No. 104049-1

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,
Respondent,

v.

TAYLOR CONLEY,
Petitioner.

MEMORANDA OF AMICUS CURIAE WASHINGTON INNOCENCE PROJECT

Lara Zarowsky, WSBA#40745
WASHINGTON INNOCENCE PROJECT
P.O. Box 85869
Seattle, Washington 98145-1869
206-739-9333
lara.zarowsky@wainnocenceproject.org

John Marlow, WSBA#49713
WASHINGTON INNOCENCE PROJECT
P.O. Box 85869
Seattle, Washington 98145-1869
206-626-9479
john.marlow@wainnocenceproject.org

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

I. IDENTITY AND STATEMENT OF INTEREST

The identity and interests of Amicus Curiae are laid out in the Motion for Leave to File Brief of Amicus Curiae previously filed and is incorporated here by reference. Amicus relies upon the Petitioner's statement of facts.

II. INTRODUCTION

This Court should accept review of the Court of Appeals decision to clarify that due process prohibits any negative inference to be drawn against a defendant for asserting innocence or exercising the constitutional right to appeal. This Court should further find that an individual's assertion of innocence or choice to pursue relief through the appellate process has no bearing on their capacity for, or achievement of, rehabilitation.

Wrongful convictions are a persistent and tragic reality of our criminal legal system, a system that does not anticipate the reality that a constitutionally and procedurally sound trial may result in the conviction of an entirely innocent person. After conviction, when the presumption of innocence no longer

applies, the opportunity to prove factual innocence is dramatically reduced, available only under extraordinary circumstances. Rather than finding post-conviction safeguards, factually innocent defendants encounter procedural barriers and practical disincentives that combine to discourage the presentation and resolution of their claim. Except in rare circumstances in which exonerating evidence not available at the time of trial is discovered and presented, no meaningful opportunity to prove actual innocence exists. Innocent defendants must resort to avenues of post-conviction relief to correct the miscarriage of justice they have suffered.

Mr. Conley was sentenced to life without parole as a young person and therefore entitled to have his sentence reconsidered pursuant to *In re Personal Restraint of Monschke*, 197 Wn.2d 305, 482 P.3d 276 (2021). Such hearings allow those similarly situated to demonstrate maturity and rehabilitation since the time of conviction, in recognition of the "mitigating qualities of youth."

Here, the resentencing court inappropriately ignored compelling evidence of Mr. Conley's rehabilitation and instead drew conclusive negative inferences from the exercise of his constitutional right to appeal. The lower court's strange reasoning to re-impose life without parole mischaracterizes the fundamental role of appeals in the criminal legal process and undermines the spirit of *Monschke* resentencing procedures, condemning Mr. Conley to once again die in prison.

Under such a scheme, a Hobson's choice is created for innocent individuals who have been wrongly convicted: either forgo legal efforts to prove innocence, or risk being deemed unrehabilitated and sentenced to die in prison.

Due process tolerates a level of risk in our adversarial justice system. Indeed, due process does not forbid the state from attaching risks to the legal choices defendants make. However, to comport with due process those risks must genuinely inhere to an essential and desirable component of the administration of justice as, for example, plea bargaining. *Chaffin v Stynchcombe*,

412 U.S. 17, 18, 93 S.Ct. 1977, 36 L.Ed.2d 714 (1973). Here, no legitimate goal related to the administration of justice is served by permitting courts to punish defendants by nullifying evidence of their rehabilitation based on the underlying crime, or the assertion of their rights. This result is not only fundamentally unfair it is also corrosive to public trust in the justice system.

This Court should accept review to dispel misconceptions that are emerging from the lower courts in resentencing hearings conducted pursuant to *Monschke* and *Haag.* Accordingly, this Court should proscribe lower courts from making negative inferences regarding a defendant's rehabilitation based on the facts of the underlying crime, their exercise of the constitutional right to appeal, or their continued or past protestations of innocence. This Court's intervention will increase protection for innocent defendants whose good conduct since conviction attests to maturity and habilitation, but for whom sufficient evidence of their innocence may not be available to overturn their convictions.

III. ARGUMENT

A. Wrongful Convictions are an undeniable reality of our criminal legal system that courts must consider in evaluating due process.

