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NO. 100432-0

SUPREME COURT

STATE OF WASHINGTON

STATE OF WASHINGTON,

Plaintiff/Petitioner,

V.

JEREMIAH JAMES GILBERT,

Defendant/Respondent.

RESPONSE

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ISSUES PRESENTED FOR REVIEW

The State has filed a Petition for Discretionary Review based upon the provisions of RAP 13.4 (b)(1), (3) and (4).

The State claims that the Court of Appeals decision entered on November 2, 2021 (unpublished No. 37121-2-III) conflicts with the holding in *State v. Ramos*, 187 Wn.2d 420, 387 P.3d 650 (2017).

The State has phrased the issue as:

How should a resentencing court consider the facts of the crime and the input of victims and their survivors in imposing sentence on a person who committed multiple murders and other serious violent offenses as a teenager?

The State also poses a second question:

May a court impose a more severe sentence on a teenager convicted of multiple murders, who remains a moderate risk to reoffend, than on a teenager convicted of a single murder, who is at low risk to reoffend?

STATEMENT OF THE CASE

Fifteen (15) year-old Jeremiah James Gilbert shot and killed Robert Gresham and Loren Evans on September 20, 1992 in Klickitat County, Washington. He was also accused of other multiple offenses including first degree assault against Farrell Harris. (CP 1-8)

A decline hearing was held prior to the filing of an Information on October 28, 1992. The juvenile court administrator prepared a report for that hearing based upon the eight (8) criteria in *Kent v. United States*, 383 U.S. 541, 86 S. Ct. 1045, 16 L. Ed.2d 84 (1966). That evaluation stated:

The murders were not planned but rather appeared to be an impulsive reaction to being confronted during the attempted truck theft. The probation report presented at his decline hearing noted that he did not meet the Kent criteria for sophistication and maturity and his ability to process information and his decision-making capacity was not the same as an adult's capacity. This perspective was echoed in the testimony of the Klickitat County Juve-

nile Court Administrator who commented that *he was not particularly sophisticated or mature beyond his age. His alcohol use was a factor as it appeared to be associated with declines in his school performance and increasing difficulties in his family life.*

(CP 20) (Emphasis added.)

Following a jury trial Judgment and Sentence was entered on June 7, 1993. The trial court imposed a sentence of life in prison without possibility of parole (LWOP) on aggravated first-degree murder. A sentence of two hundred and eighty (280) months was imposed on first degree murder and ran consecutively to the aggravated murder conviction. The sentences on the other offenses were run concurrently with one another and concurrent with the aggravated murder offense. (CP 9)

Mr. Gilbert's case was eventually remanded to Klickitat County Superior Court for resentencing based upon *Miller v. Alabama*, 567 U.S. 460, 132 S. Ct. 2455, 183 L. Ed.2d 407 (2012).

The resentencing court, believing it was constrained to imposing a twenty-five (25) year minimum sentence on the aggravated murder conviction amended the Judgment and Sentence as to that conviction, only. The consecutive sentence of two hundred and eighty (280) months for the first-degree murder conviction was re-imposed. (CP 52)

Mr. Gilbert filed a Notice of Appeal on September 22, 2015.

The Court of Appeals affirmed the resentencing court in an unpublished opinion noted at 3 Wn. App.2d 1007 (2018).

The Supreme Court accepted Mr. Gilbert's Petition for Discretionary Review (PDR) and rendered a decision on April 4, 2019 remanding the case for a second resentencing hearing. *See: State v. Gilbert*, 193 Wn.2d 169 (2019).

The State's opening statement at the second resentencing hearing set forth the groundwork for the victim impact statements and the Court's ultimate ruling when the prosecutor said:

... This is not a result of transient immaturity in any fashion. This is a result of a blackened heart that led to the death of two individuals in one - one of the most gruesome imaginable ways - an execution while a person is begging for their life.

(RP 15, l. 24 to RP 16, l. 3)

In its ruling the Court concluded: “This crime was not a result of transient immaturity; but the actions of a cold and calculated, heartless murder.” (RP 186, l. 25 to RP 187, l. 5; Appendix “A”)

The second resentencing hearing was held on September 24, 2019. A Second Amended Judgment and Sentence was entered that same date. The only change from the Amended Judgment and Sentence was a reduction on the first-degree murder conviction from two hundred and eighty (280) months to two hundred and forty (240) months. (CP 475)

Mr. Gilbert filed his Notice of Appeal on October 14, 2019. (CP 487)

The Court of Appeals reversed the trial court's de facto life sentence and remanded the case for a third resentencing hearing.

The State filed a Petition for Discretionary Review on December 2, 2021.

ARGUMENT

Constitutional Art. I, § 35

The State's initial issue involves a balancing of victims' rights and the facts surrounding the criminal offense(s).

Const. art. I, § 35 states:

Effective law enforcement depends on cooperation from victims of crime. To ensure victims a meaningful role in the criminal justice system and to accord them due dignity and respect, victims of crime are hereby granted the following basic and fundamental rights.

Upon notifying the prosecuting attorney, a victim of a crime charged as a

felony shall have the right to be informed of and, subject to the discretion of the individual presiding over the trial or court proceedings, attend trial and all other court proceedings the defendant has the right to attend, and to make a statement at sentencing and at any proceeding where the defendant's release is considered, subject to the same rules of procedure which govern the defendant's rights. In the event the victim is deceased, incompetent, a minor, or otherwise unavailable, the prosecuting attorney may identify a representative to appear to exercise the victim's rights. This provision shall not constitute a basis for error in favor of a defendant in a criminal proceeding nor a basis for providing a victim or the victim's representative with court appointed counsel.

There can be no argument that the victim statements made during Mr. Gilbert's resentencing hearing were authorized pursuant to the constitutional provision. Their statements reflect the deep and lasting impact that Mr. Gilbert's offenses had on them individually and as a family.

The underlying facts of the respective offenses represent the basis for the victim's statements. Nevertheless, a sentencing

court must strike a balance when making a determination as to whether or not a particular sentence falls within the ambit of constitutionality.

Both the Eighth Amendment to the United States Constitution and Const. art I, § 14 decry cruel and/or unusual punishment.

The Eighth Amendment prohibits mandatory life sentences without possibility of parole for youthful offenders under 18 years of age who have committed crimes involving homicide. An individualized sentencing hearing must take place and the court must take into account the attributes of youth and the life circumstances of the youth before determining a sentence. Life without parole sentences should be the rare exception. This includes de facto life sentences. *See: Miller v. Alabama*, 567 U.S. 460, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012).

Life without possibility of parole sentences for offenders under 18 years of age at the time of the crime are unconstitu-

tional. Such sentences necessarily encompass de facto life sentences. *See: State v. Bassett*, 192 Wn.2d 67, 428 P.3d 343 (2018); *see also State v. Haag*, 198 Wn.2d 309, 495 P.3d 241 (2021) (retribution must count for less than mitigating factors when conducting a resentencing hearing).

Washington ensures that crime victims and survivors of victims have a significant role in the criminal justice system through statutes and our state constitution. *See, e.g.* ch. 7.69 RCW; CONST. art. I, § 35 (Amend. 84). The courts have an obligation to vigorously protect these rights. RCW 7.69.010. However, these rights are not considered in a vacuum; they must be considered together with the defendant's due process rights. In the event that the crime victim(s) impede the defendant's due process rights, the court must make every reasonable effort to harmonize these distinct rights and to give meaning to all parts of the Washington State Constitution. *State v. Gentry*, 125 Wn.2d 570, 625, 888 P.2d 1105 (1995). To the extent that these rights are irreconcilable, federal due process rights supersede rights arising under Washington's statutes or constitution.

State v. MacDonald, 183 Wn.2d 1, 16, 346 P.3d 748 (2015).

Section I of the Fourteenth Amendment to the United States Constitution states, in part:

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.

Const. art. I, § 3 provides: “No person shall be deprived of life, liberty, or property, without due process of law.”

The trial court’s oral ruling adversely impacted Mr. Gilbert’s due process rights when the court placed undue reliance upon the facts of the crime as opposed to Mr. Gilbert’s rehabilitation.

RCW 10.95.030.

RCW 10.95.030 (the *Miller*-fix) provides, in part:

(3)(a)(i) *Any person convicted of the crime of aggravated first degree murder for an offense committed prior to the person's sixteenth birthday shall be sentenced to a maximum term of life*

imprisonment and a minimum term of total confinement of twenty-five years.
(ii) Any person convicted of the crime of aggravated first degree murder for an offense committed when the person is at least sixteen years old but less than eighteen years old shall be sentenced to a maximum term of life imprisonment and a minimum term of total confinement of no less than twenty-five years. A minimum term of life may be imposed, in which case the person will be ineligible for parole or early release.

(Emphasis supplied.)

Mr. Gilbert falls within the parameters of RCW 10.95.030 (3)(a)(i). He has served the minimum 25 year term on the aggravated first degree murder conviction. The Indeterminate Sentencing Review Board (ISRB) has seen fit to parole him in connection with that conviction. (Appendix “B”)

The stumbling block in Mr. Gilbert’s case is the companion conviction of first degree murder. The sentencing courts have consistently imposed a consecutive 20 year minimum sentence in accord with the provisions of RCW 9.94A.540 (1)(a).

Another issue that arises, and which should have application insofar as resentencing is concerned, is the provision contained in RCW 9.94A.540 (3) which states:

- (a) Subsection (1)(a) through (d) of this section shall not be applied in sentencing of juveniles tried as adults pursuant to RCW 13.04.030(1)(e)(i).
- (b) This subsection (3) applies only to crimes committed on or after July 24, 2005.

The foregoing provision was enacted by Laws of 2005, Ch. 437, § 2 (eff. July 24, 2005).

Mr. Gilbert contends that the legislative enactment of RCW 9.94A.540 (3) derives from the decision in *Roper v. Simmons*, 543 U.S. 551, 125 S. Ct. 1183, 161 L. Ed.2d 1 (2005). His position gains credence from the legislative intent set out in § 1 of that act which states:

The legislature finds that emerging research on brain development indicates that adolescent brains, and thus adolescent intellectual and emotional capabilities, differ significantly from those of mature adults. It is appropriate to

take these differences into consideration when sentencing juveniles tried as adults. *The legislature further finds that applying mandatory minimum sentences for juveniles tried as adults prevents trial court judges from taking these differences into consideration in appropriate circumstances.*

(Emphasis supplied.)

It is at this juncture that the trial judge at Mr. Gilbert's resentencing hearing deviated from what is required in making a determination as to transient immaturity.

A sentencing court must take into consideration the difference between a child exhibiting "transient immaturity" and the other child whose crime reflects "irreparable corruption." The need to do so is set out in *Montgomery v. Louisiana*, 577 U.S. 190, 136 S. Ct. 718, 735, 193 L. Ed.2d 599 (2016); *see also Tatum v. Arizona*, 580 U.S. ___, 137 S. Ct. 11, 196 L. Ed. 2d 284 (2016). where in referring to the consolidated cases, Justice Sotomayor ruled:

On the record before us, none of the sentencing judges address the question *Miller* and *Montgomery* require a sentencer to ask: whether the petitioner was among the very “lowest of juvenile offenders, those whose crimes reflect permanent incorrigibility.”

This case was stayed pending the decision in *State v. Anderson*, 200 Wn.2d 266 (2022) It is of importance to Mr. Gilbert’s case and the issues raised by the State. *See*: fn.8, p. 266:

Our opinion in *Haag*, like earlier cases, uses the common descriptors from landmark United States Supreme Court cases on juvenile justice, but we take this opportunity to note that some echo archaic notions and fail to capture the constitutional inquiry. Phrases such as “irreparable corruption” and “irretrievably depraved character” wrongly suggest a juvenile offender’s innate character determines the constitutionality of their punishment. *Roper v. Simmons*, 543 U.S. 551, 573, 570, 125 S. Ct. 1183, 161 L. Ed. 2d 1 (2005). A more accurate—and less pejorative—description of the constitutional inquiry is one used in *Miller*, which considers the “hallmark features[of youth, including] immaturity, impetuosity, and failure to appreciate risks and consequences.” 567 U.S. at

477, 132 S. Ct. 2455. In this opinion, we strive to frame the inquiry under Washington's constitution in these terms. The central question under article I, section 14 is whether and to what extent a juvenile offender's youthful characteristics were a factor in the commission of their crime(s). This is not a binary question; some juvenile offenders will be more influenced by their youthful characteristics than others. Accordingly, sentencing courts must meaningfully consider how, if at all, a juvenile offender's mitigating characteristics of youth affected the commission of their crime(s) to determine whether the juvenile offender is less culpable than an adult who engages in the same behavior.

What the trial judge did in rendering his decision that Mr. Gilbert's offenses were not the result of transient immaturity was to view those offenses from the standpoint of an adult having committed the offenses. It is due to this lapse by the trial court that resulted in Mr. Gilbert still be subjected to a de facto life sentence.

