FILED
SUPREME COURT
STATE OF WASHINGTON
7/11/2024 4:21 PM
BY ERIN L. LENNON
CLERK

No. _____

(CoA No. 394417-III)

Case #: 1032498

IN THE SUPREME COURT OF WASHINGTON

STATE OF WASHINGTON,
Respondent,

v.

MICHAEL LAUDERDALE,
Petitioner.

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER

Michael Lauderdale petitions for review of the Court of Appeals decision designated in Part B of this petition.

B. COURT OF APPEALS DECISION

On June 13, 2024, the Court of Appeals issued an opinion dismissing Mr. Lauderdale's appeal. A copy is attached.

C. ISSUES PRESENTED FOR REVIEW

1. Does the state constitution prohibit a life without parole (LWOP) sentence for a late adolescent?

2.a-c. Does the state constitution prohibit a LWOP sentence for a rehabilitated late adolescent? Was the sentencing judge's finding that Lauderdale had demonstrated rehabilitation inconsistent with the finding that the crime was not the produce of transient immaturity? Did the sentencing judge place too much

weight on rehabilitation and not enough on rehabilitation?

3. Did the sentencing judge incorrectly apply a presumption that LWOP was the correct sentence?

4. Where the trial transcript was unavailable, did the judge improperly find facts about the conduct of the crime from the probable cause statement without affording Lauderdale an opportunity to object and contest those facts?

D. STATEMENT OF THE CASE

In 1994, then 19-year-old Michael Lauderdale was convicted of the aggravated murder of Jeremy Wood, who was killed with a baseball bat. Lauderdale was sentenced to LWOP. Following the *Monschke* decision, Lauderdale was resentenced.

Prior to the hearing, Mr. Lauderdale's attorney submitted a voluminous mitigation packet, including a

detailed family history, psychological evaluation report, risk assessment report from the Department of Corrections, and various certificates of achievement and training earned by Mr. Lauderdale while incarcerated. The Court of Appeals summarized the facts as follows:

> The court detailed the information set forth in Mr. Lauderdale's mitigation packet. It acknowledged Mr. Lauderdale had a traumatic childhood and lack of impulse control as a juvenile. *Id.* at 60-62. The court also noted Mr. Lauderdale had largely stayed out of trouble in prison and maintained employment and engagement in prison programming. *Id.* at 62-63. The court then turned to the details of Mr. Lauderdale's offense conduct. The crime against Mr. Wood showed calculation and planning. It "was not an impulsive act." *Id.* at 69. And, although Mr. Lauderdale had taken responsibility for some of his conduct, he had never admitted to binding Mr. Wood's legs or sexually assaulting Mr. Wood. *Id.* at 65, 71. There was no evidence Mr. Lauderdale's conduct was prompted by peer or family pressure. *Id.* at 67. And after completion of the crime, Mr. Lauderdale attempted to get rid of evidence connecting him to the murder, thus exhibiting not

> only consciousness of guilt but an awareness of consequences. *Id*. at 70-71.
>
> In terms of Mr. Lauderdale's circumstances at the time of the offense conduct, the trial court explained Mr. Lauderdale was living as an adult. He was no longer in his abusive childhood home. He was employed and had obtained independent housing and his GED (general educational diploma). *Id*. at 67. "[Mr. Lauderdale] had control over his own environment at the time that he committed this crime." *Id*. at 70. After his arrest, Mr. Lauderdale demonstrated he was capable of working with counsel and assisting with his defense. *Id*. at 67.
>
> The trial court recited the various purposes of punishment under the Sentencing Reform Act of 1981, chapter 9.94A RCW, including proportionality, respect for law, community protection, "retribution, deterrence, incapacitation, and rehabilitation." Id. at 71-72. The court then determined the original LWOP sentence remained appropriate for Mr. Lauderdale. *Id*. at 72.

State v. Lauderdale, No. 39441-7-III, at *2 (2024)

The Court of Appeals affirmed, finding no procedural or substantive error, although it failed to decide several of the issues raised by Lauderdale.

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

1. This Court Should Categorically Bar LWOP for Late Adolescents Ages 18-20

On June 25, 2012, the United States Supreme Court decided *Miller v. Alabama*, 567 U.S. 460 (2012), holding that juveniles were "different" due to their neurodevelopmental immaturity and could not be subject to mandatory life without parole (LWOP).

