FILED
SUPREME COURT
STATE OF WASHINGTON
10/11/2019
BY SUSAN L. CARLSON
CLERK

No. 97689-9

STATE SUPREME COURT OF WASHINGTON

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IN RE: PERS. RESTRAINT PETITION OF:

CARL ALONZO BROOKS,
PETITIONER, PRO SE
PRP. NO. 79757-3-1

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# MOTION FOR DISCRETIONARY REVIEW

RAP 13.5A

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CARL ALONZO BROOKS #259045
COYOTE RIDGE CORRECTION CENTER
1301 N. EPHRATA AVE
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PETITIONER, PRO SE.

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WASHINGTON STATE
SUPREME COURT

No. 97689-9

State Supreme Court of Washington

| | |
|---|---|
| In re: Pers. Restraint Petition of: Carl Alonzo Brooks, Petitioner, Pro se. | PRP. No 79757-3-1 Brooks' Motion for Discretionary Review RAP 13.5A |

## A. Identity of Petitioner

I, Carl Alonzo Brooks, Pro se am Requesting this State high Court to Accept Review Against the Appeal Court's Acting Judge Decision Summarily denial of Petition Against Indeterminate Sentence Review Board, Successors of Board of Prison Terms and Paroles (ISRB or BPP) in Part B herein.

## B. DECISION

1. On August 8, 2019 the Acting Judge, Court of Appeals without hearing or determining the merits of my (Pet. Brooks') Appeal against the ISRB, successor to BPTP's denial of Retroactive U.S. Supreme Court announcement by Miller v. Alabama, 567 U.S. 460, 132 S.Ct. 2455, 183 LEd2d 407 (2012) That Federal Constitution's Eighth Amendment held to forbid sentencing scheme that mandated life in Prison without Possibility of Parole for Juvenile offenders, and thus, dismissed my Petition as Pretense Miller v. Alabama, supra does not apply retroactively to Pre-SRA Juveniles and time barred and labeled my (Brooks') Petition as Successive.

and further ordering dismissal under RCW 9.94A.905 and RAP 16.11(b). Appendix 1.

2. The Acting Judge did not Direct the ISRB or Trial Court to file any Response by RAP 16.11(b). SEE APPENDIX 1.

## C. ISSUES ON REVIEW

1. Whether Acting Judge committed Plain Error by failure to Direct the ISRB or trial Court to file a Response by RAP 16.11(b) before dismissing my (Pet. Brooks) Petition?

2. Whether Acting Judge is in Plain Error for not considering Miller v. Alabama, Supra, as Retroactive to my (Pet. Brooks) 1978 Juvenile sentenced by adult Court and Parole Board (ISRB) to life without Possibility of Parole for 90-years minimum is unconstitutional Eighth Amendment Violation following Miller v. Alabama, Supra, ?

## D. Statement of Case

1. Following ISRB's November 12, 2018 refusal, during in-person Petition by me (Pet. Brooks) for ISRB to Grant Parole Release because Miller v. Alabama, supra is Retroactive, therefore, State legislation enacted following Miller v. Alabama must also be retroactive to my (Pet. Brooks) Case, that is, I am a felon whose Juvenile Court decline hearing resulted in my being sentenced to life without possibility of parole (90)-years minimum.

The ISRB's rejection, and Court of appeal's dismissal of Personal Restraint Petition without directing the ISRB or trial court to file any answer is a matter of Record. Appendix 1; Brooks' PRP No. 79757-3-1 at Exhibit 4 and Exhibit 5.

## E. Summary of Ground.

Following the U.S. Supreme Court's announcement in Miller

v. Alabama, Supra, Retroactive decision requiring Parole release after 20-years of Juvenile sentenced by adult Court to life without Possibility of Parole, unless Preponderance of the evidence shows he is likely to re-offend, thus, Washington Legislature enacted 2014 R.C.W 9.94A.730, Chapter 130 Section 10, which appears to follow the U.S. Supreme Court's Miller v. Alabama decision, but the ISRB and Court of Appeals are appearing to Claim that Juveniles sentenced under Pre-SRA laws by adult Court to life without the Possibility of Parole terms under the Pre-SRA BPTP do not fall under Miller v. Alabama's Retroactive decision for Juveniles sentenced as adults to life without Possibility of Parole. APPENDIX I; and SEE Brooks' PRP. No. 79757-1

## F. ARGUMENT

1. under RAP 16.11(b) The chief judge determines at the consideration of the Petition the steps necessary to properly decide the merits of the issues raised. If after consideration of the Response and any Reply, the chief judge determines that the issues presented are frivolous, the judge will dismiss the Petition.