DE FACTO LIFE SENTENCE

When a trial court makes a finding that a juvenile offense does not reflect transient immaturity it tells that person that:

- 1) He/she is the worst of the worst;
- 2) You are incorrigible;
- 3) You are defective;
- 4) You cannot be rehabilitated;
- 5) You are a monster;
- 6) You are boogieman;
- 7) You have forfeited your right to live a free life.

Query: What constitutes a de facto life sentence?

This Court has previously indicated that a forty-six-year minimum term constitutes an unconstitutional de facto life sentence. Mr. Haag requested a twenty-five-year sentence at the resentencing hearing. The State requested a sixty year minimum sentence. *State v. Haag, supra* at 313.

The resentencing court's imposition of a forty-five-year sentence on Mr. Gilbert is also a de facto life sentence.

As in *Haag*, the current resentencing court also placed undue emphasis on retribution verses a mitigated sentence.

The *Haag* Court noted at 321-22 that

*The Miller Court made clear that retribution cannot take precedence in juvenile sentencing. See 567 U.S. at 472, 132 S. Ct. 2455 (“Because ‘[t]he heart of the retribution rationale’ relates to an offender’s blameworthiness, ‘the case for retribution is not as strong with a minor as with an adult.’” (quoting *Graham*, [560 U.S. 48, 71, 130 S. Ct. 2011, 176 L. Ed.2d 825 (2010)]) It, instead, focused on the “mitigating qualities of youth.” *Id.* at 476, 132 S. Ct. 2455 (quoting *Johnson v. Texas*, 509 U.S. 350, 367, 113 S. Ct. 2658, 125 L. Ed. 2d 290 (1993)). This followed the Court’s decision in *Graham*, where the Court noted that states must provide juvenile offenders with “some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.” 560 U.S. at 75 (emphasis added); see also *Miller*, 567 U.S. at 473, 132 S. Ct.*

2455 (“Graham 's reasoning implicates any life-without-parole sentence imposed on a juvenile.”).

(Emphasis supplied.)

As matters now stand, Mr. Gilbert has been subjected to the mandatory minimum twenty-five year sentence for his aggravated first degree murder conviction and the mandatory twenty-year sentence for his first degree murder conviction. The mandatory minimums amount to the forty-five year sentence currently in effect.

Mr. Gilbert maintains that the resentencing court abused its discretion when it ignored the mitigation evidence presented through his Department of Corrections (DOC) history, accomplishments and the psychological evaluations by Dr. Roesch. Instead, the resentencing court nitpicked the DOC records, misapplied Dr. Wentworth’s evaluation and basically gave little merit to Dr. Roesch’s conclusion.

Discretion may be abused if it is exercised on untenable grounds or for untenable reasons, such as a misunderstanding of the law. *State v. Quismundo*, 164 Wn.2d 499, 504, 192 P.3d 342 (2008) (citing *State v. Rohrich*, 149 Wn.2d 647, 654, 71 P.3d 638 (2003)).

State v. Enriquez-Martinez, 198 Wn.2d 98, 101, 492 P.3d 162 (2021).

It is apparent that the Court did not place a great deal of credence upon Mr. Gilbert's efforts at rehabilitation over the prior 27 years. Instead the Court cites to an infraction (May 12, 2017) which did not result in any designation of violence by Mr. Gilbert. (Appendix "C"-OMNI report); (WAC 137-25-030 (709); Appendix "D")

DOC has established various categories of serious infractions. Mr. Gilbert's infraction was "709- out of bounds- being in another offender's cell or being in an area in the facility with one or more offenders without authorization."

Dr. Roesch, in his testimony, stated the following concerning Mr. Gilbert's mental state

...[T]he testing showed that he does not have any major mental disorders, nor does he have a personality disorder, which includes antisocial personality disorder. And that finding was also the result of an interview and testing that was done by another psychologist as part of a parole hearing in 2017, Dr. Wentworth's evaluation.

She came to the same conclusion that he does not have any major mental health issues, does not have an antisocial personality disorder or any personality disorder.

(RP 76, l. 22 to RP 78, l. 2)

The trial court's misreading of Dr. Wentworth's report resulted in a conclusion that Mr. Gilbert suffered from antisocial personality disorders. Obviously the trial court overlooked the portion of that particular paragraph "this individual does not meet current diagnostic criteria for these disorder types and has not required mental health services while incarcerated" which is a positive factor in support of Mr. Gilbert's rehabilitation. (CP 256; Appendix "E")

As this court recognized in *State v. Gilbert, supra*, p. 175 (*Gilbert I*):

...[S]entencing courts must account for the mitigating qualities of youth and have absolute discretion to consider an exceptional downward sentence in light of such mitigating factors. We held that sentencing courts possess this discretion to consider downward sentences for juvenile offenders *regardless of any sentencing provision to the contrary*. *Houston-Sconiers*, 188 Wn.2d at 21, 391 P.3d 409.

(Emphasis supplied.)

Furthermore, *State v. Ramos, supra*, p. 435 provides:

If the juvenile proves by a preponderance of the evidence that his or her crimes reflect transient immaturity, substantial and compelling reasons would necessarily justify an exceptional sentence below the standard range because a standard range sentence would be unconstitutional.

Even though the resentencing court reduced the consecutive sentence from 280 months to 240 months it obviously did so based upon the mandatory minimum of RCW 9.94A.540 (3)(b).

In *State v. Ramos, supra*, p. 436, the Court recognized that:

Miller establishes a substantive rule that a life-without-parole sentence cannot be imposed on a juvenile homicide offender whose crimes reflect transient immaturity. Therefore, where a juvenile offender facing a standard range life-without-parole sentence proves that his or her crimes reflect transient immaturity, the juvenile has necessarily proved that there are substantial and compelling reasons for an exceptional sentence downward. *Miller* anticipates that most juveniles will be able to meet this burden of proof, and we now explicitly hold that all juvenile homicide offenders must be given the

opportunity to do so at a *Miller* hearing.

The case of *State v. Delbosque*, 195 Wn.2d 106, 456 P.3d 806 (2020) consists of similar facts to Mr. Gilbert’s case. Mr. Delbosque was convicted of one count of aggravated first degree murder and a further count of second degree felony murder.

The importance of the *Delbosque* case relates to its discussion concerning the *Ramos* case. The *Delbosque* Court stated at 122:

...[E]very judge conducting a *Miller* sentencing in Washington must set a minimum term that is less than life. In *Ramos* we stated that a “standard range consecutive sentencing may, and in this case did, result in a total prison term exceeding the average human life-span – that is, a de facto life sentence.” 187 Wn. 2d at 434. However, we did not define “de facto life sentence” as a “total prison term exceeding the average human life-span. *Id.* rather, we explicitly stated, “it is undisputed that *Ramos*’85-year aggregate sentence is a de facto life sentence, so the question of precisely how long a potential sentence must be in order to

trigger *Miller*'s requirements is not before us. *We reserve ruling on that question until we have a case in which it is squarely presented.*" *Id.* at 439, n.6 (emphasis added).

It is Mr. Gilbert's position that if the Court determines to accept the State's PDR then his case would be appropriate for making the determination that was not made in either *Ramos* or *Delbosque*.

In connection with his position, he points out that the Legislature has not seen fit to weigh in on the issue of de facto life sentences. When the Legislature enacted the *Miller*-fix statute it set a mandatory minimum sentence of twenty-five years.

The Legislature also distinguished between those juveniles under 16 years of age and those 16 years of age and older. There was an obvious recognition that a significant difference existed between those age groups.

Insofar as the minimum 25 year term that the Legislature established, it also recognized in RCW 10.95.030 (3)(b) that:

In setting a minimum term, the court must take into account mitigating factors that account for the diminished culpability of youth as provided in *Miller v. Alabama*, 132 S. Ct. 2455 (2012) including, but not limited to, the age of the individual, the youth's childhood and life experience, the degree of responsibility the youth was capable of exercising, and the youth's chances of becoming rehabilitated.

The Legislature's intent as outlined in subsection (2) of Laws of 2005, Ch. 437 clearly allows consideration of the elimination of all mandatory minimum sentences for juveniles under that particular statute. This includes Mr. Gilbert's conviction for first degree murder. *See: State v. Ronquillo*, 190 Wn. App. 765, 775, 361 P.3d 779 (2015) (citing and adopting the decision in *State v. Null*, 836 N.W.2d 41, 71-75 (Iowa 2013) ("determining that the *Miller* principles are fully applicable to lengthy term-of-years sentences, especially where a juvenile offender would face the prospect of geriatric release.")).

The *Ronquillo* Court noted at 784-85:

As directed by the plain language of RCW 9.94A.535(1)(g), a trial court must look to the purposes of the Sentencing Reform Act as expressed in RCW 9.94A.010 to determine whether mitigation of a consecutive sentence is appropriate in a particular case. ...

“Sentencing judges should examine each of these policies when imposing an exceptional sentence under .535(1)(g).” *State v. Graham*, [181 Wn.2d 887, 337 P.3d 319 (2014)].

Here, these purposes should be examined in light of *Miller* in the same manner that the exceptional sentencing framework in *O'Dell* ... was examined in light of *Miller*. In that light, many if not all of the seven statutory purposes will point toward a mitigated sentence.

The statutory intent, in conjunction with the *Houston-Sconiers* decision, would seem to implicate the application of RCW 9.94A.730 (1).

RCW 9.94A.730 (1) provides, in part:

Notwithstanding any other provision of this chapter, any person convicted of one or more crimes committed prior to the person's eighteenth birthday may petition the indeterminate sentence review board for early release after serving no less than twenty years of total confinement....

The statutory language “convicted of one or more crimes committed prior to the person’s eighteenth birthday” and “after serving no less than twenty years of total confinement” does not distinguish between the number of convictions that may be included in a single judgment and sentence. Rather, it would seem to indicate that the sentence imposed, whether concurrent or consecutive, would be subject to review by the ISRB after twenty years of confinement.

Mr. Gilbert has been confined for a total of 31 plus years at this time.

The recent case of *Personal Restraint of Dodge*, 198 Wn.2d 826, 839, 502 P.2d 349 (2022) addresses the interrelationship of RCW 9.94A.730 with the *Miller*-fix statute. In conjunction with that analysis the *Dodge* court noted in fn.6 at 839:

While subsequent United States Supreme Court cases, notably *Jones v. Mississippi*, 593 U.S. ___, 141 S. Ct. 1307, 209 L. Ed. 2d 390 (2021), have arguably narrowed parts of Miller's holding, these later developments do not change the plain text of the Miller-fix statute, nor can they change the legislature's intent at the time it enacted the statute. Moreover, state legislatures are free to enact laws that are more protective than required by the federal constitution, and *state constitutions are likewise free to provide greater protection than the federal constitution requires...*

(Emphasis supplied.)

The State's position concerning a conflict with the *Ramos* case does not take into account that the law continues to develop as to the imposition of excessive sentences not only involving juveniles; but also adults.

The *Delbosque* Court's reliance on *United State v. Briones*, 929 F.3d 1057, 1067 ((9th Cir. 2019) further emphasizes the trial court's abuse of discretion when it

... instructed courts to reorient the sentencing analysis to a forward-looking assessment of the defendant's capacity for change or propensity for incorrigibility, rather than a backward-focused review of the defendant's criminal history.

CONCLUSION

The Court of Appeals decision reversing the trial court's resentencing ruling should be affirmed. It does not constitute an issue of public importance. It does not contravene the decision in *State v. Ramos, supra*, or *State v. Delbosque, supra*. It comports with the intent of and the policy behind the SRA. It does not arise to an issue of constitutional magnitude.

For a sentence of life without parole to be proportional as applied to a juvenile murderer, a sentencing court must first find, based on competent evidence, that the offender is entirely unable to change. It must find that there is no possibility that the offender could be rehabilitated at any point later in his

life, no matter how much time he spends in prison and regardless of the amount of therapeutic intervention he receives, and that the crime committed reflects the juvenile's true and unchangeable personality and character.

...

[I]n the absence of the sentencing court reaching a conclusion, supported by competent evidence, that the defendant will forever be incorrigible, without any hope for rehabilitation
Life-without-parole sentence imposed on the juvenile is illegal, and it is beyond the Court's power to impose.

Commonwealth v. Batts, 163 A.3d 410, 435 (2016).

Mr. Gilbert has currently served thirty plus (30+) years of his sentence. Twenty-five (25) years of that sentence constitute the mandatory minimum for the aggravated first-degree murder conviction. Thus, under this new sentence he has thirteen (13) years remaining on the first-degree murder conviction.

Potential release at age sixty (60) is insufficient to address the concerns of *Graham* or *Miller*. It ignores the meaningful opportunity to demonstrate maturity and rehabilitation as required

to obtain release and reentry into society. The ISRB has determined that Mr. Gilbert meets that criteria.