The phenomenon of wrongful convictions has been documented for over two centuries, from the earliest known cases like the Boorn brothers in 1819[1] and the dozens documented in Edwin Borchard's 1932 book, *Convicting the Innocent: Sixty-Five Actual Errors of Criminal Justice*. Despite longstanding awareness, wrongful convictions were long dismissed as rare anomalies until the DNA exonerations of the modern era forced a reckoning. In 1989, Gary Dotson became the first American to be exonerated by DNA,[2] a seismic shock to

---

[1] Northwestern University Pritzker School of Law, Center on Wrongful Convictions, *The Boorn Brothers* (last visited June 26, 2025), https://www.law.northwestern.edu/legalclinic/wrongfulconvictions/exonerations/vt/boorn-brothers.html

[2] Northwestern University Pritzker School of Law, Center on Wrongful Convictions, *Gary Dotson* (last visited June 26, 2025), https://www.law.northwestern.edu/legalclinic/wrongfulconvictions/exonerations/il/gary-dotson.html.

the widely held illusion of an infallible criminal legal system. That thoroughly documented case of actual innocence, and the thousands that followed, served as a catalyst for decades of research and meticulous study of the factors that contribute to the conviction of the innocent in the American criminal legal system, research that continues to this day.

B. Children, adolescents, and youthful adults who have not yet reached full cognitive development make up an alarming percentage of known cases of wrongful conviction.

As of this writing, the National Registry of Exonerations has identified and meticulously documented the cases of 3,698 individuals who were convicted of crimes and later exonerated in the United States just since 1989.[3] *Half* of these cases involved a youthful defendant who was under the age of 26 at the time of the crime,[4] while *one in four* was under the age of 21 at the time

[3] *See* Nat'l Registry of Exonerations, Univ. of Mich., https://exonerationregistry.org/cases?f%5B0%5D=n_pre_1989%3A0 (herein after "Nat'l Registry of Exonerations") (last visited June 27, 2025).
[4] *Id.* (filter for "Age at Time of Crime" from "1" to "25")

of the crime.[5] Well over half of the under-21 wrongful convictions – 539 – were for homicide crimes that led to sentences of death (28 cases), life (225), or *de facto* life - defined here as a term of years over 60 (38 cases). Critically for purposes of this case, an *additional* 115 of these youth were sentenced to a range of years from some number under 60 "to life." For them, any chance for freedom – even as older senior citizens – would be lost unless they were willing during parole hearings to take responsibility, feign remorse, or demonstrate their "rehabilitation" for a crime they did not commit. *Id*.

Consistent with national trends, courts in Washington have also felt the cost of wrongfully convicting and imprisoning youth and young adults. Approximately one in six exonerations in this State involved a defendant under 21 at the time of the offense.[6]

---

[5] *Id.* (filter for "Age at Time of Crime" from "1" to "20")
[6] *Id*. (filter for "Washington" and "Age at time of Crime" from "1" to "20").

Donovan Allen

The risk that an actually innocent youth will be wrongly convicted in Washington State and sentenced to life without parole is not hypothetical. In 2002, Donovan Allen, then 18 years old, was wrongfully convicted of brutally murdering his own mother in Cowlitz County—the same jurisdiction as Mr. Conley.[7] After being interrogated for nearly nine hours overnight, Donovan falsely confessed. *Id*. He was convicted and sentenced to life without parole, and both the Washington Court of Appeals and Supreme Court denied his appeals. *Id*. In 2007, Donovan filed a *pro se* personal restraint petition asserting his innocence, which was also denied. *In re Pers. Restraint of Allen*, No. 37222-3-II (Wash. Ct. App. Div. II May 6, 2008) (unpublished). Years later, in 2015, DNA testing definitively exonerated Donovan and identified the true perpetrator. *Id*. He was released in December 2015.

---

[7] See Nat'l Registry of Exonerations, *Donovan Allen*, https://exonerationregistry.org/cases/11917

Had the crime scene evidence in his case been lost or degraded Donovan would not have been exonerated, but he would not be any less innocent of the crime. In that case, Donovan would have no recourse other than resentencing pursuant to *Monschke*. But if the resentencing court treated Donovan's earlier assertion of innocence in his PRP as proof of insincerity—he might have been deemed unrehabilitated and left to die in prison for a crime he did not commit. The ruling below risks precisely this outcome.