2. Therefore, the chief judge's dismissal prior to receiving any Response from the ISRB or trial court is plain error, since RAP 16.11(b) requires the judge to consider a ISRB or trial court response and any (Pet. Brooks), if any, Reply to any ISRB or trial court Response. RAP 16.11(b).

3. In Montgomery v. Louisiana, 136 S.Ct. 718, 193 LEd2d 610, 618, (2015) the U.S. Supreme

Court explained "This leads to the question whether Miller's Prohibition on life without parole for juvenile offenders indeed did announce a NEW substantive Rule that, under the Constitution, must be Retroactive."

"Under this standard, and for the Reasons explained below, Miller announced a substantive Rule that is Retroactive, in Cases on Collateral Review.

4. Under R.C.W. 10.73.100(6) it reads that - The time limit in RCW 10.73.090 does not apply to a Petition or motion that has based Solely on -

(6) There has been a Significant Change in the law, whether substantive, which is material to the Sentence instituted by the State or local government, and a court, in interpreting a change in the law that lacks express legislative intent regarding retroactive application,

determines that sufficient Reasons exist to require retroactive application of the Changed Legal Standard. RCW 10.73.100(6)

5. Therefore, Montgomery v. Louisiana's supra, announcement that Miller v. Alabama is a Retroactive, substantive change in law as interpreted by the U.S. Supreme Court, requires the ISRB and/or trial court to file a Response under RAP 16.11(b), or the Acting Chief Judge should grant my (Pet. Brooks') PRP. No. 79757-3-1. Thus, Plain error has occurred and abuse of discretion by judge, demonstrating I (Pet. Brooks) am entitled to Relief.

SEE State v. Curry, 191 Wn2d 475, 508-09, 423 P.3d 181 (2018); An abuse of discretion occurs when

the Trial Court's decision is Manifestly unreasonable or exercised on untenable grounds or for untenable Reasons. State Ex rel. Carroll v. Junker, 79 Wn.2d 12, 26, 482 P.2d 775 (1971).

7. Appellate Court Review is conducted under the Abuse of Discretion standard. State v. Sublett, 176 Wn.2d 58, 107, Para. 87, 292 P.3d 718 (2011).

8. In my (Pet. Brooks) Petition I Pointed out that in the case where the Appellate Court ordered the ISRB to Parole release Petitioner Brashear by Miller v. Alabama Rule, with conditions Relief was granted against a ISRB Refusal to follow the Retroactive U.S. Supreme Court Rule. SEE Brooks' PRP. No. 79757-3-1 at P. 6-7, Para. 1

9. The Eighth Amendment by the Fourteenth Amendent is violated where the legislation is being read to be discriminating against my (Pet. Brooks) Class of Juveniles since RCW 9.94A.730 was enacted under the SRA of 1981 instead of Pre-SRA laws where Rehabilitation Programming once permitted inmates serving life without by a Board fixing of 90-years minimum, like my (Brooks) case, and I can never be Parole released since the ISRB successor Board will never find my rehabilitation as complete.

Thus, depriving me (Pet. Brooks) of Miller v. Alabama, supra, retroactivity constitutes cruel punishment in violation of Equal Protection Clause. Under the equal Protection Clause of the Fourteenth Amendment, and Art. 1, Section 12 of Washington State Constitution, Persons Similarly Situated with Respect to legitimate

Purpose of the law must receive like treatment. State v. Coffee, 117 Wn. App. 470, 489 68 P.3d 1078 (2007).

10. Also, the U.S. Supreme Court Rule is that while "we have an obligation to insure the constitutional bounds are not overreached, we may not act as judges as we might as legislators. We may not require the legislator to select the least severe penalty possible so long as the penalty selected is not cruelly inhumane or disproportionate to the crime involved. Gregg v. Georgia, 428 U.S. 153, 174-75, 49 LEd2d 859, 96 S.Ct. 2909 (1976); see also, State v. Framton, 95 Wn.2d 469, 517, 627 P.2d 923 (1981).

12. Therefore, if the acting judge is right, then the Legislature is wrong for ~~excluding~~ excluding my (Pet. Brooks) class of juveniles sentenced by adult court to former pre-SRA sentences

Resulting in 90-years minimum Fix by Board and Successor ISRB without Parole unless the ISRB, without any Rehabilitation goals, Plans, OR Realistic opportunities, magically some day finds my (Pet. Brooks) Rehabilitation is complete; also, in my (41)-years 10-months total lockup, the ISRB has shown no desire to review my Case for errors OR Place me in any Position to obtain accurate and rehabilitation Report.