Mr. Gilbert has been incarcerated since prior to his sixteenth (16th) birthday. He has spent two-thirds (2/3) of his life in prison.

Mr. Gilbert recognizes the inherent difficulties facing trial courts, resentencing courts and appellate courts in attempting to arrive at a consensus of what constitutes a *de facto* life sentence. There exists a tension insofar as sentencing procedures are concerned. This is a tension between the legislature and the courts.

The State's argument that RAP 13.4 (b)(1), (3) and (4) require that the Court of Appeals decision be reversed is not well-taken and it should be affirmed.

Certificate of Compliance: I hereby certify there are 4756 words contained in this Response.

DATED this 23rd day of January, 2023.

Respectfully submitted,

s/ Dennis W. Morgan

DENNIS W. MORGAN WSBA #5286

Attorney for Defendant/Appellant.

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Republic, WA 99166

(509) 775-0777

(509) 775-0776

APPENDIX “A”

COURT READS RULING

1 and for the families over here that are living with
2 the fact that their family member or friend is a result
3 -- that committed an act that resulted in these losses
4 of lives out there.

5 So, that's just kind of a -- caveat as I get
6 started here talking about that -- that I recognize
7 the gravity of these types of events and decisions
8 that this Court needs to make and recognize that I
9 cannot heal those wounds that are out there; but
10 hopefully this will be at least one step in that right
11 direction.

12 COURT READS RULING

13 THE COURT: Mr. Gilbert comes before this
14 Court today for a sentencing after being convicted at
15 trial of the following crimes:

16 Count I - murder in the first degree, a serious
17 violent offense involving Robert Gresham.

18 Count II - aggravated murder in the first degree,
19 a serious violent offense involving Loren Evans.

20 Count III - assault in the second-degree
21 involving Farrell Harris, a violent offense.

22 Count IV - burglary in the first-degree involving
23 Jeff Gray's residence, a violent offense.

24 Count V - the crime of theft in the first-degree
25 involving Neal Kaiser's tractor, a non-violent

1 offense.

2 And Count VI - robbery in the first-degree
3 involving Loren Evans' pickup truck, a violent
4 offense.

5 A short synopsis of the relevant facts are as
6 follows:

7 Sometime prior to September 20th, 1992, the
8 defendant Jeremy [sic] James Gilbert and Shannon Rau
9 ran away from home and end up at Klickitat County where
10 they -- when they brought with them two firearm - a
11 .22 rifle and a .30-06 rifle. After spending the night
12 in Klickitat County, Mr. Gilbert and Mr. Rau stole a
13 tractor belonging to Neal Kaiser.

14 Mr. Gilbert and Mr. Rau drove to a residence
15 belonging to Jeff Gray. When they were there, they
16 shot a lock off the residence and they entered that
17 residence wherein they shot holes in the walls in the
18 residence. After leaving the Gray residence, Mr.
19 Gilbert and Mr. Rau drove down the road and stopped at
20 a vehicle belonging to Ferrell Harris who was in the
21 area hunting.

22 Mr. Gilbert then went to Mr. Harris's vehicle and
23 broke out the window and attempted to hotwire the
24 vehicle. Mr. Harris, who observed this activity, went
25 to confront Mr. Gilbert and Mr. Rau. Mr. Gilbert

COURT READS RULING

1 grabbed a rifle and he shot at Mr. Harris. Mr. Harris
2 fled into the wood. Mr. Gilbert continued to fire
3 shots at Mr. Harris.

4 While this was going on, Robert Gresham
5 approached on the air -- approached the area on a
6 motorcycle. Mr. Gilbert leaned on a tractor tire and
7 shot Mr. Gresham, striking him two times in the
8 shoulder. Mr. Gresham then approached Robert Gresham,
9 who was lying on the ground, begging for his life,
10 where Gilbert executed Mr. Gresham by shooting him in
11 the head to do, as what Mr. Gilbert said - to shut him
12 up and to stop him from yelling and screaming.

13 Moments later Loren Evans drove to the area. Mr.
14 Gilbert leaned across Mr. Harris's vehicle and fired
15 a shot, shattering Mr. Evans' vehicle windshield and
16 striking and killing Loren Evans. Mr. Evans vehicle
17 came to a stop before striking Mr. Harris' vehicle.
18 Mr. Gilbert and Mr. Rau then dumped Loren Evans from
19 -- body from the vehicle. Mr. Gilbert and Mr. Rau
20 then stole Loren -- Loren Evans' vehicle and fled the
21 area.

22 Sometime after leaving the area, Mr. Gilbert and
23 Mr. Rau separated. Both were subsequently arrested
24 and, after initially denying involvement, Mr. Gilbert
25 confessed to law enforcement regarding his

1 involvement. He was subsequently convicted of the
2 formerly previously mentioned charges and sentenced to
3 life in prison.

4 At that time Mr. Gilbert was fifteen years of age
5 at the time of the crimes. Mr. Gilbert's childhood
6 and family life, up to age fifteen, could be deemed
7 somewhat dysfunctional from the age of twelve and on,
8 to say the least. And Mr. Gilbert himself suffered
9 from alcohol addiction issues, even at that young age.
10 Mr. Gilbert's early years in prison were filled with
11 multiple violations and infractions. Albeit this has
12 been described as not atypical of what one would expect
13 from a young inmate in on a life sentence.

14 Over the years the infractions began to decrease
15 in number and severity. Mr. Gilbert did receive a
16 serious infraction in 2017 and also had prior
17 infractions that included assaulting a corrections
18 officer in 2006 at the age of thirty.

19 I'll also note that Mr. Gilbert has made
20 significant tries -- strides towards the ideal of being
21 a productive member of society by his attainment of
22 certificates and awards for satisfactorily completing
23 multiple prison programs. I also find it excessively
24 -- exceptionally interesting some of Mr. Gilbert's
25 work that he's done with the dog rescue programs while

COURT READS RULING

1 incarcerated, as well as the white bison program.

2 Mr. Gilbert does appear to be earnest in his
3 efforts to become something more than the image of a
4 callous, heartless, executioner of two innocent men
5 that most people envision when hearing his name. His
6 body of work while in prison is a positive indicator
7 of this earnest effort.

8 Also, of note are the facts that the indeterminate
9 Sentence Review Board has found Mr. Gilbert releasable
10 from his up to a life imprisonment sentence for Count
11 II, the aggravated murder in the first-degree
12 conviction.

13 Secondly, Mr. Gilbert was also evaluated --
14 evaluated by psychologists with the Washington State
15 Department of Corrections and Mr. Gilbert was found to
16 be a modate -- moderate risk to re-offend, if certain
17 parameters were put in place.

18 In sentencing an individual of an offense
19 committed prior to the individual turning eighteen,
20 the Court -- and this Court, was specifically tasked
21 in the ruling that was issued in directing the Court
22 what to do. The Court is tasked with considering the
23 defendant's youth and the circumstances surrounding
24 the defendant's use -- youth as potential mitigating
25 factors for the possible imposition of an exceptional

COURT READS RULING

1 sentence when sentencing a quote/unquote "juvenile" on
2 a criminal offense.

3 The other factors the Court must look at include
4 the juvenile's immaturity and inability to appreciate
5 the risks and consequences; 2) the nature of the
6 juvenile's surrounding environment; 3) the extent of
7 the juvenile's participation in the crime; 4) familial
8 and peer pressures which may have affected the
9 juvenile; 5) how the youth -- how the use -- youth
10 impacted any potential legal defenses; 6) any other
11 factors suggesting juvenile might be successfully
12 rehabilitated.

13 Along with these felon -- factors, the Court is
14 also directed to look at the convictions at issue, as
15 well as the standard sentencing ranges and any other
16 relevant factors. Its also directed to go ahead and
17 determine whether to impose an exceptional sentence.

18 In its briefing the State has essentially not
19 challenged the previous -- the proposed arguments made
20 by Mr. Gilbert as to how his youth and the surrounding
21 circumstances support his position for an exceptional
22 sentence; but rather, that their proposed
23 recommendation is an appropriate sentence for the two
24 convictions of murder.

25 That being said, the Court will quickly address

COURT READS RULING

1 the various factors, essentially as proc -- presented
2 in Mr. Gilbert's -- by Mr. Gilbert's counsel.

3 First factor - the juvenile's immaturity and
4 inability to appreciate risk. Again, the Court has
5 previously indicated that Mr. Gilbert was fifteen
6 years of age at the time of the crimes. He was
7 described by the juvenile court administrator as
8 unsophisticated. This also militated against --
9 [phonetic] by the fact that Mr. Gilbert though had a
10 prior involvement in the criminal justice system just
11 months before these heinous acts occurred.

12 Again, as previously noted, Mr. Gilbert's family
13 life was somewhat dysfunctional after the age of twelve
14 and it appears that Mr. Gilbert was constantly fighting
15 with his stepfather and had a drinking problem, even
16 at that young age. One example of his inability to
17 appreciate risk is obviously running away with only
18 two cans of food and no plans [inaudible on tape --
19 muffled].

20 Secondly, the Court must look at the nature of
21 the juvenile's surroundings. As described by Mr.
22 Gilbert and his counsel, his surroundings were fraught
23 with conflict and substance abuse after age twelve, up
24 to age fifteen. But that prior to that time it was
25 mostly unremarkable, and he was the product of a good

1 family.

2 Three, the extent of the juvenile's participation
3 in the crime. This is essentially where the rubber
4 hits the road in my overall analysis of this case.
5 What stands out most are two points. One, Mr. Gilbert,
6 your active leadership in the role in these events.
7 And two, the callous nature in which you committed
8 these horrendous acts.

9 You took your time in executing both of these
10 individuals - Mr. Gresham and Mr. Evans. You took
11 your time to use a wheel, a tractor tire and a vehicle
12 as a tripod to steady yourself for both murders. You
13 were the primary actor and the only one shooting the
14 firearm and evidence also exists that's showing Mr.
15 Rau's attempts even to attempt to minimize the plans;
16 but you carried on, going so far as to execute Robert
17 Gresham to stop him from yelling and screaming by
18 shooting him in the head at point blank range to shut
19 him up. You acted, in most respects, alone for these
20 murders and not as an unworthy participant dragged
21 along by the forces of peer pressure.

22 Fourth factor - the way familial and peer pressure
23 may have affected the juvenile. Again, as previously
24 discussed, the defendant, Mr. Gilbert had a -- somewhat
25 dysfunctional family from age twelve to fifteen and he

1 had childhood abuses for alcohol between the ages of
2 twelve and fifteen, including obtaining treatment for
3 his alcohol issues.

4 Again, talking about the peer pressure, looking
5 at the events, as I indicated, there was no peer
6 pressure as it relates to the criminal charges. As I
7 indicated previously by finding a belief that Mr.
8 Gilbert was the primary participant in these two
9 murders.

10 Fifth factor - whether Mr. Gilbert's youth
11 affected any legal defenses. The Court does not find
12 that the defendant's youth affected any potential
13 legal defenses or arguments.

14 Number six - factors suggesting the juvenile
15 might be successfully rehabilitated. Mr. Gilbert has
16 discernmed -- dem -- demonstrated evidence showing he
17 is moving towards rehabilitation while incarcerated.
18 But it's also important to note he had a serious
19 infraction in May of 2017. This act clearly was of a
20 type showing a lack of impulse control and/or the
21 ability to follow reasonable orders.

22 This was also at a time in May of 2017 that Mr.
23 Gilbert would have certainly had been aware, as any
24 offender in his position, would be aware of the pending
25 decision of Houston and Sconiers Supreme Court case

1 which held that sentencing courts could accept --
2 consider exceptional sentences for juveniles.

3 Also, of note is the psychological exam conducted
4 by the Washington State Department of Corrections in
5 2017 finding Mr. Gilbert as exhibiting anti-social
6 personality characteristics that may influence his
7 future behavior choices. And he received with a score
8 on the violence risk assessment placing him in the
9 high risk to re-offend with an average of forty-five
10 percent released offenders recidivating within seven
11 years and sixty-eight percent within twelve years.

12 On the historical clinical risk tool, indicating
13 -- indications for problems with insight and violent
14 ideation or intent. Which also, these factors could
15 be mediated by considering other risk-reducing factors
16 for a finding of moderate risk to re-offend.

17 Looking at the convictions at issue, it is clearly
18 -- clear that the charges are at the apex of the
19 culpability scale. Convictions for just the murder -
20 - for the murder crimes of murder in the first degree
21 and aggravated murder in the first degree are at the
22 top of the seriousness level for the SRA -- the
23 Sentencing Reform Act.

24 It is also important to note Mr. Gilbert was also
25 convicted of three other violent offenses at that time

COURT READS RULING

1 of assault in the second degree, burglary in the first
2 degree and robbery in the first degree; plus the
3 additional crime -- non-violent offense of theft in
4 the first degree.