C. Asserting or maintaining innocence is discouraged at every stage in our criminal legal system.

Our criminal legal system was not designed to anticipate its own failure, and notwithstanding staggering evidence that particular practices lead to the conviction of the innocent, few reforms have been implemented to prevent these entirely predictable miscarriages of justice. For example, compensating exonerees under 4.100 RCW acknowledges some wrongful convictions, but does not avoid them. Recording custodial

interrogations under 5.70 RCW documents false confessions that often lead to wrongful convictions, but documentation is not prevention. Protocols for the collection of eyewitness evidence promulgated under 10.56 RCW to minimize the risk of mistaken eyewitness identification, another major contributor to wrongful convictions, are not mandatory. Much work remains to be done in Washington to learn from past injustices.

Ironically, those who maintain their innocence in our system where the presumption of innocence is its cornerstone are disadvantaged at every stage of a criminal investigation, prosecution, and court proceedings. Suspects are urged by law enforcement to take responsibility for crimes, insisting that is the only path to leniency. When charged with a crime, prosecutors offer plea deals with dramatically less onerous sentencing recommendations to entice the person charged to plead guilty rather than assert their innocence by going to trial. And here, the resentencing court penalized Mr. Conley for previously asserting his innocence and exercising his constitutionally guaranteed

right to appeal. In short, while the letter of the law presumes innocence, in practice our system is utterly hostile to such claims.

This Court should insist, when evaluating the individuals before them in post-conviction proceedings, that the phenomenon of wrongful convictions and the *possibility* of that person's innocence be considered.

D. The court below abused its discretion and violated due process when it found Mr. Conley was not rehabilitated based on the act of appealing his conviction, his assertions of innocence, and the facts of the underlying crime.

The lower court abused its discretion when Mr. Conley was denied relief based on the exercise of his right to appeal, his prior assertions of innocence, and the facts of the underlying crime of conviction. The re-imposition of a life without parole sentence is not justified because (1) due process does not permit a defendant to be disadvantaged by exercising the right to appeal or proclaiming innocence; (2) an individualized determination of Mr. Conley's rehabilitation was not meaningfully made; and (3) the lower court's singular focus on the negative historical facts

of the crime – together with its disregard for the substantial evidence of rehabilitation presented– was improper.

Rehabilitation cannot be measured by reference the facts of the underlying crime, but the manner in which Mr. Conley has moved through the world between conviction and the resentencing hearing.

Decisions at various stages of a criminal prosecution, such as the decision to file an appeal, are particular to the closed universe of those legal proceedings. It is axiomatic in the adversarial process that decisions are made for purely strategic reasons. A defendant who pleads "not guilty" may in fact be legally innocent of the crime charged. Or they may have engaged in the conduct charged but entered "not guilty" to secure more time. Critically, the reverse is also true, that innocent people plead guilty because the risks of conviction at trial are unacceptably high. In fact, in 901 exonerations – 24% of

exonerations overall – the innocent person entered a guilty plea or Alford plea.[8]

Here the court must consider the mitigating qualities of youth, and "must place greater emphasis on mitigation factors than on retributive factors." *State v. Haag*, 198 Wash. 2d 309, 317, 495 P.3d 241 (2021). The instant case requires this Court to accept review to reaffirm *Haag* for youthful offenders resentenced under 10.95 RCW.

In Mr. Conley's case, the sentencing judge noted evidence of rehabilitation but continued: "The court cannot ignore that at the time of the sentencing the Defendant denied any responsibility for the murder. The court questions the Defendant's sincerity when he now claims to accept responsibility for the murder in light of the fact that in May 2020, he denied responsibility and maintained his innocence." Findings

[8] Nat'l Registry of Exonerations (filter for "plea").

of Fact ¶ 11. In doing so, the court punished Mr. Conley for exercising his right to seek post-conviction relief.

This reasoning below flouts a bedrock principle of our legal system: "it is far worse to convict an innocent man than to let a guilty man go free." *In re Winship*, 397 U.S. 358, 372 (1970) (Harlan, J., concurring). And it undermines the function of post-conviction proceedings—especially for people like Mr. Conley, who were sentenced as young adults and may be both legally innocent and constitutionally entitled to reconsideration of their sentence under *Monschke* and *Haag.*

Mr. Conley was originally sentenced to life without the possibility of parole based on the nature of the crime charged. His age and his sentence qualified Mr. Conley for resentencing under *Monschke*. It is nonsensical, then, for the resentencing court to deny him relief on the same fact that qualified him for consideration.