Therefore, the New Legislation RCW 9.94A.730 unconstitutionally violates 8th by 14th Amendments since Miller v. Alabama, supra, according to Montgomery v. Louisiana, supra is Retroactive Substantive announcement by U.S. Supreme Court, applicable to all states.

13. This State Supreme Court holds that - "A failure to enforce

the Federal Rules constitutes an abuse of discretion." State v. Griffin, 173 Wn.2d 467, 268 P.3d 924, 927 (2012).

14. Also, the Federal rule on plain error is that if the error affects the substantial rights, then relief must be granted to the Petitioner. United States v. MARCUS, 560 U.S. 258, 262, 130 S.Ct. 2159, 176 L.Ed.2d 1012 (2010); SEE also, State v. Smissaert, 103 Wn.2d 636, 694 P.2d 656 (1985) (an appeal that is based on judicial error in sentencing, correction of the sentence should reopen the opportunity to appeal the original judgment.)

15. Thus, I (Peti. Brooks) show here the 90-years minimum will never be reduced because the ISRB has no rehabilitation goal or plan, otherwise by now 41-years 10-months

together with evolving standards of decency Regards to Juveniles Sentenced as adults, following Miller v. Alabama, supra, and my (Pet. Brooks') Petitioning ISRB to follow Miller's announcement this Past November 2018 the ISRB would have made definite, and realistic Transfer of me into a Prison where Sex offender Assessment Program Could advise ISRB of my low Risk to Reoffend Records, which entitles Parole release with conditions under the Miller v. Alabama, supra, Scheme.

16. Also, States may not, without violating the Equal Protection Clause of the U.S. Constitution Construct arbitrary classifications. Hsieh v. Civil Servs. Comm., 79 Wn.2d 529, 530, 488 P.2d 516 (1971).

17. A state must Provide the Person who was a Juvenile at the time the

Crimes were committed with a Realistic opportunity to obtain Release. Graham v. Florida, 560 U.S. 48, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010); SEE also, State v. Bassett, 192 Wn.2d 67, 74, 428 P.3d 345 (2018) (citing Graham v. Florida, supra.)

18. Shall, when used in a statute, is presumptively imperative and creates a mandatory duty. Goldmark v. McKenna, 172 Wn.2d 568, 576, 259 P.3d 1097 (2010) (citing Phila. II v. Gregoire, 128 Wn.2d 707, 713, 911 P.2d 389 (1996); State v. Krall, 125 Wn.2d 146, 148, 881 P.2d 1040 (1994).

19. Under RAP 16.4(c)(2) Restraint is unlawful when the sentence entered in a criminal proceeding instituted by the state or local government was imposed in violation of the Constitution of the United States or Constitution or laws of the State of Washington.

RAP 16.4(c)(2).

20. Therefore the new RCW 9.94A.730(1) [2014 ch. 130 sec. 10] is discriminatory and arbitrary because as demonstrated the ISRB is treating my (Pet Brooks) Pre-SRA Case by simultaneous, and different sentencing systems - (1) the ISRB says they shall attempt to make decisions consistent with the SRA of 1981 by RCW 9.95.009(2) [1981 ch. 137, sec. 247]; and (2) this court holds "that between a statutory requirement not to release until rehabilitation is complete by RCW 9.95.100 and a duty to attempt consistency with the SRA of 1981, the statutory rehabilitation requirement trumps the duty to attempt consistency. In re: Pers. Restraint of Addleman, 151 Wn.2d 769, 775, 92 P.3d 222 (2004).

All this results in the ISRB pretense it has rehabilitation available for me (Pet. Brooks) but is not going to make that SOTAP - rehabilitation possible for

the 90-years minimum life recommendations of judge and prosecutor; and so, the new RCW 9.94A.730(1) [2014 ch. 130, sec. 10] constitutes a denial of due process, equal protection clauses by the eighth Amendment's cruel and unusual punishment against me (Pet. Brooks) since I am similarly situated as the class of juveniles who was sentenced by adult court to life without any possibility of parole.

21. The Excessive Fines Clause of the Eighth Amendment which guards against abuses of the government's criminal law is incorporated by the DUE PROCESS clause of the FOURTEENTH AMENDMENT, and is binding on the states. State v. W.W.J. Corp., 138 Wn.2d 595, 604, 980 P.2d 1257 (1999).

22. A statutory classification violates the Equal Protection Clause if it fails to rationally further a

legitimate state interest. Foley v. Dept. of Fisheries, 119 Wn.2d 783, 789, 837 P.2d 14 (1992).