5 The other factor the Court to look at is the
6 standard sentencing range that would be -- in this
7 case, in a nutshell, call for at a sentence of at least
8 twenty years on Count I, on a charge for a murder in
9 the first degree with a range of two hundred and forty
10 months to three hundred and twenty months, to run
11 consecutively with a mandatory sentence as mandated by
12 statute of twenty-five years to life on Count II of
13 aggravated murder. Plus, varying sentences for the
14 other charges of shorter duration, to ran -- run
15 concurrently with the above sentence in looking at the
16 standard sentencing range prong that the Court is imp
17 -- required to look at.

18 In light of and in consideration of all of these
19 factors as presented in the hearing today, and in prior
20 filings, the Court sentences as follows:

21 Count I - the Court imposes a sentence of two
22 hundred and forty months.

23 On Count II - the Court imposes the statutory
24 mandatated [sic] sentence of twenty-five years to
25 life.

COURT READS RULING

1 On Count III - the Court imposes a sentence of
2 sixty-three months.

3 Count IV - the Court imposes a month -- a sentence
4 of eighty-seven months, including the deadly weapon
5 enhancement.

6 Count V - the Court imposes a sentence of fourteen
7 months.

8 On Count VI - the Court imposes a sentence of a
9 hundred and twenty-nine months, including the deadly
10 weapon enhancement.

11 This Court has long held a strong commitment to
12 recognize the unique place juveniles hold in the
13 criminal justice system and has tried to uniformly hold
14 those individuals accountable for their criminal
15 activity while also recognizing that accountability is
16 different than it would be for an adult.

17 Additionally, this Court recognizes the
18 difficulties, Mr. Gilbert, that you faced in your
19 childhood and appreciates your current efforts to
20 better yourself. These are part of the reasons that
21 I find a bottom of the range sentence on Counts I
22 through VI are appropriate. But this Court also cannot
23 be blinded by the cold, calculated and heinous
24 executions you committed on your own.

25 This crime was not a result of transient

COURT READS RULING

1 immaturity; but the actions of a cold and calculated,
2 heartless murder. Your actions exposed to this
3 community the identity of a real boogiemán. That is,
4 a person whose mere mention of his name will haunt
5 this community for many lifetimes.

6 While this Court has the authority to grant an
7 exceptional sentence, such as -- exceptional sentence
8 -- such a heinous and calculated murder, leads this
9 Court to determine that an exceptional sentence is not
10 appropriate and orders that Count I shall run
11 consecutive to the recently releasable sentence on
12 Count II.

13 Furthermore, the Court finds that Counts III
14 through VI shall run concurrent with Count II. The
15 Court imposes the mandatory victim penalty assessment
16 that was in effect at that time as well as the DNA fee
17 on this matter as well as the community custody, as
18 required.

19 Any questions regarding the Court's sentence, Mr.
20 Quesnel?

21 MR. QUESNEL: No, Your Honor.

22 THE COURT: Ms. Zink, any questions regarding
23 the Court's sentence?

24 MS. ZINK: Yes, Your Honor. Is the Court
25 ascribing a burden to either of the parties?

APPENDIX “B”



STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS
INDETERMINATE SENTENCE REVIEW BOARD
P.O. BOX 40907, OLYMPIA, WA 98504-0907

DECISION AND REASONS

NAME:	Gilbert, Jeremiah
DOC #:	709551
FACILITY:	Coyote Ridge Corrections Center
TYPE OF HEARING:	AMJUVBRD Release Hearing
HEARING DATE:	March 20, 2018
PANEL MEMBERS:	KR & LRG
FINAL DECISION DATE:	April 13, 2018

This matter came before Kecia Rongen and Lori Ramsdell-Gilkey, who are members of the Indeterminate Sentence Review Board (ISRB or the Board) on the above date for a release hearing in accordance with the provisions of RCW 10.95.030. Mr. Gilbert appeared in person. Testimony was provided by Department of Corrections (DOC) Classification Counselor (CC) Jeremy Westphal, and Mr. Gilbert.

BOARD DECISION:

This was a deferred decision following a full Board discussion. Based on the requirements of RCW 10.95.030 the Board finds Mr. Gilbert releasable from Count II Aggravated Murder in the First Degree to consecutive Count I Murder in the First Degree both Klickitat Cause #92-1-00108-1, effective September 19, 2017.

NEXT ACTION:

Mr. Gilbert may petition the Board after he has served 20 years on the Count I Murder in the First Degree, as per ESSB 5064 (early release consideration) that Legislature passed in 2014.

JURISDICTION:

Jeremiah Gilbert is under the jurisdiction of the Board on a June 7, 1993 conviction of Count II, Aggravated Murder in the First Degree in Klickitat County under Cause # 92-1-00108-1. His time start is June 10, 1993. He was originally sentenced to a term of Life without Parole on this Count. On September 21, 2015 he was resentenced to a minimum term of 25 years and a maximum term of Life. He has served approximately 24 years and 8 months plus 263 days of jail time credit.

Under this same Cause Mr. Gilbert was also sentenced for Count I, Murder in the First Degree. He was sentenced to a term of 280 months from an SRA range of 240-320 months with a maximum term of Life. This time is consecutive to Count II and concurrent with all other counts. Count III, Assault in the Second Degree, sentenced to a concurrent 73.5 months from an SRA range of 63-84 months with a max of 10 years. Count IV, Burglary in the First Degree, sentenced to a concurrent 119.5 months from an SRA range of 87-116 and a maximum term of Life. In addition, a special finding of Use of a Deadly Weapon was made regarding this count. Count V, Theft in the First Degree, sentenced to 16 months from an SRA range of 14-18 months and a maximum term of 10 years. Count VI, Robbery in the First Degree, sentenced to 174 months from an SRA range of 129-171 months and a maximum term of Life. In addition, a special finding of Use of a Deadly Weapon was made regarding this count. Counts III, IV V and VI have all expired.

NATURE OF INDEX OFFENSE(S):

In September of 1992, Jeremiah Gilbert, (age 15) and his friend/co-defendant (age 16) ran away from their homes in King County and subsequently committed numerous offenses in Klickitat County. They had two guns with them when they hitchhiked to the area of Centerville, in Eastern Washington. They managed to steal a tractor and drove it to an area where they believed there were some cabins they might be able to get into. They entered at least one of the cabins by shooting the lock off the door.

When they left that area they came across an empty Ford Bronco on the side of the road and tried to hotwire it. The owner was nearby and shouted at them. Jeremiah Gilbert fired a rifle several times at that man who managed to run into a bushy canyon area and avoid being shot. Then another man was seen approaching the boys on a motorcycle. Jeremiah Gilbert fired a shot and hit this man in the chest. He fell to the ground screaming and Mr. Gilbert walked up to his prone body and shot him twice more, killing him.

Jeremiah Gilbert returned to trying to hotwire the Bronco and within a couple of minutes a third man came driving down this same road in a small pickup truck. Jeremiah Gilbert picked up the rifle yet again and fired, sending a bullet through the windshield and hitting this victim in the head killing him. The victim fell to the side and his truck rolled into the Bronco. Jeremiah Gilbert and his co-defendant then removed this victim's body from the vehicle, stole the victim's wallet, then placed their belongings in the truck and drove off.

After driving around the area for a while then abandoning the small pickup truck in a ditch the two young men began walking and went their separate ways. The co-defendant contacted law enforcement to turn himself in and Jeremiah Gilbert was apprehended nearby shortly thereafter.

PRIOR CRIMINAL CONDUCT:

Jeremiah Gilbert's juvenile history consists of convictions on January 7, 1992 for Criminal Trespass First Degree and Malicious Mischief Third Degree. He was placed on six months of community supervision and was discharged from probation on July 17, 1992.

Jeremiah Gilbert had a history of being a runaway and was placed on runaway status several times. He last ran away the month before the index offense and was basically homeless during that time.

HISTORY/COMMENTS:

This was Mr. Gilbert's second hearing with the Board. He was afforded a new hearing based on the fact that he did not have a chance to review his file material prior to his hearing on January 24, 2018 and it was not clarified with him the choices the Board had since he falls under both juvenile board statutes, 10.95.030 and 9.94A.730. Mr. Gilbert acknowledged having an opportunity to review his file material prior to the hearing today. In addition he indicates he understands the Board choices which are to have him remain serving on the Aggravated Murder in the First Degree and add time to his minimum term or to transfer him to his consecutive cause for Murder in the First Degree. He will then have 20 years to serve before he can petition the Board for release. Mr. Gilbert indicated that he has spoken to Nick Allen from Columbia Legal Services and that the previous Decision and Reasons was hand delivered to some members in the legislature. He also indicated that he has an active appeal regarding his sentence structure.

Mr. Gilbert was optimistic in today's hearing and hopes that a court will change his sentence structure so that he will have an opportunity to be released sooner than 20 years.

Testimony provided during his first hearing on January 24, 2018: Classification Counselor Westphal testified that he is familiar with Mr. Gilbert stating he'd served his initial period of confinement at Greenhill until he transferred to the DOC in 1995 after he turned 18. CC Westphal provided several very positive emails from staff who have worked with Mr. Gilbert on different projects. He has incurred a total of 36 serious infractions while in the DOC. His last violent infraction was in 2006 when he assaulted a staff person. There is no description in the record to indicate the seriousness of this assault but it does indicate Mr. Gilbert lost 100 days of good time and received 30 days in segregation. His last serious infraction was in May of 2017. It was reported he had entered another inmate's cell and helped hold him while another inmate assaulted him. There was no evidence he helped with an assault but he was found guilty of being **Out of Bounds**. Mr. Gilbert told the Board that he had gone into another inmate's cell to talk to him and convince him he needed to quit acting up in the dayroom. He stated that he thought the

other inmate would listen to him. The other inmate instead hit Mr. Gilbert and Mr. Gilbert hit him back. CC Westphal stated Mr. Gilbert is typically respectful and easy going.

Mr. Gilbert has completed the following programming/activities: GED, Hobby Shop, Inside/Outside Dads, MRT, Stress-Anger Management, Release Readiness, Dog Program, Family Friendly Events, Victim Awareness, Customer Service Certification, Redemption, Re-entry Life skills, Roots of Success, First Aid, Chemical Dependency, Focusing on Freedom, Clallam Bay Improvement Team, and Bears Behind Bars amongst others.

Mr. Gilbert stated he is no longer a "thug" or involved with any gang activity. He has distanced himself from that life inside and worked on improving himself and preparing for release one day.

Regarding the offenses; Mr. Gilbert stated he was running the streets as a teen, not getting along with his father and he and his friend decided to run away. His friend stole some guns from the family home before they left. He acknowledged the offenses occurred much like described in report, that he doesn't actually remember everything but has read the reports over the years.

He stated he did not intend to shoot the first man but when he pointed the gun at him it went off. Seeing that the man was seriously injured and bleeding, he decided to "put him out of his misery" and shot him again. Pretty quickly a truck came towards them and Jeremiah Gilbert fired towards that truck intending to scare the man off but it went through the windshield and killed him. He took this man's wallet and they left in the truck. Shortly thereafter he was apprehended.

Mr. Gilbert stated he is sorry for his actions and knows that nothing can fix what happened. He understands he has negatively impacted a good number of people to include the victims and their families as well as his own family. He stated that he knows saying he is sorry is not enough. All he can do is do the best he can every day.

Mr. Gilbert stated he enjoyed being able to participate in the Dog Training Program at Clallam Bay as well as participating in the Cultural Give Away Program where they sew clothes and quilts

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Mr. Gilbert stated he enjoyed being able to participate in the Dog Training Program at Clallam Bay as well as participating in the Cultural Give Away Program where they sew clothes and quilts

and donate them to the needy. He had a steady girlfriend during this incarceration but recently put their engagement on hold as he is hoping for release and believes he needs to make it on his own in the community for a while. He understands there will be challenges upon release and hopes that prior to his actual release he will be able to work and earn some money to pay his own way. He has had good support from his family during this incarceration and has enjoyed EFV's with his parents. He's has been completely clean and sober since 2006. It's clear he has participated in many positive activities in prison and since 2006 has focused on being a better person and improving himself.

INFORMATION CONSIDERED:

In preparation for Mr. Gilbert's hearing and its decision in this case, the Board completed a review of his ISRB file. The Board considered all information contained in those files, including but not limited to: the most recent DOC facility plan; information regarding institutional behavior and programming; any letters of support and/or concerns sent to the Board; the Juvenile Court Administrator's Report on Decline of Jurisdiction completed prior to sentencing in 1992, the psychological evaluation prepared by Dr. Wentworth in 2017 and a report prepared by Dr. Roesch prior to the resentencing in 2015. The Board also considered the testimony of the witnesses listed above.