Rehabilitation is determined by an examination of the person, not the crime of conviction. In fact, an egregious crime

was what justified a life without parole sentence and is a *prerequisite* for resentencing eligibility. It should therefore not be dispositive of the forward-looking question of Mr. Conley's current state and future capacity for rehabilitation.

Recently this Court considered the denial of a motion to vacate a record of conviction and found that "[t]he trial court abused its discretion in denying Hawkins' motion because it treated the qualifying conviction as a bar to eligibility and because it failed to meaningfully consider extensive uncontradicted evidence of rehabilitation and mitigation." *State v. Hawkins*, 200 Wash.2d 477, 497, 519 P.3d 182 (2022). This Court should adopt the reasoning in *Hawkins* and find that the lower court abused its discretion when it found Mr. Conley unrehabilitated due to the nature of the crime of conviction.

IV. CONCLUSION

This court should find that the lower courts inappropriately focused on the crime of conviction rather than rehabilitation, and that the negative inferences against

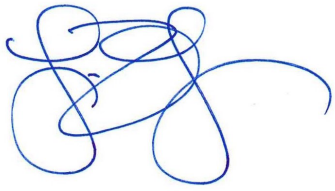
rehabilitation based on Mr. Conley's appeal and past assertion of innocence violated due process.

CERTIFICATE OF COMPLIANCE

This document contains 2,386 words, excluding the parts of the document exempted from the word count pursuant to RAP 18.17.

Dated this 27th day of June 2025.

Respectfully submitted,[9]



Lara Zarowsky, WSBA#40745
Washington Innocence Project
P.O. Box 85869
Seattle, WA 98145-1869
lara.zarowsky@wainnonceneproject.org

[9] Amicus Curiae is grateful to Mr. Atif Rafay, whose thoughtful correspondence, research, and lived perspective helped inform the development of this brief.

John Marlow, WSBA#49713
Washington Innocence Project
PO Box 85869
Seattle, WA 98145-1869
206-636-9479
john.marlow@wainnocenceproject.org

DECLARATION OF SERVICE

I, John Marlow, declare that on June 27, 2025, I caused to be electronically filed the foregoing document via the Washington State Supreme Courts' Secure Portal, which will automatically cause such filing to be served on counsel for all other parties in this matter via the Court's e-filing platform. The filing was addressed as follows:

- ladouceurtom@hotmail.com
- appeals@cowlitzwa.gov
- ellis_jeff@hotmail.com
- jeffreyerwinellis@gmail.com
- bentsone@cowlitzwa.gov
- appeals@co.cowlitz.wa.us

Under penalty of perjury under the laws of the State of Washington, the foregoing is true and correct.

Dated: June 27, 2025.

_____

John Marlow, WSBA#49713
Washington Innocence Project
P.O. Box 85869
Seattle, WA 98145-1869
(206) 636-9479

WASHINGTON INNOCENCE PROJECT

June 27, 2025 - 4:23 PM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	104,049-1
Appellate Court Case Title:	State of Washington v. Taylor Tom Conley
Superior Court Case Number:	06-1-00457-1

The following documents have been uploaded:

- 1040491_Briefs_20250627162223SC572863_0591.pdf
  This File Contains:
  Briefs - Amicus Curiae
  The Original File Name was Final_2025-06-27_Wash IP Amicus Conley_Formatted.pdf

A copy of the uploaded files will be sent to:

- Ladouceurtom@hotmail.com
- appeals@co.cowlitz.wa.us
- appeals@cowlitzwa.gov
- bentsone@cowlitzwa.gov
- ellis_jeff@hotmail.com
- jeffreyerwinellis@gmail.com
- john.marlow@wainnocenceproject.org
- lara.zarowsky@gmail.com

Comments:

Sender Name: Justine Mclean-Riggs - Email: peno.mclean-riggs@wainnocenceproject.org
Filing on Behalf of: Lara Zarowsky - Email: lara.zarowsky@wainnocenceproject.org (Alternate Email:)

Address:
P O Box 85869
SEATTLE, WA, 98145
Phone: (206) 739-9333

Note: The Filing Id is 20250627162223SC572863