On October 18, 2018, this Court held that our state constitution requires an additional protection, categorically barring LWOP for all juveniles in *State v. Bassett*, 192 Wash. 2d 67, 428 P.3d 343 (2018), recognizing that even after *Miller* there was an unacceptable risk that children undeserving could still receive a life without parole sentence given the difficulty "even for expert psychologists to differentiate between the juvenile offender whose crime reflects

unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption." *Bassett,* 192 Wash. 2d at 89.

It is now understood that neurodevelopment continues past a person's 18th birthday. In *Matter of Monschke*, 197 Wash. 2d 305, 482 P.3d 276 (2021), this Court expanded the *Miller* rule again, this time striking LWOP as applied to late adolescents ages 18-20 because that cohort shares the neurodevelopmental characteristics that make juveniles "different." Consequently, the same constitutional protections must apply.

Monschke broke new ground, not only in Washington but nationally. Soon thereafter, *People v. Parks*, 510 Mich. 225, 987 N.W.2d 161 (2022), held 18-year-olds convicted of first-degree murder must receive the same individualized statutory sentencing

procedure as juveniles who have committed first-degree murder.

Then, Massachusetts took the next logical step when it categorically barred LWOP for all individuals ages 18-20 in *Commonwealth v. Mattis,* 493 Mass. 216, 217–18, 224 N.E.3d 410, 415 (2024):

> Here, we consider whether our holding in *Diatchenko I* [barring LWOP for all juveniles] should be extended to apply to emerging adults, that is, those who were eighteen, nineteen, and twenty years of age when they committed the crime. Based on precedent and contemporary standards of decency in the Commonwealth and elsewhere, we conclude that the answer is yes.

This case presents the same issue as *Mattis*: whether someone 18-20 should ever be sentenced to LWOP. This is a significant question of law under the Constitution of the State of Washington and an issue of

substantial public interest that should be determined by this Court.[1] This Court should grant review.

LWOP is Cruel for All 18-20 Year Olds

Mr. Lauderdale asks this Court to hold that the cruel punishment clause of the Washington Constitution[2] categorically prohibits a life in prison until death sentence for late adolescents ages 18-20. As in *Bassett*, 192 Wash. 2d at 85, this Court should employ the categorical bar analysis and consider the characteristics of youth.

The lower court did not conduct this analysis, but instead passed the proverbial "buck" to this Court.

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[1] *Monschke* did not raise, and this Court did not decide this issue. *Monschke,* 197 Wash. 2d at 312 ("We need not decide whether new constitutional protections [*i.e.*, a categorical ban on LWOP] apply in this case because the petitioners do not ask for new constitutional protections.").

[2] Article I, section 14's cruel punishment clause provides greater protection than the Eighth Amendment. *Bassett,* 192 Wash. 2d at 82.

State v. Lauderdale, at *3 (June 13, 2024) ("To the extent Mr. Lauderdale believes *Bassett* must be expanded to include youthful offenders, that must be resolved by our Supreme Court.").

The categorical bar test involves two considerations. The first step is to look at objective indicia of society's standards to determine whether there is a national consensus or a trend in favor of the result sought. The second step, the judicial exercise of independent judgment, requires consideration of the culpability of the offenders at issue in light of their crimes and characteristics, along with the severity of the punishment in question and whether the challenged sentencing practice serves legitimate penological goals. *Bassett,* 192 Wash. 2d at 87. Lauderdale proceeds in that order. Both considerations merit relief.

There is a Clear Trendline Favoring a Categorical Bar

In *Bassett,* 192 Wash. 2d at 86, 428 this Court found that "the *direction of change* in this country is unmistakably and steadily moving toward abandoning the practice of putting child offenders in prison for their entire lives." (emphasis added). There is a similar and equally unmistakable "direction of change" in favor of barring LWOP for late adolescents.

Legislative action carries great weight in this Court's analysis. Washington now has several statutes reflecting the recognition that maturity continues past age 18. RCW 72.01.410 provides a juvenile sentenced to prison "shall not be transferred to the custody of the department of corrections" until "the person reaches the age of twenty-five." As the commentary to the bill provides, the "emphasis on rehabilitation up to age twenty-five reflects similar programming in other

states, which has significantly reduced recidivism of juveniles confined in adult correctional facilities." 2019 c 322 § 1.