REASONS:

This was a deferred decision following a full Board discussion using a structured decision-making framework that takes into consideration; the statistical estimate of risk, criminal history, parole/release history, ability to control behavior, responsivity to programming, demonstrated offender change, release planning, discordant information, and other case specific factors.

Mr. Gilbert presented well and came across as sincere and forthright. At this time, the Board believes it is appropriate to move Mr. Gilbert from the Aggravated Murder in the First Degree to the Murder in the First Degree.

Gilbert, Jeremiah – DOC # 709551

Page 7 of 8

Mr. Gilbert should continue to engage in any offender change programming available to him as well as vocational opportunities that will eventually help with his re-entry into the community.

KR: ch

March 29, 2018

April 2, 2018

April 17, 2018

April 24, 2018

cc: Institution
Jeremiah Gilbert
File



STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS
INDETERMINATE SENTENCE REVIEW BOARD
P.O. BOX 40907, OLYMPIA, WA 98504-0907

DATE: 3-29-18

TO: Full Board

FROM: KR & LRG (*Christine*)

RE: Gilbert, Jeremiah/*DOC# 709551*

Board Decision: Releasable from Ct. II Agg. Murder First Degree to CS Ct. I Murder First Degree both Klickitat Cause #92-1-00108-1, effective September 19, 2017.

Next action: Mr. Gilbert may petition the Board after he has served 20 years on the Count I Murder in the First Degree, as per ESSB 5064 (early release consideration) that Legislature passed in 2014.

Agree	Disagree
EB 4/10/18 LRG 4/13/18 KLR 4/13/18 JP 4/13/18	

APPENDIX “C”

Washington State
Department of Corrections

Offender Management Network Information

DOC No.: 709551 Go

Selected DOC No.: 709551 GILBERT, Jeremiah James

Home Assignments Offender Plans Programs Facility Search Administration

Home > Plans > Custody Facility Plan > Create Regular Review > Review [Return to Case Plan](#) | [Most Recent Search](#) | [Help](#) Logged in as **Robin Riley**Regular Review
Menu

Pt 1: Review Plan

Links

[OnBase](#)[CeField](#)[CePrison](#)[Policies](#)[Report Wizard](#)**Inmate: GILBERT, Jeremiah James (709551)** [View Offender Photo](#) | [Legal Face Sheet](#)

Gender: Male	DOB: 11/27/1976	Age: 40	Category: Regular Inmate	Body Status: Active Inmate
RLC: LOW*	Wrap-Around: No	Comm. Concern: Yes	Custody Level: Minimum 3 - Long Term Minimum	Location: CRCC — I / IA423U
ERD: 06/14/2038	CC/CCO: Hinds, Brady J			

Offender Information

Time Start: 06/10/1993	Expiration Date: Mandatory:	Eligibility Date: Camp: 06/14/2034	Supervision Ordered: No	Mental Health: SMI: No
Offender Release Plan:	Maximum:	Work Release: 12/14/2037	ORP Override Type: Please Select	ORCS: Unknown
Notification	Ten Day Release:	Commitment Type: SRA	Please Explain ORP Override In Counselor Comment Section.	End Of Sentence Review Status: S
Next Review Date: 06/14/2018	Eligible			

Pt 1: Review Plan

Purpose of Review

Purpose Of Review	Date Initiated
Regular Review	07/14/2017

Previously Deported

No

Detainers

Current Type	Narrative
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Holds

Hold	Staff Name	Hold Until
There is no data to display.		

Community Support

County Of First Felony Conviction, WA: Klickitat

☐ Homeless / Address Unknown

Residence Sponsor	Anticipated Release Address
Name (Last, First): Gilbert, Guy	1650 Sunset Drive
Date Of Birth: 53	Wenatchee, Washington
Age: 53	United States
Relationship: Father	
Phone No. (509) 387-6688	
Type: Cell	

98801

Individuals in Home

Name (Last, First)	Gender	Date of Birth	Age	Relationship
Gilbert, Amanda	Female		26	Sister
Gilbert, Ara	Female		51	Mother

☐ Sponsor Or Others In Home Have Been A Victim Of The Offender

Program Needs

Education

GED/HSD:	Date Obtained:	Location:	Verified?
GED	05/27/1997	DOC	Y

Grade Point Equivalency

Math:	Reading:
6th	1st

Offender Needs (Needs Assessment Tool)

COMMUNITY EMPLOYMENT

ALCOHOL / DRUG USE

AGGRESSION

RESIDENTIAL

FRIENDS

ATTITUDES / BEHAVIORS

Program Narrative

Narrative:

Gilbert understands that programming and work assignments that are considered mandatory, if refused or lost could lead to loss of earned time. Gilbert has high ONA risk levels in Aggression, Employment, and Friends and moderate risk levels in Alcohol/Drug Use and Residential. He was referred to Roots to Success, GIR, Life Skills: Computing. He has completed Re-Entry Life Skills, Job Seeking Skills, IOP, SAM, Family Friendly Programming, Meditation and Stress Control, First Aid, and Redemption. He also has several CBT programs related to transition to lower levels of custody. He has completed CD TX. Gilbert has 15 approved visitors.

Approved GCT pathway below is cancelled due too serious infraction WAC 709 received on 5/17. A new GCT pathway can be revisited at next scheduled review.

During his previous CFP a Good Conduct Restoration Pathway was developed for 2 serious infractions:

- 20 days for #505 (IGN #14, 5/22/99)
- 15 days for #658 (IGN #15, 7/6/99)

The Pathway was:

- Complete redemption
 - Remain Serious Infraction Free and no other infractions related to aggression or violence
 - Remain in Compliance with his CFP
- Offender Gilbert has completed his pathway requirements and my recommendation is to restore 35 days of lost good conduct time.

Recommend establish new pathway to address 3 serious infractions:

- 40 days for #558, #710, and #555 (IGN #16, 7/20/99)
- 30 days for #555 (IGN #20, 10/12/99)
- 60 days for # 710 and # 714 (IGN #21, 10/13/99)

Recommended requirements for Restoration:

- Remain in compliance with CFP
- Receive no serious infractions
- Enter into and successfully complete Roots of Success

If he complies with the approved pathway, Offender Gilbert will be eligible for 130 days restoration

of lost GCT.
Offender Gilbert's ERD is 7/19/38 which provides adequate time for restoration.

Education/Employment Needs

Employment/Education Needs

Needs part time prison work assignment
Needs full time prison work assignment
Needs job finding skills and support for community employment

Narrative:

He has a verified GED and wishes to be a Dog Handler. He indicated he had jobs lined up on the outside if he had these skills. He was not released under the juvenile board but indicates that if he can resolved certain issues regarding his sentence, he believes he will be eligible under the juvenile board. He has already completed many of the classes necessary for consideration of release.

Programs

Program Name	Program Date	Program Status
DOG OBEDIENCE HANDLER	10/20/2016	Dropped

Expectations

Conditions

Condition Description

There is no data to display.

Expectations

Expectation	Frequency	Due Date	Complete
Comply with DOC programming expectations.	As required	12/31/2040	No
Maintain positive behavior and consistent programming.	As required	12/31/2040	No
Remain serious infraction free.	As required	12/31/2040	No
Seek and maintain full-time work, education and treatment programs.	As required	12/31/2040	No

LFO (Legal Financial Obligations)

Cause

Amount \$

There is no data to display.

Custody Score

Current Custody

Current Custody Score: 10

Minimum 3 - Long Term Minimum

Infraction Behavior

Infraction Behavior Score: 10

DOC Infractions:

Category	Violation Description	Date Occurred
B3	709 - OUT OF BOUNDS	05/12/2017

Program Behavior

Program Behavior Score: 12

Month	Year	Points	Non-Award Reason
August	2016	1	
September	2016	1	
October	2016	1	
November	2016	1	
December	2016	1	

January	2017	1
February	2017	1
March	2017	1
April	2017	1
May	2017	1
June	2017	1
July	2017	1

Detainers			Detainer Score:	10
	Felony	ICE		
Current	No	No		
Potential	No	No		

Escape History			Escape History Score:	15
DOC				
Escape Description	Month	Year		

Calculated Custody	
Custody Score:	57
Calculated Custody:	Minimum

Targeted Custody and Placement

Targeted Date	Targeted Custody	Targeted Placement	Inmate Preferred Location
There is no data to display.			

Disciplines

Discipline	Other Discipline	Staff
Custody		Jones, Douglas G

Recommendations

☒ **I have verified Earned Time and Programming Points are accurate.** (07/14/2017 Hinds, Brady J)

Submit/Review Name Date	Comments	Concur
07/14/2017 Brady Hinds, Classification Counselor 2	<p>(Offender) Offender had no other comments. He was offered a copy of his earned time/good conduct time report. He was shown his CFP and understands the expectations of his CFP. P signed his 48 hour hearing notice and waived his right to attend FRMT.</p> <p>(Counselor) Gilbert is not in compliance with his last CFP. P received 1 serious infraction (WAC 709) on 5/12/2017 and no behavioral observations this review period. Gilbert is not currently assigned to any programs or work assignment, but has been referred to programs according to his ONA. Officer Jones, D. states P is not a behavioral issue in the unit. P has no NCO's and no holds. CCR complete. ONA updated 07/14/17. STG: Intelligence Only. P has 3 Keep Separates and no Prohibited Placements. P has no Medical, Mental Health, or Dental concerns. P has 15 approved visitors. Gilbert had an approved GCT pathway in place but due to infraction 5/17 will</p>	

cancel existing GCT pathway and revisit at next scheduled review. Classification Recommendations: Maintain MI3 custody and continue to house in I Unit. Target Dates: MI2/MI1 require HCSC approval.

07/18/2017	Jeremy Westphal, Classification Counselor 3	(FRMT) His earned time is up to date. His job screening is up to date. His classification notice was completed. A GCT Pathway will need to be addressed at his next review. Maintain MI3, Retain CRCC-MSC, No targets due to ERD 2038.	Yes
07/20/2017	Mark Leigh, Correctional Unit Supervisor	FRMT concurs with counselors recommendations: Maintain MI3 Custody. Retain at CRCC-MSC. Comply with recommended programming as it becomes available and remain infraction free. GCT pathway will be addressed at future review. FRMT members: CUS Leigh, CC3 Westphal, CC2 Hinds, CC2 Hall, CC2 Rand and CO2 Jones.	Yes

Transfer Order Summary

Calculated Custody:	Assigned Custody:	Override Reason:	Override Narrative:
Minimum	Minimum 3 - Long Term Minimum		APPROVED
	Classification Status:	Completion Date:	Custody Assigned By:
	In-Effect	07/20/2017	Mark Leigh, Correctional Unit Supervisor

Inmate: GILBERT, Jeremiah James (709551)

Gender: Male	DOB: 11/27/1976	Age: 41	Category: Regular Inmate	Body Status: Active Inmate
RLC: LOW*	Wrap-Around: No	Comm. Concern: Yes	Custody Level: Minimum 3 - Long Term Minimum	Location: CRCC — I / IA411L
ERD: 06/14/2038	CC/CCO: Villa, Daniel M			

Infraction Summary

Offender Infraction					
Infraction Group Number	Overall Infraction Report Status	Hearing Type	Infraction Data Indicator	Incident Date	Violation Codes
4	Hearing Complete	Full Hearing	Serious	On 04/02/1996	724
5	Hearing Complete	Full Hearing	Serious	On 05/03/1996	602
6	Hearing Complete	Full Hearing	Serious	On 09/15/1996	600
7	Hearing Complete	Full Hearing	Serious	On 06/18/1997	714
8	Hearing Complete	Full Hearing	Serious	On 08/05/1997	555 , 714
10	Hearing Complete	Full Hearing	Serious	On 10/14/1997	606
11	Hearing Complete	Full Hearing	Serious	On 01/01/1998	652
12	Hearing Complete	Full Hearing	Serious	On 05/02/1999	555 , 710
14	Hearing Complete	Full Hearing	Serious	On 05/22/1999	505
15	Hearing Complete	Full Hearing	Serious	On 07/06/1999	658
16	Hearing Complete	Full Hearing	Serious	On 07/14/1999	555 , 558 , 710
19	Hearing Complete	Full Hearing	Serious	On 08/24/1999	658
20	Hearing Complete	Full Hearing	Serious	On 10/07/1999	555
21	Hearing Complete	Full Hearing	Serious	On 10/09/1999	710 , 714
23	Hearing Complete	Full Hearing	Serious	On 11/24/1999	504
24	Hearing Complete	Full Hearing	Serious	On 02/08/2000	657
25	Hearing Complete	Full Hearing	Serious	On 07/24/2000	710
26	Hearing Complete	Full Hearing	Serious	On 08/06/2000	658
27	Hearing Complete	Full Hearing	Serious	On 08/25/2000	633 , 710
29	Hearing Complete	Full Hearing	Serious	On 11/21/2000	506 , 509 , 554 , 602 , 650
34	Hearing Complete	Full Hearing	Serious	On 05/27/2001	708
35	Hearing Complete	Full Hearing	Serious	On 06/03/2001	710
36	Hearing Complete	Full Hearing	Serious	On 04/26/2004	714
37	Hearing Complete	Full Hearing	Serious	On 12/29/2006	704
38	Hearing Complete	Full Hearing	Serious	On 06/15/2009	740
40	Hearing Complete	Full Hearing	Serious	On 05/12/2017	709

APPENDIX “D”

WAC 137-25-030 Serious violations. (1) Any of the following types of behavior may constitute a serious violation. Attempting or conspiring to commit one of the following violations, or aiding and abetting another to commit one of the following violations, shall be considered the same as committing the violation, with the exception of attempting an aggravated assault. Attempting to commit an aggravated assault will be charged as violation:

- (a) #633 When against another offender;
- (b) #704 When against a staff member; or
- (c) #711 When against a visitor or community member.

