from
20 Mr. --

21 THE COURT: Plaintiff from plaintiff's
22 state's No. 10 Findings.

23 MR. QUIGLEY: (Unintelligible.)

24 THE COURT: Yeah.

25 st. vs. Marvin Lofi Leo
Pierce Co. Cause No. 98-1-03161-3
Findings of Fact & Conclusions of Law
January 6, 2017

1 MR. QUIGLEY: Yes, I'm sure we can

2 (Unintelligible.)

3 THE COURT: All right. I'll hand these --

4 I'll hand these down then and you can these are

5 copies. You got the originals?

6 MR. QUIGLEY: I have an extra original.

7 MR. SCHACHT: Your Honor, I think for

8 purposes of the record, if the Court would file the copy

9 that I provided to the Court --

10 THE COURT: Sure.

11 MR. SCHACHT: -- as proposed

12 THE COURT: I will do that.

13 MR. SCHACHT: -- by the State.

14 And then, Your Honor, there were a couple

15 of, what I think are, typos that we will also likely

16 correct. I believe (Unintelligible.)

17 THE COURT: I won't --

18 MR. SCHACHT: Mr. Quigley.

19 THE COURT: -- grade for spelling, Counsel.

20 All right. We'll file the one on the top.

21 Okay. There's the one that was not on the

22 docket.

23 MR. SCHACHT: And, Your Honor, I believe we

24 can just step back. We'll make the (Unintelligible.)

25

1 THE COURT: Yes.

2 MR. SCHACHT: (Unintelligible.) This
3 docket.

4 MR. QUIGLEY: One other matter, Your Honor,
5 on this, we'll just get it done now while we're in front
6 of you regarding the appeal.

7 The State has appealed your ruling. I have
8 an order of indigency and a motion and declaration for
9 appointment of appellate counsel for Mr.

10 THE COURT: All right.

11 MR. QUIGLEY: Leo that I will pass
12 forward for your review and signature, if you deem it
13 appropriate, and you can just file that.

14 THE COURT: Okay. Well, he's been in DOC
15 now for a long time.

16 MR. QUIGLEY: Yes.

17 THE COURT: Anticipated to be there longer.

18 MR. QUIGLEY: All right. Mr. Schacht and I
19 will step back and make the changes and --

20 THE COURT: All right.

21 MR. QUIGLEY: get the order in at a
22 later time on your docket.

23 MR. SCHACHT: Thank you, Your Honor.

24 MR. QUIGLEY: Thank you.

25 st. VB. Marvin Lofi Leo
Pierce Co. Cause No. 98-1-03161-3
Findings of Fact & Conclusions of Law
January 6, 2017

1 THE COURT: Okay. All right. I've signed
2 the order of indigency.

3 MR. QUIGLEY: Thank you.

4 THE COURT: All right.

(Hearing concluded.)

5

6

7

8

9

10

11

12

13

1

4

15

16

17

18

19

20

21

22

23

24

CERTIFICATION

I, Valerie J. Meade, hereby certify that the foregoing pages are a true, accurate, and complete transcript of the audio-recorded proceeding in st. vs. Marvin Lofi Leo, Pierce Co. Cause No. 98-1-03161-3, transcribed by me to the best of my knowledge and ability.

ranscriptionist

March 8, 2017
Date

APPENDIX "G"

Notice of Appeal



0008
15345
1/5/2017

FILED
IN COUNTY CLERK'S OFFICE

JAN 03 2017

PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
BY _____ DEPUTY

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

STATE OF WASHINGTON

Plaintiff,

v.

MARVIN LOFI LEO,

Defendant.

NO. 98-1-03161-3

NOTICE OF APPEAL

The State of Washington, Appellant herein, seeks review by the Court of Appeals, Division II, of the decision entered orally and in writing on December 5, 2016, by the Honorable Katherine M. Stolz, in the above-captioned matter.

A copy of the decision is attached to this notice.

Dated: Tuesday, January 03, 2017

MARK LINDQUIST
Pierce County
Prosecuting Attorney

JAMES SCHACHT
Deputy Prosecuting Attorney
WSB # 17298

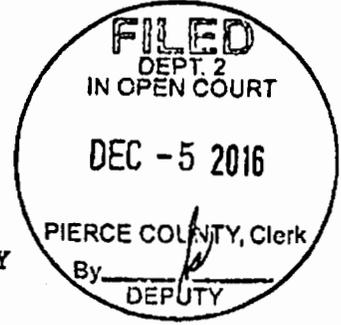
0009
15345
1/5/2017

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Certificate of Service:

The undersigned certifies that on this day she delivered by U.S. mail or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his or her attorney or to the attorney of record for the respondent and respondent c/o his or her attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

1.3.17 *Theresa Kar*
 Date Signature



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO: 98-1-03161-3

vs

MARVIN LOFI LEO,

Defendant.