Legislation in other states reflects this trend. The District of Columbia now provides a chance at sentence reduction for people who were under twenty-five years old when they committed a crime. D.C. Code § 24-403.03. In 2019, Illinois enacted a law allowing parole review at ten or twenty years into a sentence for most crimes, exclusive of sentences to life without parole, if the individual was under twenty-one years old at the time of the offense. 730 Ill. Comp. Stat. 5/5-4.5-115. Effective January 1, 2024, Illinois also ended life without parole for most individuals under twenty-one years old, allowing review after they serve forty years. Ill. Pub. L. No. 102-1128, § 5 (2022). California has extended youth offender parole eligibility to

individuals who committed offenses before twenty-five years of age. Cal. Penal Code § 3051. Similarly, in 2021, Colorado expanded specialized program eligibility, usually reserved for juveniles, to adults who were under twenty-one when they committed a felony. Colo. House Bill No. 21-1209 (2021) (enacted). In Wyoming, "youthful offender" programs were revised to offer reduced and alternative sentencing for those under thirty years old. Wyo. Stat. Ann. §§ 7-13-1002, 7-13-1003.

In practice, there is also an unmistakable trend *away* from LWOP sentences imposed on late adolescents. LWOP sentences imposed on people under age 26 peaked in 1998 but stabilized until 2009, since which time the imposition of these sentences declined 37%, even while LWOP for individuals 26 and older has risen. Ashley Nellis and Niki Monazzam. *Left to*

Die in Prison, Emerging Adults 25 and Younger Sentenced to Life without Parole at sentencingproject.org.

With regard to the general availability of LWOP for individuals ages 18-20, *Commonwealth v. Mattis*, 493 Mass. at 232-34, summarizes:

> Twenty-two States and the District of Columbia do not mandate life without parole in any circumstance. Of the remaining twenty-eight States, only twelve (including Massachusetts) mandate life without parole. Moreover, the statutes in at least two of those States provide an opportunity to avoid the mandatory nature of the sentence.
>
> Twelve States mandate life without parole as an alternative to a discretionary death sentence, and five States only mandate life without parole if aggravating circumstances exist.
>
> Massachusetts is one of only ten States that currently require eighteen through twenty year old individuals who are convicted of murder in the first degree to be sentenced to life without parole.
>
> We also may consider where other nations stand in this analysis. See *Okoro*, 471 Mass. at 61, 26

> N.E.3d 1092. See also *Graham*, 560 U.S. at 80, 130 S.Ct. 2011 ("The judgments of other nations and the international community are not dispositive as to the meaning of the Eighth Amendment," but "[t]he Court has looked beyond our Nation's borders for support for its independent conclusion that a particular punishment is cruel and unusual"). The United Kingdom has banned life without parole for any offender under twenty-one years of age at the time of the offense. Sentencing Act 2020, c. 17, § 322, sch. 21, par. 2 (U.K.). And in 2022, the Supreme Court of Canada unanimously ruled that life without parole sentences were unconstitutional for all offenders, regardless of age. *R. v. Bissonnette*, 2022 SCC 23. The foregoing examples suggest that the "evolving standards of decency that mark the progress of a maturing society" referenced in *Miller,* 567 U.S. at 469, 132 S.Ct. 2455, trend away from life without parole for emerging adults (citation omitted).

This Court should conclude, as did the *Mattis* Court, that the evolving standards of decency reflected by recent legislative and judicial action support Lauderdale's requested categorical exemption.

This Court's Independent Judgment

The second step in the categorical bar analysis, the judicial exercise of independent judgment, requires consideration of "the culpability of the offenders at issue in light of their crimes and characteristics, along with the severity of the punishment in question" and "whether the challenged sentencing practice serves legitimate penological goals." *Bassett*, 192 Wash. 2d at 87.

In *Bassett*, this Court gave two reasons for its decision to ban LWOP for all juveniles in all cases. First, the science of neurodevelopment now establishes "a clear connection between youth and decreased moral culpability for criminal conduct." *Id*. The brain-behavior connection continues through the mid-20's. See *State v. O'Dell*, 183 Wash. 2d 680, 358 P.3d 359 (2015) and peer reviewed articles cited therein.