Category A

501 - Committing homicide
502 - Committing aggravated assault against another offender
507 - Committing an act that would constitute a felony and that is not otherwise included in these rules
511 - Committing aggravated assault against a visitor or community member
521 - Taking or holding any person hostage
550 - Escaping
601 - Possessing, manufacturing, or introducing an explosive device or any ammunition, or any component thereof
602 - Possessing, manufacturing, or introducing any firearm, weapon, sharpened instrument, knife, or poison, or any component thereof
603 - Introducing or transferring any unauthorized drug or drug paraphernalia
604 - Committing aggravated assault against a staff member
611 - Committing sexual assault against a staff member
613 - Committing an act of sexual contact against a staff member
635 - Committing sexual assault against another offender, as defined in department policy (i.e., aggravated sexual assault or offender-on-offender sexual assault)
637 - Committing sexual abuse against another offender, as defined in department policy
650 - Rioting, as defined in RCW 9.94.010
651 - Inciting others to riot, as defined in RCW 9.94.010
830 - Escaping from work/training release with voluntary return within 24 hours
831 - While in work/training release, failing to return from an authorized sign out
882 - While in prison, introducing, possessing, or using a cell phone, electronic/wireless communication device, or related equipment without authorization

Category B - Level 1

504 - Engaging in a sex act with another person(s) within the facility that is not otherwise included in these rules, except in an approved extended family visit
553 - Setting a fire

560 - Possessing items or materials likely to be used in an escape without authorization
633 - Assaulting another offender
704 - Assaulting a staff member
711 - Assaulting a visitor or community member
744 - Making a bomb threat
884 - Urinating, defecating, or placing feces or urine in any location other than a toilet or authorized receptacle
886 - Adulterating any food or drink
892 - Giving, selling, or trading any prescribed medication, or possessing another offender's prescribed medication

Category B - Level 2

505 - Fighting with another offender
556 - Refusing to submit to or cooperate in a search when ordered to do so by a staff member
607 - Refusing to submit to a urinalysis and/or failing to provide a urine sample within the allotted time frame when ordered to do so by a staff member
608 - Refusing or failing to submit to a breath alcohol test or other standard sobriety test when ordered to do so by a staff member
609 - Refusing or failing to submit to testing required by policy, statute, or court order, not otherwise included in these rules, when ordered to do so by a staff member
652 - Engaging in or inciting a group demonstration
655 - Making any drug, alcohol, or intoxicating substance, or possessing ingredients, equipment, items, formulas, or instructions that are used in making any drug, alcohol, or intoxicating substance
682 - Engaging in or inciting an organized work stoppage
707 - Introducing or transferring alcohol or any intoxicating substance not otherwise included in these rules
716 - Using an over the counter medication without authorization or failing to take prescribed medication as required when administered under supervision
736 - Possessing, manufacturing, or introducing an unauthorized key or electronic security access device
750 - Committing indecent exposure
752 - Possessing, or receiving a positive test for use of, an unauthorized drug, alcohol, or intoxicating substance
778 - Providing a urine specimen that has been diluted, substituted, or altered in any way

Category B - Level 3

503 - Extorting or blackmailing, or demanding or receiving anything of value in return for protection against others or under threat of informing
506 - Threatening another with bodily harm or with any offense against any person or property
509 - Refusing a direct order by any staff member to proceed to or disperse from a particular area
525 - Violating conditions of a furlough

549 - Providing false or misleading information during any stage of an investigation of sexual misconduct, as defined in department policy
558 - Interfering with staff members, medical personnel, firefighters, or law enforcement personnel in the performance of their duties
600 - Tampering with, damaging, blocking, or interfering with any locking, monitoring, or security device
605 - Impersonating any staff member, other offender, or visitor
653 - Causing an inaccurate count or interfering with count by means of unauthorized absence, hiding, concealing oneself, or other form of deception or distraction
654 - Counterfeiting or forging, or altering, falsifying, or reproducing any document, article of identification, money, or security or other official paper without authorization
660 - Possessing money, stamps, or other negotiable instruments without authorization, the total value of which is five dollars or more
709 - Out-of-bounds: Being in another offender's cell or being in an area in the facility with one or more offenders without authorization
738 - Possessing clothing or assigned equipment of a staff member
739 - Possessing, transferring, or soliciting any person's identification information, including current staff members or their immediate family members, when not voluntarily given. Identification information includes Social Security numbers, home addresses, telephone numbers, driver's license numbers, medical, personnel, financial, or real estate information, bank or credit card numbers, or other like information not authorized by the superintendent
745 - Refusing a transfer to another facility
746 - Engaging in or inciting an organized hunger strike
762 - Noncompliance with the DOSA program. Note: <i>This violation must be initiated by authorized staff and heard by a community corrections hearing officer in accordance with chapter 137-24 WAC</i>
777 - Causing injury to another person by resisting orders, assisted movement, or physical efforts to restrain
813 - Being in the community without authorization, or being in an unauthorized location in the community
814 - While in work/training release, violating an imposed special condition
879 - Operating or being in a motor vehicle without permission or in an unauthorized manner or location
889 - Using facility phones, information technology resources/systems, or related equipment without authorization

Category C - Level 1

508 - Spitting or throwing objects, materials, or substances in the direction of another person(s)
557 - Refusing to participate in an available work, training, education, or other mandatory programming assignment

563 - Making a false fire alarm or tampering with, damaging, blocking, or interfering with fire alarms, fire extinguishers, fire hoses, fire exits, or other firefighting equipment or devices
610 - While in prison, receiving or possessing prescribed medication without authorization
620 - Receiving or possessing contraband during participation in off-grounds or outer perimeter activity or work detail
659 - Committing sexual harassment against another offender, as defined in department policy
661 - Committing sexual harassment against a staff member, visitor, or community member
663 - Using physical force, intimidation, or coercion against any person
702 - Possessing, manufacturing, or introducing an unauthorized tool
708 - Organizing or participating in an unauthorized group activity or meeting
717 - Causing a threat of injury to another person by resisting orders, assisted movement, or physical efforts to restrain
720 - Flooding a cell or other area of the facility
724 - Refusing a cell or housing assignment
734 - Participating or engaging in the activities of any unauthorized club, organization, gang, or security threat group; or wearing or possessing the symbols of an unauthorized club, organization, gang, or security threat group
810 - Failing to seek/maintain employment or training or maintain oneself financially, or being terminated from a work, training, education, or other programming assignment for negative or substandard performance
893 - Damaging, altering, or destroying any item that results in the concealment of contraband or demonstrates the ability to conceal contraband
896 - Harassing, using abusive language, or engaging in other offensive behavior directed to or in the presence of another person(s) or group(s) based upon race, creed, color, age, sex, national origin, religion, sexual orientation, marital status or status as a state registered domestic partner, disability, veteran's status, or genetic information
899 - Failing to obtain prior written authorization from the sentencing court, contrary to RCW 9.94A.645, prior to commencing or engaging in any civil action against any victim or family of the victim of any serious violent crime the offender committed

Category C - Level 2

552 - Causing an innocent person to be penalized or proceeded against by providing false information
554 - Damaging, altering, or destroying any item that is not the offender's personal property, the value of which is ten dollars or more
710 - Acquiring an unauthorized tattoo/piercing/scar, tattooing/piercing/scarring another, or possessing tattoo/piercing/scarring paraphernalia

718 - Using the mail, telephone, or electronic communications in violation of any law, court order, or previous written warning, direction, and/or documented disciplinary action

726 - Telephoning, sending written or electronic communication, or otherwise initiating communication with a minor without the approval of that minor's parent or guardian

Category C - Level 3

606 - Possessing, introducing, or transferring any tobacco, tobacco products, matches, or tobacco paraphernalia

657 - Being found guilty of four or more general violations arising out of separate incidents within a 90-day period

658 - Failing to comply with any administrative or posthearing sanction imposed for committing any violation

812 - Failing to report/turn in all earnings

Category D

517 - Committing an act that would constitute a misdemeanor and that is not otherwise included in these rules

551 - Providing false information to the hearing officer or in a disciplinary appeal

555 - Stealing property, possessing stolen property, or possessing another offender's property

559 - Gambling or possessing gambling paraphernalia

656 - Giving, receiving, or offering any person a bribe or anything of value for an unauthorized favor or service

662 - Soliciting goods or services for which the provider would expect payment, when the offender knows or should know that he/she lacks sufficient funds to cover the cost

706 - Giving false information when proposing a release plan

714 - Giving, selling, purchasing, borrowing, lending, trading, or accepting money or anything of value except through approved channels, the value of which is ten dollars or more

725 - Telephoning or sending written or electronic communication to any offender in a correctional facility, directly or indirectly, without prior written approval of the superintendent/community corrections supervisor/designee

728 - Possessing any sexually explicit material(s), as defined in WAC 137-48-020

740 - Committing fraud or embezzlement, or obtaining goods, services, money, or anything of value under false pretense

741 - Stealing food, the value of which is five dollars or more

742 - Establishing a pattern of creating false emergencies by feigning illness or injury

755 - Misusing or wasting issued supplies, goods, services, or property, the replacement value of which is ten dollars or more

811 - Entering into an unauthorized contract
861 - Performing or taking part in an unauthorized marriage
890 - Failing to follow a medical directive and/or documented medical recommendations, resulting in injury

(2) If contraband or another violation is discovered in an offender's assigned area of responsibility, such as within the confines or contents of a cell, the contraband or other violation shall be constructively attributed (i.e., cell tagged) to all offenders assigned responsibility for that area.

[Statutory Authority: RCW 72.01.090 and 72.65.100. WSR 19-24-045, § 137-25-030, filed 11/26/19, effective 12/13/19. Statutory Authority: RCW 72.01.090, 72.65.100, and 72.09.130. WSR 15-20-011, § 137-25-030, filed 9/24/15, effective 1/8/16. WSR 14-12-095, § 137-25-030, filed 6/4/14, effective 7/1/14. Statutory Authority: RCW 72.09.130, 72.01.090, and 72.65.100. WSR 11-17-119, § 137-25-030, filed 8/23/11, effective 9/23/11; WSR 09-01-195, § 137-25-030, filed 12/24/08, effective 1/24/09; WSR 06-21-054, § 137-25-030, filed 10/13/06, effective 11/13/06. Statutory Authority: RCW 72.01.090, 72.09.130, and 9.94.070. WSR 05-24-009 and 06-02-038, § 137-25-030, filed 11/28/05 and 12/28/05, effective 5/1/06.]

Reviser's note: Under RCW 34.05.030 (1)(c), as amended by section 103, chapter 288, Laws of 1988, the above section was not adopted under the Administrative Procedure Act, chapter 34.05 RCW, but was published in the Washington State Register and codified into the Washington Administrative Code exactly as shown by the agency filing with history notes added by the code reviser's office.

APPENDIX “E”

WASHINGTON STATE DEPARTMENT OF CORRECTIONS
PSYCHOLOGICAL EVALUATION

FOR THE
INDETERMINATE SENTENCE REVIEW BOARD

NAME: Jeremiah Gilbert	EXAMINER: Deborah Wentworth, PhD
DOC: 709551	EXAM DATES: July 25, 2017
DOB: 11/27/1976	REPORT DATE: Oct. 16, 2017. <i>Amended: 12/19/17-</i> <i>noted in italicized print.</i>
AGE: 40 years, 11 months	Residence: CRCC ERD: 06/14/2038

Reason for Referral

Mr. Gilbert has been referred for a psychological evaluation by Chief Psychologist Dr. Lou Sowers on behalf of the Indeterminate Sentence Review Board (ISRB) which requires a fully-instrument supported evaluation to be used in Mr. Gilbert's upcoming JUVBRD hearing before the Board. The purpose of the assessment is to provide a written evaluation of the current behavior and risks that may assist the Board in determining the potential for re-offense, violence risk, capacity to function in a less restrictive environment, and/or whether Mr. Gilbert's rehabilitation is complete and he may be considered appropriate for parole in terms of his risk to himself, DOC and the community.