23. Equal Protection Violation occurs when impermissible distinctions are drawn between two members of the same class. Duffy v. Dept. of Social & Health Services, 90 Wn.2d 673, 677, 585 P.2d 470 (1978).

24. In 1991 this state supreme court explained that the reason why the rehabilitation laws created illegal, unconstitutional disparaties is because—

"Individualized decision-making created a significant disparity among the sentences imposed for offenders of similar crimes in those cases which considered amenability to treatment... the purpose of the SRA, therefore, was to create a system ... and the emphasis was on proportionality, Equality

and Justice... The Legislature changed our sentencing system from Rehabilitation to determinate, having punishment as its purpose." State v. Barnes, 117 Wn.2d 701, 710-11, 818 P.2d 1088 (1991).

25. On November 12, 2018 the ISRB stated during my in-person hearing that -

"Cause you're not eligible for the Board to consider you as a juvenile Board case cause you been sentenced under Pre-SRA." ISRB CD Hearing minutes at 35:19

That ISRB statement constitutes discrimination of my (Pet. Brooks) class of a juvenile without legitimate goal or objective and is cruel and unusual since - "The words cruel and unusual when read in light of the English Proscription against selective and irregular use of penalties, suggest it is cruel and

unusual to apply any penalty selectively to minorities whose numbers are few, who are outcasts of society, and who are unpopular, but whom society is willing to see suffer though it would not countenance general application of the same penalty across the board." Furman v. Georgia, 408 U.S. 238, 244-45, 33 LEd2d 346, 92 Sct. 2726 (1972).

26. Therefore, the legislation R.C.W. 9.94A.730(1) [2014 ch. 130 sec. 10] results in selective punishment against only me (Pet Brooks) the pre-SRA juvenile who got sentenced by adult court to life minimum judge & prosecution recommendation and ISRB (successor to BPTP) re-affirming 90-years minimum without any real way to shorten it, since as shown ISRB has no rehabilitation interest, at least not any realistic before 90-years expires chance.

a. RCW 9.94A.730(1) [2014 Ch. 130 Sec. 10]'S SILENCE ON PRE-SRA JUVENILE SENTENCED to life without by adult Court is AMBIGUOUS

27. RCW 9.94A.730(1) states any person convicted of one or more crimes committed prior to the person's 18th birthday may petition the ISRB for early release after serving no less than twenty-years of total confinement. Provided the person has not committed a disqualifying serious infraction in the past twelve-months prior to filing the petition for early release.

28. The reading of RCW 9.94A.730(1) therefore is silent on Pre-SRA juveniles and in this case the rule of lenity requires retroactive application of RCW 9.94A.730(1) to my (Pet. Brooks') Pre-SRA juvenile

sentenced by adult court recommendation for BPTP/ISRB 1997 administrative decision reaffirm of 90-years minimum fixed in 1970.

29. In Weatherwax, this state high court explains that "Silence is Ambiguous" language, that a statute is ambiguous if more than one interpretation of the plain language is reasonable... In this situation, the rule of lenity requires us to interpret the statute strictly in favor of the defendant. Citing Conover 183 wn.2d at 712; see also, State v. Tvedt, 153 wn.2d 705, 710-11, 107 P.3d 728 (2005) (when choice has to be made between two readings of what conduct [the legislature] has made a crime, it is appropriate, before we choose the harsher alternative, to require that [the legislature] should have spoken in language that is clear and definite." (quoting United States v. Universal C.I.T. Credit Corp., 344 U.S. 218, 221-22, 73 S.Ct. 227, 97 L.Ed 260 (1952)). The underlying

Rationale for the Rule of Lenity is to Place the burden on the legislature to be clear and definite in Criminalizing Conduct and establishing Criminal Penalties. State v. Weatherwax 188 Wn.2d 139, 154-55, 392 P.3d 1055 (2017)

30. By Wash. Const. Art 1, section 3 - No Person shall be deprived of life, liberty or property without due Process of law

31. By Wash. Const. Art. 1, section 12 - No ~~Person~~ ~~St~~ Law shall be Passed granting any privileges which shall not equally belong to all Citizens.

32. By the fourteenth Amendment U.S. Const. - No state shall make or enforce any law which shall abridge the Privileges or immunities of Citizens of the United states; Nor shall any state deprive any Person of life, liberty or Property

without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws; and

33. Wash. Const. Art. 1, Sec. 14 holds - Nor cruel and unusual punishment inflicted

34. Eighth Amendment U.S. Const. holds - Nor cruel and unusual punishment inflicted.

35. Therefore, as demonstrated, the ISRB has no realistic opportunity for (90-years minimum) me (Pet. Brooks) to participate in any SOTAP total lock up rehabilitation program, and the evidence of 41-years 10-months consecutive years I've served proves the ISRB is being inhumane with conditions of total-lock up SOTAP rehabilitation opportunity following evolving standards of decency first with the SRA of 1990, then Miller v. Alabama, supra, and the Weatherwax, supra (evolving standard of Lenity Rule on silence in Legislation).

