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No. 97766-6

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,
Respondent,

v.

TIMOTHY HAAG,
Appellant.

**SUPPLEMENTAL MEMORANDUM OF AMICUS CURIAE
FRED T. KOREMATSU CENTER FOR LAW AND EQUALITY
IN SUPPORT OF PETITION FOR REVIEW**

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IDENTITY AND INTEREST OF AMICUS CURIAE

The identity and interest of the Fred T. Korematsu Center for Law and Equality are set forth in the Motion for Leave to File Supplemental Memorandum of Amicus Curiae in Support of Review, submitted contemporaneously with this memorandum.

INTRODUCTION AND SUMMARY OF ARGUMENT

This Court has requested additional briefing regarding the effect of its decision in *State v. Delbosque*, __ Wn.2d __, 456 P.3d 806 (2020), on the issues presented in this case. Though certain aspects of Mr. Haag's case seem to mirror those of Mr. Delbosque's,¹ there are important differences that warrant review here. Amicus submits this memorandum² to demonstrate that the Court's decision in *Delbosque* does not resolve the issues presented by Mr. Haag because of the distinctions in the underlying findings and reasoning of the respective resentencing courts. The sentencing court here permitted retribution to eclipse the finding of diminished culpability, casting significant doubt on the constitutionality of

¹ Both Mr. Delbosque and Mr. Haag were convicted of one charge of aggravated first-degree murder; both were resentenced pursuant to the *Miller*-fix statute, RCW 10.95.030 & .035; both presented compelling evidence related to their diminished culpability based on the characteristics of youth identified in *Miller v. Alabama*, 567 U.S. 460, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012), and of their subsequent rehabilitation during their time in prison; and each received sentences that condemn them to spend nearly the entirety of their adult lives in prison.

² This memorandum is intended to supplement the arguments made in the Korematsu Center's Memorandum of Amicus in Support of Petition for Review, filed on December 9, 2019.

Mr. Haag's sentence under article I, section 14. *See State v. Bassett*, 192 Wn.2d 67, 82, 428 P.3d 343 (2018) (holding article I, section 14 is more protective in the juvenile sentencing context).

Review is warranted under RAP 13.4(b)(3) and (4) to ensure that the procedures governing the sentencing of children in adult court conform with the heightened protection of article I, section 14 and that sentencing courts are exercising discretion within constitutional bounds and not abusing their discretion by setting disproportionate minimum sentences in light of the evidence presented. This is especially the case when sentencing courts appear consistently to sentence children tried in adult courts to sentences that will, in practice, exceed the sentences served by the worst of the worst, those whose death sentences were converted to life imprisonment without parole after *State v. Gregory*, 192 Wn.2d 1 (2018).

ARGUMENT

The resentencing court in this case reviewed the mitigation evidence presented by Mr. Haag and acknowledged that he was both less culpable due to youth and largely rehabilitated since his crime was committed. *State v. Haag*, 10 Wn. App. 2d 2014, *3-4 (2019), (unpublished opinion). Yet the court imposed a disproportionate sentence of 46-years to life by relying almost solely on the retributive rationale for punishment, *see* Pet. for Rev. at 9-10, disregarding Mr. Haag's

demonstration of diminished culpability and capacity for change that this Court and the United States Supreme Court have required trial courts give great weight to in sentencing juvenile offenders. *See Miller*, 567 U.S. at 479.

I. This Court’s Decision in *Delbosque* Does Not Squarely Address the Issues Raised by Mr. Haag.

The underlying issues in *Delbosque* were different from those present in this case. In *Delbosque*, the trial court imposed a term of 48-years to life after finding that Mr. Delbosque exhibited an “ongoing attitude reflective of the murder” and that he was permanently incorrigible and irretrievably corrupt. 456 P.3d at 813, 814. This Court affirmed the Court of Appeals’ decision that those findings were not supported by substantial evidence, *id.* at 814, noting that the record suggested that “the trial judge did not adequately consider mitigation evidence that would support a finding of diminished culpability, rather than irretrievable depravity,” and did not reconcile the finding with the evidence demonstrating Mr. Delbosque’s capacity for change. *Id.* In determining the appropriate remedy for this error, this Court noted that the resentencing court did not have the benefit of the Court’s decisions in *State v. Ramos*, 187 Wn.2d 420, 387 P.3d 650 (2017), and *State v. Bassett*, 192 Wn.2d 67, 428 P.3d 343 (2018), at the time of the *Miller* hearing, and therefore could

not apply the relevant reasoning in determining a proportionate sentence for Mr. Delbosque. *Delbosque*, 456 P.3d at 814-15. The Court therefore remanded the case for resentencing to allow the trial court the opportunity to apply precedent from both of those cases, *id.* at 819, and to “*meaningfully* consider how juveniles are different from adults,” *id.* at 814 (quoting *Ramos*, 187 Wn.2d at 434-35) (emphasis not in original but added in *Delbosque*).