WARRANT OF COMMITMENT

- 1) County Jail
- 2) Dept. of Corrections
- 3) Other Custody

THE STATE OF WASHINGTON TO THE DIRECTOR OF ADULT DETENTION OF PIERCE COUNTY:

WHEREAS, Judgment has been pronounced against the defendant in the Superior Court of the State of Washington for the County of Pierce, that the defendant be punished as specified in the Judgment and Sentence/Order Modifying/Revoking Probation/Community Supervision, a full and correct copy of which is attached hereto

- [] 1. YOU, THE DIRECTOR, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement in Pierce County Jail).
- [X] 2. YOU, THE DIRECTOR, ARE COMMANDED to take and deliver the defendant to the proper officers of the Department of Corrections; and

YOU, THE PROPER OFFICERS OF THE DEPARTMENT OF CORRECTIONS, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence and this addendum. (Sentence of confinement in Department of Corrections custody).

01610
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

[] 3. YOU, THE DIRECTOR, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence. (Sentence of confinement or placement not covered by Sections 1 and 2 above).

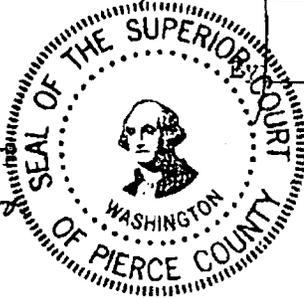
Dated: 12/05/16

By direction of the Honorable

Katherine M. Stolz
JUDGE KATHERINE M. STOLZ

CLERK

Nelson Jones
DEPUTY CLERK



CERTIFIED COPY DELIVERED TO SHERIFF

DEC 06 2016 *Nelson Jones* Deputy

STATE OF WASHINGTON

ss:

County of Pierce

I, Kevin Stock, Clerk of the above entitled Court, do hereby certify that this foregoing instrument is a true and correct copy of the original now on file in my office.

IN WITNESS WHEREOF, I hereunto set my hand and the Seal of Said Court this

_____ day of _____

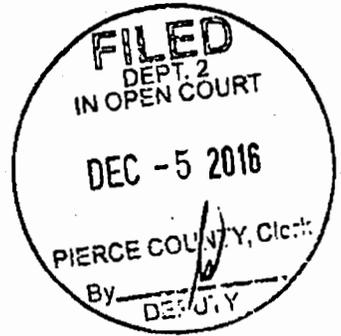
KEVIN STOCK, Clerk

By: _____ Deputy

SHS



09261
15603
12/7/2016
11010
1000
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 98-1-03161-3

vs

MARVIN LOFI LEO

Defendant.

JUDGMENT AND SENTENCE ADDENDUM
SETTING MINIMUM TERMS FOR
AGGRAVATED MURDER COUNTS
PURSUANT TO RCW 10.95.030 AND .035.
OTHER CONVICTIONS AND SENTENCES
REMAIN FINAL PURSUANT TO RCW
10.95.035(4) (FJS)
[x] Prison
[x] Clerk's Action Required, para 3.3

SID: 18387037
DOB: 02/11/1981

I HEARING

1.1 A hearing to set the minimum terms of confinement for convictions of aggravated murder was held and the defendant, the defendant's attorney and the deputy prosecuting attorney were present. This hearing was held pursuant to the provisions of RCW 10.95.030 and .035

II FINDINGS

There being no reason why judgment should not be pronounced, the court FINDS:

2.1 RELEVANT OFFENSES FOR SETTING OF MINIMUM TERM OF CONFINEMENT:

The defendant was found guilty on June 27, 2002, by jury verdicts of the following relevant offenses as charged in the the June 10, 2002 Corrected Information:

| COUNT | CRIME | RCW | SENTENCE ENHANCEMENT TYPE | DATE OF CRIME | INCIDENT NO. |
|-------|--|---|---------------------------|---------------|--|
| 1 | AGGRAVATED MURDER IN THE FIRST DEGREE (D-21) | 9A.32.030(1)(a) 10.95.020(10) 9A.08.020 9.41.010 9.94A.310 9.94A.370 | FIREARM | 07/05/1998 | Tacoma Police Department Incident No. 98-186-0260 |