Dissemination of Information

This psychological report provides information to be available to DOC classification staff, community corrections officers, the Indeterminate Sentence Review Board, the End of Sentence Review Committee, and care providers within DOC who have a need to know in order to effectively manage the inmate within the Department Of Corrections. Disclosure and dissemination of this report shall be in accordance with RCW 70.02 and DOC Policy 640.020. It shall not be released to individuals outside DOC without the inmate's written consent or unless otherwise authorized by law.

Consent

Mr. Gilbert was advised of the purpose of this evaluation and departmental policy regarding information practices in plain language and in writing. I explained that I am not his treating therapist and that the information gathered from this interview would be gathered and reported to the Board for use in his hearing. His written consent to participate was obtained on DOC Form 13-386 and placed in his health care records. He repeated back to the examiner that he understood that his participation is voluntary and that he may ask questions or refuse to answer a question. The inmate may request to review a copy of this evaluation. BEFORE reviewing a copy, the inmate must attend an interpretive meeting with the author, a licensed psychologist, or licensed psychologist designee.

Description of Risk Assessment and Limitations

A Risk assessment involves a systematic review of past aggressive behaviors, looking specifically at the antecedents of the behavior, as well as the degree of harm and context in which the behavior occurred. This review is combined with assessment tools specifically for evaluation of past behavior and its impact on future behavior. Whether a person will act aggressively is a function of a variety of factors that include history, personal disposition, and situational variables that cannot all be known in advance. Mental Health professionals often over predict aggression and statements concerning an individual's potential for future risk become less valid over time and must be revisited periodically to consider dynamic or changeable factors. Recently, there are researched based instruments that use structured professional judgment to review risk reducing or mitigating factors which are included in this report. Despite these limitations, it is possible to consider available current and historical clinical data to identify and form an opinion regarding risk of future violence and make recommendations on ways in which risk may be reduced.

Current literature in risk assessment best practices, shows that it is important to identify who the person was at the time of the incident crime; e.g., their age and developmental maturity. The importance of these factors are identified in the conclusion of one organization's presentation at the 2012 National Conference of State Legislators: "Findings by the MacArthur Foundation's Research Network on Adolescent Development and Juvenile Justice show that adolescent brains do not fully develop until about age 25, and the immature, emotional and impulsive nature characteristic of adolescents makes them more susceptible to committing crimes. Studies also have shown that juveniles who commit crimes or engage in socially deviant behavior are not necessarily destined to be adult criminals." (Trends in Juvenile Justice State Legislation: June 2012 National Conference of State Legislators, P.3).

Research presented by Dr. Dahl from the University of Pittsburgh Departments of Psychiatry and Pediatrics (2008) elaborates on the more specific connections between these developmental processes and the multitude of ways they affect an individual's functioning. He writes that, "The capacities for competent self-control of behavior and emotions encompass a set of slow, gradual processes that continue to develop through the late teenage years and into the twenties. Such dramatic changes create challenges in the integration of cognitive and emotional processes in ways that place demands on the functional neural circuits that are critical for mediating arousal, orientation, attention, and affect (e.g., limbic regions) as well as for regulating and integrating these drives in the generation of long-term, goal-directed behaviors (e.g., regions of prefrontal cortex)." Dr. Dahl goes on to summarize what the research findings show as important areas of impact on an adolescent's functional behavior. "These findings suggest that adolescents engage relatively fewer prefrontal regulatory processes than adults when making decisions—in ways that may make adolescents more prone to risk taking in certain situations. More generally, engaging less prefrontal cognitive control may permit a relatively greater influence from affective systems that influence decision making and behavior which, in turn, increases adolescent vulnerability to some social and peer contexts that activate strong feelings."

The importance of these factors is also recognized/validated by our legal system. In a Committee Report and Recommendations made to the Joint Legislative Task Force on Juvenile Sentencing Reform (Dec. 2014) it was presented that "The Miller opinion was the third in a series of three major pronouncements addressing the issue of proportionality of criminal punishment for youthful offenders. In all three cases, the United States Supreme Court, relying on substantial and compelling brain science, as well as

'emerging standards of decency' concluded that children who commit crimes, even horrific crimes, must be sentenced in a manner that recognizes their youth, culpability and capacity to change."

This current assessment reflects efforts to incorporate measures of static, maturational, and dynamic factors that the Board may want to consider in their decision making process. It is important to note that science has not advanced to the point of being able to precisely predict future risk of violence/recidivism for any one individual; rather observations are offered based on what we have learned about behavior within large groups of people that we see as having similar characteristics and factors. Whether a person will act aggressively is a function of a variety of factors that include history, personal disposition, and situational variables that cannot all be known in advance.

Sources of Information

Interviews:

Mr. Gilbert was interviewed and tested on by Dr. Deborah Wentworth in a private mental health office at Coyote Ridge Correctional Center for approximately three hours of face to face time on July 25, 2017. Additional time was spent administering tests, scoring instruments and for preparing this report.

Review of Records

Review of DOC Medical Files

Review of DOC Electronic Files (OMNI)

Review of DOC Mental Health Files

Psychological Tests Administered:

PCL-R

Risk Assessment Instruments Used:

VRAG-R

HCR-20v3

Criminal History/Offense Behavior

Instant Offense Description:

On 9/20/92, P and an accomplice were walking in the area near Centerville when they found a tractor and drove off. They exited off the road onto a country road and continued on to a private road that leads to various residences that are hunting cabins. They passed a brown SUV that was parked in the roadway. At one of the residences they shot the lock off the door and went inside. They proceeded to shoot holes in the walls. They went to the other residence and it is unknown if any damage was done. They then drove up to the vehicle and stopped the tractor. P broke the window out of the SUV in an attempt to hot wire the car. Victim 1, [REDACTED] had observed this and started to walk towards them, as the vehicle was his. As [REDACTED] was walking towards P, he observed P grab a rifle and pointed it in his direction. [REDACTED] jumped into the bushes as P shot at him. [REDACTED] ran down into a canyon and P shouted out "I know you're down there" and began to fire in his direction. P began to walk down into the canyon until the accomplice had said there was a bike coming and P went back to the tractor. Using the tractor wheel as support, P shot victim 2 [REDACTED] as he was riding his bike up to them. Police believe [REDACTED] was shot once while on the bike due to blood splatter and then shot two more times, once in the shoulder about 1/2 inch from the entry of the first bullet and once in the left cheek. P indicated that he had shot him in the head as he was sick of hearing him yelling and screaming. As the next victim 3, [REDACTED] drove up on the scene in his vehicle, from the opposite direction of where [REDACTED] had approached, using the door of the SUV as support, P fired one round that struck [REDACTED] in the right cheek. His vehicle was about 25 yards from P. [REDACTED] fell to the passenger side and his vehicle continued down the hill and ran into the SUV. [REDACTED] was removed from his vehicle and thrown onto the ground. Both offenders took their belongings from the tractor and put them in the rear of the truck and drove off.

Cause Number 921001081							
State:	County:	Cause Number:	Sentence Date:	Type:	Sentence Type:	Source:	Cause Status:
WA	Klickitat	921001081	6/7/1993	Adult	OMNI	OMNI	Active
Crime Title: Robbery 1							
RCW: 9A.56.200	DV: No	Anticipatory: None	Enhancement(s):		Offense Date: 9/20/1992		
Crime Title: Theft 1							
RCW: 9A.56.030	DV: No	Anticipatory: None	Enhancement(s):		Offense Date: 9/20/1992		
Crime Title: Burglary 1							
RCW: 9A.52.020	DV: No	Anticipatory: None	Enhancement(s):		Offense Date: 9/20/1992		
Crime Title: Assault 2							
RCW: 9A.36.021	DV: No	Anticipatory: None	Enhancement(s):		Offense Date: 9/20/1992		
Crime Title: Murder 1							
RCW: 9A.32.030	DV: No	Anticipatory: None	Enhancement(s):		Offense Date: 9/20/1992		
Updated: 10/14/2015 12:51:36 PM Updated By: Hicks, Daniela E Offense Description: x							

Prior Offenses:

Cause Number 298241R010							
State:	County:	Cause Number:	Sentence Date:	Type:	Sentence Type:	Source:	Cause Status:
WA	Pierce	298241R010	1/17/1992	Juvenile	Supervision	NCIC	Closed
Crime Title: Misd -Criminal Trespass 1							
RCW: 9A.52.070	DV: No	Anticipatory: None	Enhancement(s): None		Offense Date: 12/13/1991		

Crime Title: Misd -Mildous Mischief 3				
RCW: 9A.48.090	DV: No	Anticipatory: None	Enhancement(s): None	Offense Date: 12/13/1991

Relevant Personal History

Family:

Mr. Gilbert was born in Buckley, WA to married parents. He believes his mother's pregnancy was normal and he met all developmental milestones. He was not hospitalized and normal childhood illnesses without incident. His father, mother, grandfather, are very supportive and attend visits and Extended Family Visits as does his sister and nieces. His family has offered housing and financial support for him upon his release. His mother has visited in the past at CBCC, but her birth certificate has been misplaced. He has several friends who visit and provide support as well as one former cell-mate who is approved to visit from many years ago. He has specific offers of housing and job support in Tulalip and Spokane. He has support from a Native American group who have offered to sponsor him. He has 15 approved and active visitors.

Education:

Mr. Gilbert began his education at the age of five and states that he did well in school, but became bored with academics because there were "fish to be caught, lizards to be raised." He states that his family moved around a lot because his dad was always chasing a dream. He stated he had no behavioral problems in school and he was never suspended or expelled. Mr. Gilbert stopped attending school in the eighth grade due to his criminogenic behaviors. Mr. Gilbert completed his GED in 1997 while incarcerated.

Work: He states that he has good speaking skills and enjoys working with his hands. He has taught several classes. He is bright enough to learn through future educational training. He has been employed as a food service worker and has stated that he would like training to be a dog handler and *participated in programs at CBCC, SCCC, and CRCC.*

Military: None due to his age at time of arrest.

Medical:

It appears that Mr. Gilbert has no medical problems that would significantly impact release planning. He reports that his appetite is good and he sleeps well.

Mental Health:

Mr. Gilbert has no reported history of mental health treatment within his time in Department of Corrections. His testing reveals that all clinical scales are within normal limits.

Substance Abuse:

Mr. Gilbert was drinking heavily prior to his arrest and his parents placed him in treatment in about 1990 or 1991, (his age of 15) from which he escaped by throwing a chair through the window. The police returned him and he completed treatment, although he felt it was not useful to him. He states he was still using until 2006 when he decided to become sober and clean. He completed ITP at Clallam Bay which helped him turn around and adopt sobriety. He would need to abstain from any substance abuse if released. *He would continue with the "wellbriety" (White Bison) programs that his friends run when released.*

Current Functioning/Behavior

Programming:

He has completed Re-entry life skills, Job seeking skills, IOP, Stress and Anger Management, Family friendly programming, Meditation and stress control, first aid, and redemption. He is enjoying Roots of Success. His Custody Facility Plan states that he also has completed several CBT programs related to transition to lower levels of custody but did not list them. *He was an active participant for Cultural Giveaway until it was discontinued. His programming is limited due to his sentence structure. He participates in Native American Programming such as White Bison, (a Native American AA and NA program) sweat programming, etc.*

Mr. Gilbert had been approved for a Good Conduct Restoration pathway, however, his plan was cancelled due to his serious infraction. His previous CFP was successfully completed.

Infractions:

Mr. Gilbert has incurred a total of 40 infractions of which all are serious. He slowed his infractions in 2001 and has had only 6 since that date. He had managed to go for 6 years between 2009 and 2017 without an infraction. His last general infraction occurred on May 12, 2017. Note that his serious infractions declined and his behavior improved when he reached the age of 24 which reflects the brain development as described by Dr. Dahl above. The 2017 infraction involved him being involved in a violent situation with another offender, although he was not charged with violence. Please see the infraction description in OMNI.

Peer Relationships/Community Support:

Mr. Gilbert reports getting along well with other offenders and staff. He has a strong community support system with many family visits as well as extended family visits. He also has a Native American sponsor and support from the Native American Community. He has 12-15 visitors on his visit list who appear to come regularly.

Strengths/Weaknesses:

Mr. Gilbert presents as a thoughtful and articulate man whose presentation is goal directed. He has pursued available programming and involved himself in Native American activities as a volunteer. He has a strong family and community support system with whom he has an active relationship now. *He does bead and art work which he sends out to the community. He states that he just donated a piece to Seattle Children's Hospital. He has decreased institutional behavior and increased his self-management skills.*

His stumbling blocks will be that he has not lived or worked in the community as an adult, nor had a supportive live-in intimate relationship. He has somewhat limited employment skills which are marketable and able to support himself. It appears that he has not furthered his education while in prison. His most recent Offender Needs Assessment updated in July 2017 states that aggression, employment and friends are high needs.