Second, even though *Miller* had barred mandatory LWOP, there remained an unacceptable risk that children undeserving of a life without parole sentence will receive one due to "the imprecise and subjective judgments a sentencing court could make regarding transient immaturity and irreparable corruption." *Bassett*, 192 Wash. 2d at 89.

The same is true post-*Monschke* for late adolescents. There is no reason to conclude that a sentencing judge can better determine irreparable corruption for a late adolescent than it could for a juvenile given the fact that maturation continues into a person's mid-20's. This Court's independent judgment should lead to the same conclusion here as in *Bassett*.

Conclusion

This is an important, undecided constitutional issue. Like with the cases cited, review is merited.

2. Life Without Parole Cannot be Imposed on a Late Adolescent Who Has Demonstrated Rehabilitation and, Thereby Also Transient Immaturity. The Sentencing Court Improperly Placed Too Much Weight on Retribution and Not Enough Weight on Rehabilitation.

The Sentencing Court Found Not Only the Possibility of Rehabilitation, But Actual Rehabilitation.

A court cannot impose a de facto life sentence on a juvenile whose crime reflects "unfortunate yet transient immaturity." *State v. Haag*, 198 Wash. 2d 309, 318, 495 P.3d 241 (2021). This Court should grant review and hold that a court cannot impose LWOP on a late adolescent whose subsequent rehabilitation reveals his past transient immaturity.

Likewise, this Court should hold that when weighing mitigating and aggravating circumstances under RCW 10.95.030, a court must place greater weight on the mitigation, including "the youth's

chances of becoming rehabilitated." RCW 10.95.030(2)(b). Lauderdale's sentence reflected the overemphasis of the crime and the need for retribution.

This Court should accept review and hold that these fundamental rules for the sentencing of juveniles in adult court apply with equal force to someone 18-20 sentenced under RCW 10.95.030.[3]

The sentencing court misconstrued the meaning of transient immaturity, specifically how it is intertwined with the possibility of rehabilitation. Lauderdale's sentencing court:

> …recognized Mr. Lauderdale had a traumatic childhood. It also recognized he had done a lot to rehabilitate himself during his time in prison. But the court determined that at the time of the offense Mr. Lauderdale was exhibiting adult conduct and behavior. His offense conduct did not reflect transient immaturity.

[3] The lower court failed to explain why it concluded that RCW 10.95.030(2)(b) is inapplicable given the requirement of construing the statute consistent with the constitution.

Lauderdale at *3.

The sentencing courts findings are contradictory. When a court finds that a defendant has demonstrated either the possibility of rehabilitation or, as here, actual rehabilitation, a court cannot conclude that the offense was not the product of transient immaturity, regardless of the facts of the crime. Transient immaturity can only be measured by considering the possibility of rehabilitation. They are two sides of the same coin.

The "signature qualities" of "immaturity and irresponsibility, impetuousness, and recklessness" are almost always "transient." *Miller,* 567 U.S. at 476. Most adolescents will outgrow the signature qualities of youth by the time their brain development is complete. The seriousness of their crime or how it was committed does not alter this proposition. Instead,

"unfortunate yet transient immaturity'," serves as an antonym to "irreparable corruption." *State v. Ramos,* 187 Wash. 2d 420, 444, 387 P.3d 650, 663 (2017).

A defendant who has demonstrated rehabilitation, as has Lauderdale, is not irreparably corrupt. It follows, as a matter of logic, that his criminal actions were the product of transient immaturity. For that reason, "transient immaturity" and particularly, potential for rehabilitation, of a defendant is still the touchstone inquiry a sentencing judge must determine prior to sentencing a juvenile homicide offender. *Davis v. State,* 415 P.3d 666, 693 (Wyo. 2018)

This Court's most recent late adolescent sentencing decision is in accord. When resentencing a defendant 18-20 years old whose LWOP sentence was vacated, the court must recognize that "(y)outh is a

time of life where people are susceptible to influence, which is accompanied by a heightened capacity for change." *State v. Carter*, __ Wn.3d __, 548 P.3d 935, 948 (2024) (affirming a new less-than-life sentence and noting the superior court conducted an analysis "consistent with *Monschke* because it exercised individualized discretion by assessing the totality of the evidence, including her actual and sustained rehabilitation." *Carter* further held:

> The State argues that postsentencing conduct and remorse do not reduce a defendant's culpability at the time of the offense. We reject the State's argument and hold that the actions a defendant takes toward self-improvement postsentencing are relevant at resentencing. Also, the defendant's later ability to understand and take responsibility for what they did and its effects is consistent with our understanding of the features of youth—though youth is accompanied by immaturity, impetuosity, and failure to appreciate risks and consequences, it is also accompanied by heightened capacity for change.

Carter, 548 P.3d at 948–49.

Review is warranted because without reliable guidance as to how to distinguish an "irreparably corrupt" defendant from the typical offender who is capable of rehabilitation, additional life without parole or de facto life sentences necessarily will be imposed in an unconstitutional manner. Alice Reichman Hoesterey, *Confusion in Montgomery's Wake: State Responses, the Mandates of Montgomery, and Why A Complete Categorical Ban on Life Without Parole for Juveniles Is the Only Constitutional Option,* 45 Fordham Urb. L.J. 149, 187–88 (2017).

The Judge Placed Too Much Weight on the Crime

This Court should also accept review because the sentencing court failed to strike the required balance, among other things treating Lauderdale's impressive rehabilitative efforts as irrelevant and unrelated to transient immaturity.

Comparing the sentencing judge's findings with the conclusions show how that court improperly gave too much weight to the crime and not enough to Lauderdale's mitigation. As noted previously:

> It recognized Mr. Lauderdale had a traumatic childhood. It also recognized he had done a lot to rehabilitate himself during his time in prison. But the court determined that at the time of the offense Mr. Lauderdale was exhibiting adult conduct and behavior. His offense conduct did not reflect transient immaturity.

Lauderdale, at *3. The court's conclusion simply does not follow its findings. The consequences of trauma, including neurodevelopment impairment, do not disappear when someone turns 18. Jenifer Siegel et al, *Exposure to Violence Affects the Development of Moral Impressions and Trust Behavior in Incarcerated Males,* 10 Nature Comm. 1 (2019). Likewise, while many crimes committed by juveniles and late adolescents reflect planning and knowledge of

wrongfulness, that does not mean those crimes were committed by neurodevelopmentally mature individuals. The deficits of neurodevelopment are not limited to impulsivity and peer pressure. Center for Law, Brain & Behavior at Massachusetts General Hospital, *White Paper on the Science of Late Adolescence: A Guide for Judges, Attorneys and Policy Makers* (2022). https://clbb.mgh.harvard.edu/white-paper-on-the-science -of-late-adolescence/.

Once again, the lower court's decision reveals that this issue is one of substantial public interest. The science of adolescent neurodevelopment and the corresponding brain-behavior relationship has developed quickly. This Court has done an admirable job of incorporating that science into its constitutional sentencing jurisprudence. However, the failures of the trial and lower appellate court in this case demonstrate

the need to further explain and elucidate so that courts can accurately assess and weigh these facts when imposing a sentence.

3. The Sentencing Judge Improperly Treated Life Without Parole as the Presumptive Sentence.

The sentencing judge treated the prior LWOP sentence as the presumptive sentence and placed the burden on Lauderdale to prove that a lesser sentence was justified. RP 72 ("the original sentence in this case, of life without the possibility of parole, is the appropriate sentence"). The sentencing judge erred.

There is no presumptive sentence. Lauderdale did should not have had to shoulder the burden of proving that a lesser sentence was "appropriate."

This follows from how the statute was saved by the Supreme Court so that it complied with the constitutionally required discretion, namely severing

the word "shall" and replacing it with "may," so that LWOP is the maximum sentence and no minimum sentence is specified. In other words, the sentencing range for aggravated murder is zero to LWOP. "This leaves LWOP and anything less than LWOP as the available options." *State v. Carter*, __ Wn.3d __, 548 P.3d 935, 946 (2024).