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

| COUNT | CRIME | RCW | SENTENCE ENHANCEMENT TYPE | DATE OF CRIME | INCIDENT NO. |
|-------|--|---|---------------------------|---------------|--|
| II | AGGRAVATED MURDER IN THE FIRST DEGREE (D-21) | 9A.32.030(1)(a) 10.95.020(10) 9A.08.020 9.41.010 9.94A.310 9.94A.370 | FIREARM | 07/05/1998 | Tacoma Police Department Incident No. 98-186-0260 |
| III | AGGRAVATED MURDER IN THE FIRST DEGREE (D-21) | 9A.32.030(1)(a) 10.95.020(10) 9A.08.020 9.41.010 9.94A.310 9.94A.370 | FIREARM | 07/05/1998 | Tacoma Police Department Incident No. 98-186-0260 |
| IV | AGGRAVATED MURDER IN THE FIRST DEGREE (D-21) | 9A.32.030(1)(a) 10.95.020(10) 9A.08.020 9.41.010 9.94A.310 9.94A.370 | FIREARM | 07/05/1998 | Tacoma Police Department Incident No. 98-186-0260 |
| V | AGGRAVATED MURDER IN THE FIRST DEGREE (D-21) | 9A.32.030(1)(a) 10.95.020(10) 9A.08.020 9.41.010 9.94A.310 9.94A.370 | FIREARM | 07/05/1998 | Tacoma Police Department Incident No. 98-186-0260 |

[X] A special verdict/finding for use of firearm was returned on Counts One through Five pursuant to former RCW 9.94A.125, and 9.94A.360.

2.2 CRIMINAL HISTORY (RCW 9.94A.525):

| CRIME | DATE OF SENTENCE | SENTENCING COURT | DATE OF CRIME | A or J ADULT JUV | TYPE OF CRIME |
|---|------------------|------------------|---------------|------------------------|---------------|
| Taking a Motor Vehicle Without Permission | 08/20/1997 | Juvenile/Pierce | 01/29/1997 | Juvenile | NV |
| Theft Second Degree | 08/20/1997 | Juvenile/Pierce | 01/29/1997 | Juvenile | NV |
| Malicious Mischief Second Degree | 08/20/1997 | Juvenile/Pierce | 01/29/1997 | Juvenile | NV |

2.3 MINIMUM TERM SENTENCING DATA:

| COUNT NO. | OFFENDER SCORE | SERIOUSNESS LEVEL | STANDARD RANGE (not including enhancements) | PLUS ENHANCEMENTS | TOTAL STANDARD RANGE | MAXIMUM TERM |
|-----------|----------------|-------------------|---|-------------------|----------------------|-----------------|
| I | Nine+ | XVI | LIFE W/O PAROLE | FASE 60 MOS | 25 YEARS TO LIFE | LIFE W/O PAROLE |
| II | 0 | XVI | LIFE W/O PAROLE | FASE 60 MOS | 25 YEARS TO LIFE | LIFE W/O PAROLE |
| III | 0 | XVI | LIFE W/O PAROLE | FASE 60 MOS | 25 YEARS TO LIFE | LIFE W/O PAROLE |
| IV | 0 | XVI | LIFE W/O PAROLE | FASE 60 MOS | 25 YEARS TO LIFE | LIFE W/O PAROLE |
| V | 0 | XVI | LIFE W/O PAROLE | FASE 60 MOS | 25 YEARS TO LIFE | LIFE W/O PAROLE |

2.4 EXCEPTIONAL SENTENCE. Substantial and compelling reasons exist which justify an exceptional sentence:

within below the standard range for Count(s) 1 through 5
 above the standard range for Count(s) _____

The defendant and state stipulate that justice is best served by imposition of the exceptional sentence above the standard range and the court finds the exceptional sentence furthers and is consistent with the interests of justice and the purposes of the sentencing reform act.

Aggravating factors were stipulated by the defendant, found by the court after the defendant waived jury trial, found by jury by special interrogatory.

Findings of fact and conclusions of law are attached in Appendix 2.4. Jury's special interrogatory is attached. The Prosecuting Attorney did did not recommend a similar sentence.