Goals and Plans for the Future:

Mr. Gilbert has somewhat limited and vague plans for his future that are specific. His goal or dream is to someday have a house with five or more acres in order that he can raise and train dogs. He participated in the dog obedience handler program at CBCC, SCCC, and at CRCC. His parents raise and train Golden

Retrievers and will help him get started. He would like to work with children. He wants to commit to benefitting his Native people as the only way he can ever say he is sorry for what he has done. He wants to keep anyone from doing crimes like he did.

He wants to live intentionally and make something meaningful out of his life. He would like to have a committed relationship. He states he does not care about having a car or house. (His father states that he does want a house and car in an email to Mr. R. Frederick on 12/18/2017.)

Clinical Interview

Mr. Gilbert appeared on time for his appointment for this evaluation. He was dressed in neat and clean prison Khakis and his grooming was neat and clean. He is a 6' 3" tall man with a well-nourished and muscular frame. He appears his stated age of 40 years. He was pleasant and cooperative throughout the interview process. He established appropriate rapport and maintained good eye contact. He appeared to participate in an honest and non-defensive manner, without any suggestion of manipulation or guardedness. His speech was organized, coherent, and forward thinking. His mood was appropriate to content with normal range of expression. His thoughts were without any sign or symptom of disorder. His recent and remote memory is intact. He denies any history of suicidal or harmful thoughts. His insight and judgment appear to be within normal limits.

Cognitive Functioning:

Mr. Gilbert performed within normal limits on the Bender-Gestalt, Trails A & B, and Draw a Clock which indicates that he functions adequately for the purposes of this evaluation. Formal intellectual testing in June 1993 revealed high average range of cognitive function.

Psychological Test Findings:

It is important to note that this individual was evaluated in a prison setting under conditions that were less than ideal for psychological testing. Therefore, any results from the test scores should be used only as hypotheses about the examinee. No decisions should be made based solely on the information contained in this report.

Psychological tests are used to provide one source of information necessary to construct the model. The psychologist chooses tests depending upon the information needed to complete the clinical and risk assessment. The battery of tests selected and the opinions regarding risk status are based on the training, experience, skill, judgment, and expertise of this licensed psychologist and not on any particular test, historical information, or record.

Year	Test	Results
Clinical Assessment		
2017	PCL-R	Scored at level 3 of 5 equal bins, described as a moderate level of antisocial behaviors, but below cut score of 30.
Forensic Risk Assessment		
2017	VRAG-R	Total score places him in Bin 7 of 9.

		45% on average reoffend within 5 years and 69% reoffend on average within 12 years
2017	HCR-20v3	Most points accrue under historical scale, Clinical and Future Management scores are low. His areas identified as needing support are supervision responsiveness and coping skills.

Risk Assessment:

A central feature of this evaluation is to render an opinion regarding Mr. Gilbert's risk for future dangerousness in terms of criminal recidivism, violence and/or sexual re-offense. Assessing any individual's risk for engaging in future violent behavior is an inherently difficult task, as the scientific literature attests. This is particularly the case where the information is either incomplete or deliberately concealed. Mental health professionals can make use of a large and growing body of empirical literature for identifying risk-elevating factors. There is also very little data available for youthful offenders who release as adults to the community after such a lengthy period of incarceration and so many years elapsed since their instant offense.

Mr. Gilbert scores as exhibiting antisocial personality characteristics that may continue to influence his future behavior choices. He has improved in his ability to self-regulate his behavior, but had a serious mis-step with his infraction last May (2017) after a lengthy infraction free period of about six years. This may be concerning. One can be hopeful that this is not an indicator of future problems.

His scores on the VRAG-R place him in the high risk to reoffend bin with an average of 45% of released offenders recidivating within 7 years and 68% reoffending within 12 years. He was also scored on the Historical-Clinical-Risk management 20 version 3 (HCR-20v3). Most of his points were in the Historical category of problems with violence, other antisocial behavior, substance use and violent attitudes. He had indicators for problems with insight and violent ideation or intent. His indication of future problems relevant to risk management were low with concerns only on compliance or responsiveness with supervision and stress and coping skills as present, but not problematic.

Protective or Risk Reducing Factors:

There may be significant risk reducing factors that merit consideration in order to present a balanced assessment of Mr. Gilbert's current risk to reoffend. The Structured Assessment of Protective Factors or SAPROF was developed as a structured clinical judgment instrument that research has found to be relevant factors that may reduce or protect from future risk behaviors. A protective factor is a factor reducing the negative effects that certain chronic or acute risk factors have on an individual's behavior. Items on the SAPROF are scored dynamically, predominantly based on information from the past six months and the current plans regarding the near future. The SAPROF score is considered valid for the next 12 months, providing that the context stays the same.

Mr. Gilbert scored at moderate levels for risk mitigating or protective factors that may reduce his estimated rate of recidivism. His overall level of risk is estimated to be moderate to high which when combined with moderate levels of risk reducing factors would result in a balanced score of low to

moderate risk for reoffending. Gilbert has also participated in cognitive-behavioral programming and has reached an age where the likelihood of reoffending is reduced.

Summary and Risk Management Recommendations

Current literature in Risk Assessment Best Practices asks questions such as: Who the person "is" in terms of gender, age, and developmental growth currently as well as at the time of the Incident Crime; What the person "has done" in terms of their criminal activities; What the person "has" in terms of psychiatric conditions that might increase or decrease risk; and what has been "done to" the person in terms of abuse, neglect, or familial actions. These questions are used as a format for understanding a person's level of risk.

The question of who a person "is," can be reviewed from perspective of past & current functioning.

While nothing can excuse the tragic loss of two lives; awareness of the factors affecting the inmate's behavior might help one evaluate how he could be a part of such activities and whether similar current conditions exist that could influence behaviors if sentencing was modified. As elaborated on above, Mr. Gilbert was approximately 15 years old when he and a friend took guns and began to break into cabins in a rural area. Mr. Gilbert aimed his rifle at one man who was attempting to stop them, another man came along and was shot by Gilbert several times and he died. A third man came along in a truck and Gilbert shot him in the head and killed him. Both defendants were intoxicated at the time.

Information presented earlier in this report suggests that Mr. Gilbert would still be chronologically and emotionally in the middle of completing important developmental processes. He appeared to be lacking key developmental/environmental supports that often protect an individual from bad choices/behaviors during these vulnerable times. Factors shown to decrease chances of engaging in risky behavior include presence of a loving & supporting adult relationship, connection to positive peer groups/influences, and sense of academic success. At the time of his incident crime, Mr. Gilbert was not attending school, and not getting along well with his parents. He was drinking heavily and using other street drugs to the point of identifying himself as an alcoholic upon admission to custody. He was running away from home as well.

Again, the research finds that individuals in these situations are going to be more at risk for negative behaviors. Although not excusing any delinquent behaviors, Dahl (2008) reminds us of the strong influence these biological/neurological processes can have: "These findings suggest that adolescents engage relatively fewer prefrontal regulatory processes than adults when making decisions—in ways that may make adolescents more prone to risk taking in certain situations. More generally, engaging less prefrontal cognitive control may permit a relatively greater influence from affective systems that influence decision making and behavior which, in turn, increases adolescent vulnerability to some social and peer contexts that activate strong feelings."

The question of who the inmate is currently, recognizes that he is now almost 41 years old and has experienced growth and maturation over time. Evidence in his records validate Mr. Gilbert's report of having made significant changes in many areas including: reduction of violent & destructive behaviors; disconnection from negative & anti-social peer influences; increasing presence of positive peer relations; and in focusing on coping activities. Whether the changes are of sufficient duration, quantity, or quality to warrant reconsideration of sentencing is a legal decision to be determined by the Board.

If based primarily on criminal & Infraction history, Mr. Gilbert would be considered to be in the "moderate" to "high-moderate" range for risk of reoffending after release. However, overall risk assessment may benefit from taking into consideration of dynamic factors such as several years of no serious infractions with one exception and the lack of current biological/neurological development risk factors that were present as an adolescent and young adult. Under these parameters, and accounting for the results of the SAPROF, the risk of reoffending would best be seen as in the "low-moderate to moderate" range. Whether the changes/factors are of sufficient duration, quantity, or quality to warrant reconsideration of sentencing is a legal decision to be determined by the Board.

The question of what a person "has," can be defined by the diagnosis of any mental health disorders that could increase/decrease one's risk for recidivism or violence. These could include major mental disorders (e.g., Mood, Anxiety, or Psychotic Disorders), Personality disorders (Antisocial Personality Disorders, etc.), and/or Substance Abuse disorders. This individual does not meet current diagnostic criteria for these disorder types and has not required mental health services while incarcerated. His one factor of risk is his self-identified alcoholism and drug use. It is imperative that he abstain from any substance abuse or his risk level significantly increases.

A last question, asking what has been "done to" the person, is consistent with the findings of the National Research Council's Panel on the Understanding and Control of Violent Behavior. They concluded that whether or not the person was raised in a pathological family environment and whether the individual was physically abused can correlate as risk factors for future violence. Mr. Gilbert was raised in a supportive and nurturing environment and has "low" risk of reoffending based on the factor of what has been "done to" him.

Overall, the results of this evaluation suggest that Mr. Gilbert is at "moderate" risk to reoffend. Measures utilizing primarily static factors place him at moderate-to-high risk. Records documenting improved functioning and maturation over time (combined with results from the SAPROF) suggest that, for this particular individual, the risk level could be viewed as more in the "moderate" range. Taking into account maturational and dynamic risk factors is consistent with the legal and clinical findings elaborated on earlier in this report. Whether these risk estimations & factors are sufficient to justify changes in sentencing (or a release to less restrictive levels), however, is not a scientific/clinical question and is respectfully deferred to the Board.

Recommendations:

Mr. Gilbert's risk of recidivism or reoffending is dependent upon several risk factors which, if successfully managed, should continue to reduce his risk of recidivism or violence toward others. These include:

Mr. Gilbert may be a reasonable candidate for transitioning to a less restrictive setting after a period of infraction free behavior. Demonstration of self-regulation would be beneficial to all concerned. He would benefit from continued involvement in therapy for stress and anger issues, especially concerning those that may stem from possible reintegration into the community.

1. Mr. Gilbert is less likely to engage in criminal activity in the presence of mandatory ongoing external supervision & monitoring to be required by the legal system as well as various support systems.

2. Mr. Gilbert is less likely to engage in criminal activity in the presence of strong family and positive peer connections. Efforts should be made to insure adequate access and transportation to family members and positive peer activities; and to assist with relationship issues that often occur during major transitions.

3. Mr. Gilbert is less likely to engage in criminal activity in the presence of required participation in a therapeutic group where they discuss issues/stress associated with the process of transitioning to life outside of prison. He reports having learned some important communication, anger management, and coping skills from programming activities such as the CBT courses he has taken. Continuing with this type of program when released could help establish a place to reinforce that knowledge/skill and to expand its use for outside of prison; as well as for situations not yet encountered. A structured regular group activity would also provide additional exposure to a positive peer culture with others who might be experiencing similar adjustment problems.

4. Mr. Gilbert is less likely to engage in criminal activity in the presence of continued court requirements to abstain from alcohol or other drugs. He is used to having external constraints beginning as an adolescent in prison, and the presence of continued external constraints might provide ongoing awareness appropriate to reinforce the internal commitment to abstinence already verbalized by the inmate. This will be most effective if drug/alcohol testing requirements are also mandated, and if they are sometimes administered randomly rather than always on a predictable schedule. Any indication of his abusing alcohol should precipitate his being evaluated for need for treatment services and for following the treatment recommendations from that evaluation.

With the submission of this report, my evaluation of Mr. Gilbert is complete. Please do not hesitate to contact me if there are any questions.

Deborah Wentworth, PhD

Deborah Wentworth, PhD
Psychologist 4, Evaluator for the
Indeterminate Sentence Review Board

NO. 100432-0

SUPREME COURT

STATE OF WASHINGTON

STATE OF WASHINGTON,)	
)	KLICKITAT COUNTY
Plaintiff,)	NO. 92 1 00108 1
Respondent,)	
)	
v.)	CERTIFICATE OF SER-
)	VICE
)	
JEREMIAH JAMES GILBERT,)	
)	
Defendant,)	
Appellant.)	
_____)	

I certify under penalty of perjury under the laws of the State of Washington that on this 23rd day of January, 2023, I caused a true and correct copy of the *RESPONSE* to be served on:

WASHINGTON STATE SUPREME COURT
Attn: Erin Lennon, Court Clerk
supreme@courts.wa.gov

E-FILE

KLICKITAT COUNTY PROSECUTOR'S OFFICE

E-FILE

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Appellate Court Case Title: State of Washington v. Jeremiah James Gilbert
Superior Court Case Number: 92-1-00108-1

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