In other words, there is no "correct" or "appropriate" starting sentence. A defendant bears no burden to merit a sentence less than LWOP. While the judge's comments are somewhat ambiguous, the comments imply that Lauderdale failed to meet his burden of showing that LWOP was an inappropriate sentence. The Court of Appeals did not decide this issue. This Court should grant review given that the sentencing judge's comments are contrary to precedent.

4. The Sentencing Court Treated Allegations as Fact

Finally, this case presents what is likely a reoccurring issue in cases returned for resentencing many years after conviction and original sentencing. Sadly, many Washington courts do not preserve trial transcripts, even when a complete transcript has been produced and was received by trial and appellate courts. While some resentencing cases do not involve any contested facts, it is hardly novel or controversial to point out that not every fact alleged at the beginning of a criminal case is adduced or proven at trial.

Fundamental principles of due process prohibit a criminal defendant from being sentenced on the basis of information which is false, lacks a minimum indicia of reliability, or is unsupported in the record. *State v. Ford*, 137 Wash. 2d 472, 481, 973 P.2d 452 (1999). See also *State v. Herzog,* 112 Wash.2d 419, 426, 771 P.2d

739 (1989) (any action taken by the sentencing judge which fails to comport with due process requirements is constitutionally impermissible). Information relied upon at sentencing "is 'false or unreliable' if it lacks 'some minimal indicium of reliability beyond mere allegation.' " *United States v. Ibarra*, 737 F.2d 825, 827 (9th Cir.1984) (emphasis added) (quoting *United States v. Baylin*, 696 F.2d 1030, 1040 (3d Cir.1982)).

Here, the sentencing judge relied on the probable cause statement—treating it as fact and failing to provide Lauderdale an opportunity to object and request an evidentiary or "recreation" hearing.

This Court should accept review.

F. CONCLUSION

This case presents several important, reoccurring substantive and procedural issues related to the

resentencing of late adolescents convicted of aggravated murder. This Court should accept review.

WORD COUNT

This Petition for Review has 3891 words.

DATED this 11th day of July 2024

Respectfully Submitted:

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FILED
JUNE 13, 2024
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

STATE OF WASHINGTON, Respondent, v. MICHAEL RANDALL LAUDERDALE Appellant.	)))))))))	No. 39441-7-III UNPUBLISHED OPINION

PENNELL, J. — In 1995, a jury found Michael Lauderdale guilty of aggravated first degree murder and first degree felony murder, and sentenced him to life without parole (LWOP). Mr. Lauderdale was 19 years old at the time of the offense conduct. In 2021, his case was remanded by our Supreme Court to the trial court for resentencing to consider the mitigating factors of youth in light of *In re Personal Restraint of Monschke*. 197 Wn.2d 305, 482 P.3d 276 (2021) (plurality opinion). On resentencing, the trial court reimposed Mr. Lauderdale's LWOP sentence. We affirm.

FACTS[1]

In 1994, then 19-year-old Michael Lauderdale killed Jeremy Wood by assaulting him with a baseball bat. Forensic evidence indicated Mr. Lauderdale also bound Mr. Woods's legs and sexually assaulted Mr. Wood's deceased body. A jury convicted Mr. Lauderdale of aggravated first degree murder and first degree felony murder. He received a sentence of LWOP. In 2019, Mr. Lauderdale moved for resentencing, alleging a double jeopardy violation. The State conceded the violation. The trial court then vacated the felony murder conviction and Mr. Lauderdale was resentenced to LWOP, as it was required to do at the time.

Mr. Lauderdale appealed the LWOP sentence, arguing the trial court had the discretion, but failed to recognize it, to impose a sentence below life in prison based on the mitigating characteristics of youth. We rejected Mr. Lauderdale's argument on appeal. *See State v. Lauderdale*, No. 37141-7-III, (Wash. Ct. App. Dec. 24, 2020) (unpublished), https://www.courts.wa.gov/opinions/pdf/371417_2_ord.pdf. The Supreme Court accepted

[1] The transcript from Mr. Lauderdale's 1995 trial is unavailable. Unless otherwise noted, we draw our factual recitation from this court's prior decisions. *See State v. Lauderdale*, No. 37141-7-III, (Wash. Ct. App. Dec. 24, 2020) (unpublished), https://www.courts.wa.gov/opinions/pdf/371417_2_ord.pdf; *State v. Lauderdale*, noted at 83 Wn. App. 1023 (1996).

review only on the sentencing issue and immediately remanded the case to the trial court for resentencing in light of *Monschke*, which held that Washington's constitutional prohibition of mandatory LWOP sentences extends to youthful offenders aged 18 to 20. Ruling Granting Rev., *State v. Lauderdale*, No. 99591-5 (Wash. Sept. 1, 2021).