III. MINIMUM TERM OF CONFINEMENT.

3.1 CONFINEMENT. The defendant is sentenced to the following minimum terms of confinement pursuant to RCW 10.95.030(3)(a)(ii):

Count One: 40 (Forty) Years to life in prison
Count Two: 40 (Forty) years to life in prison
Count Three: 40 (Forty) years to life in prison
Count Four: 40 (Forty) years to life in prison
Count Five: 40 (Forty) years to life in prison.

The maximum term of confinement for Counts One through Five is LIFE WITHOUT PAROLE.

(Handwritten initials)

3.2 OTHER: The minimum terms of confinement set above in § 3.1 shall be served concurrently
[] consecutively to each other, and shall be served concurrently [] consecutively to the sentences
imposed for Counts Six through Ten in the original Judgment and Sentence that was entered in this case on
June 23, 2002. Credit for time served shall be calculated starting on the day of the defendant's arrest, July
18, 1998. All other terms and conditions that are not modified by this addendum and which are set forth in
the June 28, 2002, Judgment and Sentence remain in full force and effect.

3.3 THE CLERK OF THE SUPERIOR COURT shall physically attach a true and correct copy of this
addendum to the June 28, 2002, Judgment and Sentence so that anyone viewing or obtaining a copy of the
judgment will also view or receive a copy of this addendum.

DONE in Open Court and in the presence of the defendant this date: 12/05/16

JUDGE
Print name

HONORABLE KATHERINE M. STOLZ

(Handwritten signature of Judge Katherine M. Stolz)

(Handwritten signature of James Schacht)

Deputy Prosecuting Attorney
Print name: JAMES SCHACHT
WSB #17298

Attorney for Defendant
Print name: MARK QUIGLEY, MARY KAY HIGH
WSB # 14496 20123

(Handwritten signature of Marvin Loft Leo)

Defendant
Print name: MARVIN LOFT LEO

(Handwritten signature)

(Handwritten signature)

FILED
DEPT. 2
IN OPEN COURT
DEC - 5 2016
PIERCE COUNTY, WASH.
By [Signature]
DEPUTY

12/7/2016 15:00:31 0900

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 30 day of October, 2018



Kevin Stock, Pierce County Clerk

By /S/Mark Kindig, Deputy.

Dated: October 30, 2018 12:05 PM



Instructions to recipient: If you wish to verify the authenticity of the certified document that was transmitted by the Court, sign on to:

<https://linxonline.co.pierce.wa.us/linxweb/Case/CaseFiling/certifiedDocumentView.cfm>,
enter **SerialID: C48C98CF-20A9-4757-B45D5E8F7DF4E283**.

This document contains 8 pages plus this sheet, and is a true and correct copy of the original that is of record in the Pierce County Clerk's Office. The copy associated with this number will be displayed by the Court.

APPENDIX “H”

Motion to Re-Designate Notice of Appeal

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

STATE OF WASHINGTON,

Appellant,

v.

MARVIN LOFI LEO,

Respondent.

NO. 49863-4

MOTION TO RE-DESIGNATE NOTICE
OF APPEAL AS A NOTICE FOR
DISCRETIONARY REVIEW

I. IDENTITY OF MOVING PARTY:

Appellant State of Washington, requests the relief designated in Part II.

II. STATEMENT OF RELIEF SOUGHT:

In accordance with RAP 5.1(c) the state's Notice of Appeal by which this direct appeal was initiated, together with the parties' briefs, should be given the same effect as if review in this case had been initiated by a notice for discretionary review.

III. GROUNDS FOR RELIEF AND ARGUMENT:

The 2014 *Miller*¹ fix amendments to the aggravated murder statutes included a provision restricting review of minimum term sentencing hearings. RCW 10.95.035(3). In

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

1 a case arising from the same incident as this case, the state has argued that this provision
2 requires a defendant to challenge his minimum term set pursuant to this statute via
3 personal restraint petition. *See State v. John Phet*, No. 48877-9, Brief of Respondent, §
4 C.2. For obvious reasons a personal restraint petition is not an option for the state. In this
5 case, as a result of the specific statutory language in the *Miller* fix the state's ability to seek
6 review through direct appeal may be in question.

7 The controlling language from the *Miller* fix incorporates by reference availability
8 of appellate review in 1986: "(3) The court's order setting a minimum term is subject to
9 review to the same extent as a minimum term decision by the parole board before July 1,
10 1986." RCW 10.95.035(3). This provision does not distinguish between appeals initiated
11 by the defendant or the state.