## G. CONCLUSION

Therefore, this state high Court Should find:

1) The Acting Judge Committed Plain Error;

2) The Rule of Lenity in Weatherway Requires ISRB to apply RCW 9.94A.730(1)(2014) retroactively, includes subsections (2) + (3); to Brooks Pre-SRA Juvenile sentenced by adult Court Case;

3) Brooks Case is remanded to ISRB for release by RCW 9.94A.730 within 60-days after this Decision; OR

4) The ISRB must Prove by Preponderance of evidence Brooks is high risk to re-offend if released. RCW 9.94A.730.

I, Carl Brooks, declare under Penalty of Perjury the foregoing is true and correct (by laws of state of Washington).

Respectfully submitted October 7, 2019

Carl Alonzo Brooks

Carl Alonzo Brooks #259045
Coyote Ridge Correction Center
1301 N. Ephrata Ave
Connell, WA 99326
Petitioner Pro se

# APPENDIX 1

FILED
8/20/2019
Court of Appeals
Division I
State of Washington

# IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
## DIVISION ONE

| | | |
|---|---|---|
| In the Matter of the Personal Restraint of: | ) | No. 79757-3-I |
| CARL ALONZO BROOKS, | ) | ORDER DISMISSING PERSONAL RESTRAINT PETITION |
| Petitioner. | ) | |

In 1978, Carl Brooks pleaded guilty to three counts of first degree robbery, one count of first degree rape, one count of first degree kidnapping, one count of first degree assault, one count of second degree murder, and one count of first degree burglary, all while armed with a deadly weapon. The trial court sentenced him to a maximum term of life imprisonment. Since his incarceration, the Indeterminate Sentence Review Board has imposed minimum terms consistent with the recommendations of the sentencing judge and the prosecuting attorney and with the guidelines of the Sentencing Reform Act. See RCW 9.95.009(2). Over the years, Brooks has filed numerous personal restraint petitions challenging his 1978 judgment and sentence and the subsequent Board decisions.

In his current petition, Brooks appears to argue that he is entitled to petition for release under a statutory provision enacted in 2014 in response to evolving jurisprudence regarding juvenile sentencing, RCW 9.94A.730. See Laws of 2014, ch. 130, § 10. Brooks contends that the Board abused its discretion by refusing to apply the "Miller fix" statute and by considering disciplinary infractions that occurred

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more than a year before his most recent parolability hearing. But because Brooks committed his offenses prior to the effective date of the Sentencing Reform Act of 1981 (SRA), the provisions of the SRA, including RCW 9.94A.730, do not apply. See RCW 9.94A.905.

Brooks's sentence is governed by the former indeterminate sentencing provisions of RCW 9.95. He received a sentence that was within the court's discretion to impose under those provisions. See In re Ayers, 105 Wn.2d 161, 162, 713 P.2d 88 (1986). Also, according to the documents Brooks has supplied in support of his petition, the Board most recently considered his parolability under RCW 9.95.100 in December 2018 and added 60 months to his minimum term.

Because Brooks's claim is time-barred, successive, and he makes no showing that he is entitled to relief, the petition must be dismissed. Now, therefore, it is hereby

ORDERED that the personal restraint petition is dismissed under RAP 16.11(b).

Mann, A.C.J.
Acting Chief Judge

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STATE SUPREME COURT Washington

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| In re: Pers. Restraint of: Carl Alonzo Brooks, Petitioner, Pro se. | NO. 97689-9 |
| | **AFFIDAVIT OF SERVICE BY MAILING** |

I, Carl Brooks, being first sworn upon oath, do hereby certify that I have served the following documents: Motion for Discretionary Review; Table of Contents; Affidavit Service by mailing

Upon: Clerk, state supreme court
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Clerk, court of Appeals I
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By placing same in the United States mail at:

WCC Library
Coyote Ridge Correct. Ctr.
1301 N Ephrata Ave.
Connell, WA 99326

On this 7th day of October, 2019.

Carl Brooks
Carl Brooks #259045
Name & Number

Affidavit pursuant to 28 U.S.C. 1746, Dickerson v. Wainwright 626 F.2d 1184 (1980); Affidavit sworn as true and correct under penalty of perjury and has full force of law and does not have to be verified by Notary Public.

Kleinbach
10/7/19

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