On remand, Mr. Lauderdale's attorney submitted a voluminous mitigation packet, including a detailed family history, psychological evaluation report, risk assessment report from the Department of Corrections, and various certificates of achievement and training earned by Mr. Lauderdale while incarcerated.

A resentencing hearing was held on October 20, 2022. The trial court listened to statements from several of Mr. Wood's family members and friends. The parties then presented their recommendations. The State argued that, under *Monschke*, the court "must give meaningful consideration to [Mr.] Lauderdale's youthfulness at the time he committed the crime." Rep. of Proc. (RP) (Oct. 20 ,2022) at 30. Nevertheless, the State asked the court to reimpose the LWOP sentence based on the facts of the case, seriousness of the crime, and Mr. Lauderdale's continued lack of remorse. *Id.* at 31-33. Mr. Lauderdale asked for a 30-year sentence, which would essentially amount to time served. During his allocution, Mr. Lauderdale stated he was ashamed of what he had

done, but was focused on changing himself for the better. *Id.* at 45-48. The court then took the matter under advisement.

The trial court reconvened on November 3, 2022. At that hearing, the court referenced the applicable case law, including *Monschke*. The court read from *State v. Ramos*, 187 Wn.2d 420, 387 P.3d 650 (2017), identifying the factors relevant to determining whether an offender's culpability was impacted by the mitigating factors of youth. RP (Nov. 3, 2022) at 58-59.

The court detailed the information set forth in Mr. Lauderdale's mitigation packet. It acknowledged Mr. Lauderdale had a traumatic childhood and lack of impulse control as a juvenile. *Id*. at 60-62. The court also noted Mr. Lauderdale had largely stayed out of trouble in prison and maintained employment and engagement in prison programming. *Id*. at 62-63.

The court then turned to the details of Mr. Lauderdale's offense conduct. The crime against Mr. Wood showed calculation and planning. It "was not an impulsive act." *Id*. at 69. And, although Mr. Lauderdale had taken responsibility for some of his conduct, he had never admitted to binding Mr. Wood's legs or sexually assaulting Mr. Wood. *Id.* at 65, 71. There was no evidence Mr. Lauderdale's conduct was prompted by peer or family pressure. *Id.* at 67. And after completion of the crime, Mr. Lauderdale attempted

to get rid of evidence connecting him to the murder, thus exhibiting not only consciousness of guilt but an awareness of consequences. *Id.* at 70-71.

In terms of Mr. Lauderdale's circumstances at the time of the offense conduct, the trial court explained Mr. Lauderdale was living as an adult. He was no longer in his abusive childhood home. He was employed and had obtained independent housing and his GED (general educational diploma). *Id.* at 67. "[Mr. Lauderdale] had control over his own environment at the time that he committed this crime." *Id.* at 70. After his arrest, Mr. Lauderdale demonstrated he was capable of working with counsel and assisting with his defense. *Id.* at 67.

The trial court recited the various purposes of punishment under the Sentencing Reform Act of 1981, chapter 9.94A RCW, including proportionality, respect for law, community protection, "retribution, deterrence, incapacitation, and rehabilitation." *Id.* at 71-72. The court then determined the original LWOP sentence remained appropriate for Mr. Lauderdale. *Id.* at 72. The court subsequently conformed its oral decision to written findings. Clerk's Papers at 176-82.

Mr. Lauderdale has filed a timely appeal.

ANALYSIS

Mr. Lauderdale's first argument on appeal is that the Washington Constitution requires a categorical bar on LWOP for defendants aged 20 and under. Mr. Lauderdale cites to *State v. Bassett*, 192 Wn.2d 67, 428 P.3d 343 (2018), which adopted a categorical bar for juveniles under age 18. According to Mr. Lauderdale, the court's decision in *Monschke* dictates that a categorical bar must also apply to young adults aged 18 to 20.