12 Presently the appellate rules explicitly enable the state to prosecute a direct appeal
13 of a sentence in a criminal case where:

14 A sentence in a criminal case that (A) is outside the standard range for the offense,
15 (B) the state or local government believes involves a miscalculation of the standard
16 range, (C) includes provisions that are unauthorized by law, or (D) omits a
provision that is required by law.

17 RAP 2.2(b)(6). This provision however was not adopted until September 1, 1990. *Order:*
18 *Adoptions and Amendments of Rules of Court*, Entered May 10, 1990, 115 Wn.2d 1101,
19 1118-19(1990).

20 While the adoption of RAP 2.2(b)(6) in 1990 does not address the *Miller* fix
21 limitation, the state is not left without an avenue for appellate review. RAP 2.3(a) permits
22 a party to "seek discretionary review of any act of the superior court not appealable as a
23 matter of right." The rule also provides enumerated circumstances in which review may be
24 accepted. RAP 2.3(b). The appellate rules further provide for re-designation of a direct
25 appeal as a motion for discretionary review and *vice versa*. RAP 5.1(c). "A notice for
discretionary review of a decision which is appealable will be given the same effect as a

1 notice of appeal. A notice of appeal of a decision which is not appealable will be given the
2 same effect as a notice for discretionary review." *Id.*

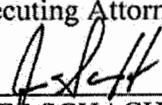
3 In light of the statutory limitation on direct appeals of minimum term decisions
4 under the *Miller* fix, this Court should apply RAP 5.1(c). The state's direct appeal notice
5 and the parties' briefs should be given the same effect as if review in this case had been
6 initiated by a notice for discretionary review. *Id.* Any need for additional briefing as a
7 result of such re-designation may be addressed via supplemental briefing. RAP 10.1(h).

8 IV. CONCLUSION:

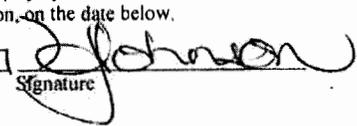
9 For the foregoing reasons the state respectfully requests that the state's Notice of
10 Appeal by which this direct appeal was initiated, together with the parties' briefs, should
11 be given the same effect as if review in this case had been initiated by a notice for
12 discretionary review.

13 DATED: Thursday, November 02, 2017.

14 MARK LINDQUIST
15 Pierce County
16 Prosecuting Attorney

17 
18 JAMES SCHACHT
19 Deputy Prosecuting Attorney
20 WSB # 17298

21 Certificate of Service:
22 The undersigned certifies that on this day she delivered by ^{efile} e-mail and/or
23 ABC-LMI delivery to the attorney of record for the appellant and appellant
24 c/o his or her attorney true and correct copies of the document to which this
25 certificate is attached. This statement is certified to be true and correct under
penalty of perjury of the laws of the State of Washington. Signed at Tacoma,
Washington, on the date below.

11/2/17 
Date Signature

APPENDIX "I"

Ruling on Motion



Washington State Court of Appeals Division Two

950 Broadway, Suite 300, Tacoma, Washington 98402-4454

Derek Byrne, Clerk/Administrator (253) 593-2970 (253) 593-2806 (Fax)

General Orders, Calendar Dates, and General Information at <http://www.courts.wa.gov/courts> **OFFICE HOURS:** 9-12, 1-4.

March 1, 2018

Gregory Charles Link
Washington Appellate Project
1511 3rd Ave Ste 701
Seattle, WA 98101-3647

James S. Schacht
Deputy Prosecuting Attorney
930 Tacoma Ave S Rm 946
Tacoma, WA 98402-2102

CASE #: 49863-4-II

State of Washington, Petitioner v. Marvin Lofi Leo, Respondent

Counsel:

On the above date, this court entered the following notation ruling:

A RULING BY COMMISSIONER BEARSE:

Upon further review of the record, this court, on its own motion, stays resolution of the State of Washington's motion for discretionary review pending issuance of: (1) the Supreme Court's opinion in *State v. Bassett*, 198 Wn. App. 714, 394 P.3d 430 (2017), review granted, 189 Wn.2d 1008 (2017); and (2) an opinion from this court in *State v. Phet*, No. 488779-1-II, consolidated with *In re the Personal Restraint of Phet*, No. 49508-2-II.