In contrast, while the resentencing court in this case imposed a similar-length minimum term of 46-years, it did so based on different findings and reasoning. Here, the trial court recognized that Mr. Haag had diminished culpability due to his youthful characteristics and underdeveloped brain. *State v. Haag*, 10 Wn. App. 2d 2014, *3 (2019), (unpublished opinion). It also recognized that Mr. Haag had significantly rehabilitated himself in prison. *Id.* at *4. Based on this, the court found that Mr. Haag was “not irretrievably depraved nor irreparably corrupt.” *Id.* (internal quotations omitted). However, the trial court determined that it must consider the gravity of the crime in addition to the mitigating circumstances, and in weighing those factors determined that retribution justified a 46-year minimum term sentence. Pet. for Rev. at 9-10. Taking place in 2018, the trial court had the benefit of this Court’s opinion in

Ramos.³ *Haag*, 10 Wn. App. 2d at *5. On appeal, the Court of Appeals held that the sentencing court exercised its discretion appropriately. *Id.* at * 14-15.

Because of these differences, the Court’s reasoning for remanding Mr. Delbosque’s case—that there was a lack of substantial evidence to support a finding of irreparable corruption—does not apply here. *See Delbosque*, 456 P.3d at 814.

II. This Court Should Accept Review to Determine Whether Mr. Haag’s Sentence Is Disproportionate in Light of the Sentencing Court’s Findings.

Mr. Haag’s case presents the unique question of whether a long-term minimum sentence can be proportionate under article I, section 14 where the sentencing court has acknowledged both diminished culpability and subsequent rehabilitation, and has specifically stated that Mr. Haag is not irretrievably depraved nor irreparably corrupt. While courts may consider retribution in imposing a sentence on a child, “[t]he heart of the retribution rationale is that a criminal sentence must be directly related to the personal culpability of the criminal offender.” *Graham v. Florida*, 560 U.S. 48, 71, 130 S. Ct. 2011, 176 L. Ed. 2d 825 (2010), *as modified* (July 6, 2010) (internal quotations omitted). Therefore, retribution does not

³ While the court had the benefit of the *Ramos* decision, *Bassett* had not yet been decided when Mr. Haag was resentenced. *Bassett*, 192 Wn.2d 67 (decided in October 2018, approximately nine months after Mr. Haag’s resentencing).

carry as much strength as a rationale for punishment when sentencing a juvenile who is less blameworthy due to his youth. *Roper v. Simmons*, 543 U.S. 551, 571, 125 S. Ct. 1183, 161 L. Ed. 2d 1 (2005) (“Retribution is not proportional if the law’s most severe penalty is imposed on one whose culpability or blameworthiness is diminished, to a substantial degree, by reason of youth and immaturity.”); *Bassett*, 192 Wn.2d at 88 (citing *Miller*, 567 U.S. at 472).

In setting the minimum term at 46-years, Mr. Haag will likely serve more cumulative years than the average served by those deemed the most blameworthy and sentenced to death pre-*Gregory*. See Memo. of Amicus Curiae Fred T. Korematsu Center for Law and Equality in Support of Pet. for Rev. at 6 (demonstrating that those previously sentenced to death whose sentences were converted to life imprisonment will likely serve less time than those resentenced pursuant to RCW 10.95.035 and .030). Though the minimum sentence of 46-years lies within the explicit legislative grant of authority under RCW 10.95.030, review is appropriate so this Court may consider whether this sentence exceeds the heightened protections afforded to juveniles under article I, section 14 of the Washington Constitution, due to their diminished culpability. *Bassett*, 192 Wn.2d at 82.

CONCLUSION

Amicus respectfully requests that the Court accept review for the foregoing reasons.

DATED this 14th day of March 2020.

Respectfully Submitted:

/s/ Melissa R. Lee

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Counsel for Amicus Curiae

FRED T. KOREMATSU CENTER FOR LAW AND EQUALITY

DECLARATION OF SERVICE

I declare under penalty of perjury under the laws of the State of Washington, that on March 14, 2020, the forgoing document was electronically filed with the Washington State's Appellate Court Portal, which will send notification of such filing to all attorneys of record.

Signed in Seattle, Washington, this 14th day of March, 2020.

/s/ Melissa R. Lee

Melissa R. Lee

Attorney for Amicus Curiae

FRED T. KOREMATSU CENTER FOR LAW AND EQUALITY

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