We disagree with Mr. Lauderdale's assessment of *Monschke*. The lead opinion in *Monschke* "was careful to note it was not concluding that LWOP is categorically barred for young adults and was therefore not announcing a decision similar to *State v. Bassett*." *In re Pers. Restraint of Kennedy*, 200 Wn.2d 1, 23, 513 P.3d 769 (2022). The *Monschke* lead opinion specifically recognized that "[n]ot every 19- and 20-year-old will exhibit . . . mitigating characteristics" warranting leniency. 197 Wn.2d at 326. Accordingly, *Monschke* affords trial courts discretion to assess the propriety of an LWOP sentence on an individual basis. This court has repeatedly rebuffed invitations to extend *Monschke*'s ruling. *See State v. Krueger*, 26 Wn. App. 2d 549, 555-56, 540 P.3d 126 (2023), *review denied*, ___ Wn.2d ___, 547 P.3d 900 (2024).

Consistent with *Monschke*, we hold sentencing courts retain discretion to impose LWOP sentences on youthful adult offenders. To the extent Mr. Lauderdale believes

Bassett must be expanded to include youthful offenders, that must be resolved by our Supreme Court.

Mr. Lauderdale also argues the trial court abused its discretion at resentencing by focusing on the facts of the offense and retribution instead of taking a forward-looking approach focused on rehabilitation. In support of this argument, Mr. Lauderdale cites *State v. Haag*, 198 Wn.2d 309, 495 P.3d 241 (2021).[2]

Mr. Lauderdale's reliance on *Haag* is misplaced. *Haag* involved a juvenile resentencing under former RCW 10.95.030(3) (2015) and former RCW 10.95.035 (2015). Former RCW 10.95.030(3)(b) set forth the following process for imposing a sentence for aggravated first degree murder on a defendant under age 18:

> [T]he court must take into account mitigating factors that account for the diminished culpability of youth as provided in *Miller v. Alabama*, [567 U.S. 460,] 132 S. Ct. 2455[, 183 L. Ed. 2d 407] (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.[3]

Haag noted that this statutory language does not include a "any reference to retributive factors." 198 Wn.2d at 322. Given the statutory text, the Supreme Court reasoned that

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[2] Mr. Lauderdale also complains the trial court improperly relied on facts outside the record and did not reconstruct the 1995 trial transcript. These contentions were not preserved in the trial court and therefore will not be reviewed on appeal. *See* RAP 2.5(a).

[3] This same provision is now found in RCW 10.95.030(2)(b).

"the legislature intended sentencers to focus on mitigating factors, with retribution playing a minor role." *Id*. According to the *Haag* court, this means the sentencing hearing "must be forward looking, not backward looking." *Id*. at 322-23.

Because Mr. Lauderdale was nearly 19 years and 8 months old at the time of his offense conduct, his 2022 resentencing did not fall under former RCW 10.95.030(3)(b). Rather, as recognized by the trial court at the time of resentencing, Mr. Lauderdale's sentencing was governed by the nonstatutory, constitutional factors set forth in *Ramos*.

As explained in *Ramos*, when assessing the constitutionality of an LWOP sentence on a youthful offender, a trial court "must meaningfully consider how juveniles are different from adults." 187 Wn.2d at 434-35. "If the [young person] 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" LWOP. *Id*. at 435. A court assessing the constitutionality of an LWOP sentence during a resentencing hearing may consider evidence of a defendant's postsentencing rehabilitative efforts. *Id*. at 449. However, it is not required to consider such evidence. *Id.*

The resentencing court here complied with the procedure set forth in *Ramos*. The court gave meaningful consideration to Mr. Lauderdale's mitigation evidence. It recognized Mr. Lauderdale had a traumatic childhood. It also recognized he had done

a lot to rehabilitate himself during his time in prison. But the court determined that at the time of the offense Mr. Lauderdale was exhibiting adult conduct and behavior. His offense conduct did not reflect transient immaturity. Thus, the court was not constitutionally prohibited from imposing a sentence of LWOP.

CONCLUSION

The judgment of conviction is affirmed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

Pennell, J.

WE CONCUR:

Staab, A.C.J.

Cooney, J.

ALSEPT & ELLIS

July 11, 2024 - 4:21 PM

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