The stay will automatically lift when both *Bassett* and *Phet* are decided. The parties will have 15 days from the issuance of the latest of the two opinions to inform this court whether they wish to file additional briefing or whether the motion for discretionary review can be decided on the present briefs.

Very truly yours,

A handwritten signature in black ink, appearing to be "Derek M. Byrne", is written over a horizontal line.

Derek M. Byrne
Court Clerk

APPENDIX “J”

Motion to Modify Ruling

FILED
Court of Appeals
Division II
State of Washington
3/19/2018 4:41 PM

THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION TWO

APPELLATE DIVISION
COPY RECEIVED

MAR 20 2018 JSS

STATE OF WASHINGTON,)
Appellant,)
v.)
MARVIN LEO,)
Respondent.)
_____)

No. 49863-4-IPROSECUTING ATTORNEY
PIERCE COUN
MOTION TO MODIFY
ORDER STAYING CASE

I. IDENTITY OF MOVING PARTY AND RELIEF REQUESTED

Marvin Leo asks this Court to modify the commissioner's ruling staying consideration of the question of the State's ability to seek review in this case.

II. GROUNDS FOR RELIEF

Marvin Leo was sentenced to die in prison for crimes he committed as a child.

Fourteen years after Marvin's crimes, the United States Supreme Court found mandatory life sentences, such as the one Marvin received, violated the Eighth Amendment. The Washington Legislature responded by ordering new sentencing hearings for juveniles sentenced to life in prison. The statutory amendment requires the trial court to consider the mitigating qualities of youth and to set a minimum term of

no less than 25 years, at which point the juvenile becomes eligible for parole.

Here, the trial court conducted the required hearing. The court carefully considered, and entered detailed findings regarding, the mitigating qualities of Marvin's youthfulness at the time of his offenses. The court set a minimum term of 40 years.

The State initially appealed, contending the court was required to again sentence Marvin to die in prison for the crimes he committed as a child.

Marvin responded in part by noting that RCW 10.95.030 prohibits the State from seeking review of the trial court's minimum term decision. The State now concedes it is not permitted to appeal as a matter of right, but contends it is entitled to seek discretionary review.

This Court has already held that a minimum term decision of the parole board prior to 1986, was not subject to discretionary review. "Such decisions were not reviewable by appeal or by discretionary review as they did not meet the criteria of RAP 2.2 or RAP 2.3." *In re the Personal Restraint of Rolston*, 46 Wn. App. 622, 623, 732 P.2d 166 (1987). Because the State has never been able to seek review of a

minimum term decision, RCW 10.95.035 bars the State's effort to seek discretionary review here.

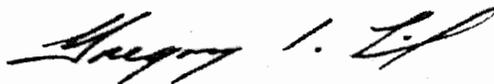
The commissioner stayed consideration of the State's motion pending the Supreme Court's opinion in *State v. Bassett*, and this Court's decision in *State v. Phet*. Regardless of whether or those opinions may address the substantive issues in this case, they will not resolve the fundamental flaw in the State's position; that the State does not have any avenue to seek review in this case.

The State's inability to seek review is clearly settled. There is no basis to stay this matter. Instead, the State's motion should be dismissed.

III. CONCLUSION

The Court should modify the commissioner's ruling and dismiss the State's motion for review.

DATED this 19th day of March, 2018.



Gregory C. Link – 25228
Attorney for Appellant
Washington Appellate Project
greg@washapp.org

PIERCE COUNTY PROSECUTING ATTORNEY

October 31, 2018 - 2:23 PM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 49863-4
Appellate Court Case Title: State of Washington, Petitioner v. Marvin Lofi Leo, Respondent
Superior Court Case Number: 98-1-03161-3

The following documents have been uploaded:

- 498634_Petition_for_Review_20181031142201D2254010_6198.pdf
This File Contains:
Petition for Review
The Original File Name was Leo Petition for Review.pdf

A copy of the uploaded files will be sent to:

- greg@washapp.org
- nathaniel.block@piercecountywa.gov
- wapofficemail@washapp.org

Comments:

Sender Name: Heather Johnson - Email: hjohns2@co.pierce.wa.us

Filing on Behalf of: Michelle Hyer - Email: PCpatcecf@co.pierce.wa.us (Alternate Email:)

Address:
930 Tacoma Ave S, Rm 946
Tacoma, WA, 98402
Phone: (253) 798-7875

Note: The Filing Id is 20181031142201D2254010