No. 1041608

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON

vs.

ADRIAN MENDOZA

ANSWER TO PETITION FOR REVIEW

Tamara A. Hanlon,
WSBA #28345
Deputy Prosecuting Attorney
Benton County

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A. IDENTITY OF RESPONDENT

The Respondent is the State of Washington.

B. COURT OF APPEALS DECISIONS

At issue is the Court of Appeals' March 4, 2025, unpublished opinion that upheld Mendoza's conviction and sentence for second degree murder.

C. ISSUE PRESENTED FOR REVIEW

1. Does the court's decision meet the criteria for review under RAP 13.4(b)?

D. STATEMENT OF THE CASE

The petitioner, Adrian Mendoza, was charged with first degree murder in the shooting death of Andrea Nunez. CP 1. Because he was 17 years old at the time, adult court had exclusive jurisdiction. 5/7/19 RP 7.

The investigation revealed that the murder was gang-related. CP 3-6. Ms. Nunez's boyfriend, Jospeh Ayala, told officers that as he and his girlfriend were walking on Seventh Avenue, he heard a male yell "Westside." CP 3. Ms. Nunez

responded, “Southside” before shots were fired and Ms. Nunez fell to the ground. *Id*. A neighbor supplied video footage from exterior cameras to the police. CP 4. The videos were released to the public and a witness, Brian Calderon, identified Mendoza. as one of the individuals wearing an “18th street shirt.” CP 4-5. Another witness, Charles Miller, said that he had picked up Mendoza and drove him and a female to a trailer in Hermiston. CP 5. He also recognized Mendoza in one of the surveillance videos. CP 5.

The video footage showed Mendoza and a codefendant walking east toward the crime scene at around 4:15 in the morning. CP 117. They were then seen running way from the crime scene and Mendoza was seen on the video holding a firearm. *Id*. An officer found Mendoza’s cell phone in the middle of Seventh Avenue. CP 3, 117. A later search produced 9 mm ammunition that matched spent shell casings near Mendoza’s phone. *Id*. at 117.

Mendoza was arrested and spoke to the police. *Id*. He confirmed he was a member of the Westside 18th Street gang. *Id*. At first, he admitted to being on the video, but claimed he was not the shooter. *Id*. He admitted to dropping his cell phone at the time. *Id*.

The codefendant, Marin Rivera, gave an extensive interview, and said he saw Mendoza with a firearm, yelling "Westside" and shooting Ms. Nunez. RP 118. He admitted that they both ran from the scene. *Id*. He gave information that further corroborated the truthfulness of his statement with the physical evidence. *Id*.

An autopsy was conducted, and it was determined that Ms. Nunez was shot in the back with an exit wound on the left side of her chest. *Id*. She died from a single gunshot wound. *Id*.

The State and Mendoza entered into a plea agreement whereby the State agreed to amend the charge from first degree murder to second degree murder with a firearm enhancement. CP 157-59. This resulted in a decrease in the standard range

from 250 to 333 months to 194 to 294 months. *Id*. The parties agreed that the State could ask for the top of standard range and that the defense could ask for an exceptional sentence below the standard range. CP 165.

The defense expert, Dr. Patterson, conducted a forensic psychological evaluation of the defendant. CP 127-40. During the evaluation, Mendoza made conflicting statements but admitted to shooting members of a rival gang "just to scare them." CP 130.

Mendoza's probation counselor also wrote a probation compliance summary report. CP 142. That report noted that Mendoza was adjudicated on four separate case numbers and was brought to court ten times for probation violation and had seven warrants issued. *Id*. For the majority of his probationary periods, he was in non-compliance. *Id*. He failed to remain in parental care, control and custody, failed to contact probation, failed to abstain from drugs, failed to attend school, and failed to complete community service hours. *Id*. The counselor advised that it was

difficult to provide services because Mendoza was in constant noncompliance or on warrant status. *Id*. He was referred to participate in multiple programs: substance abuse treatment, aggression replacement training, an employment program, gang intervention, and several school interventions. *Id*. However, none of the programs were completed due to his lack of attendance or behavioral issues. *Id*.

The State filed a sentencing memorandum, asking for 294 months, which included a 60-month firearm enhancement. CP 125. At the time of sentencing, Mendoza's prior history included convictions for unlawful possession of a firearm in the second degree when he was 16 years old and criminal mischief with a deadly weapon when he was 14 years old. CP 118-19. In addition, Mendoza had pending charges for second degree assault and possession of a controlled substance, methamphetamine, in the jail. CP 119-20. The State argued that Mendoza was dangerous and a risk to the community. 4/21/23 RP 24.

Based on the report of the psychologist and Mendoza's background, the defense asked for a sentence of 101 months and one day, which would keep him in custody until age 25. *Id*. at 43.

After considering the mitigating qualities of youth on the record, the court found that a sentence of 294 months (the top of the range with the added 60-month firearm) was fair and appropriate. *Id*. at 64.

Mendoza appealed, arguing for the first time, that exclusive adult criminal jurisdiction discriminated against minorities. Br. of Appellant at 17-40. The defense never argued that the statute was constitutional at the trial level. The State responded that the Court of Appeals should not consider the issue under RAP 2.5. Br. of Respondent at 16-21.

The case was set for oral argument before Division Three. After argument, Mendoza filed additional authorities. The State filed a motion to strike, arguing that RAP 10.8 was used to

submit new evidence that was not admitted in the trial court. The Court of Appeals denied the State's motion to strike.

Despite the State's argument that error was not preserved in the trial court, the Court of Appeals found that review was warranted. Petitioner's App. A. The Court ultimately upheld the murder conviction after finding no constitutional equal protection or due process violations. *Id*. The Court also held that the trial court meaningfully considered mitigating qualities of youth before imposing the defendant's sentence. *Id*.

Mendoza filed a petition for review.

E. ARGUMENT WHY REVIEW SHOULD BE DENIED

1. This case does not meet any of the criteria in RAP 13.4(b).

RAP 13.4(b) states:

> (b) Considerations Governing Acceptance of Review. A petition for review will be accepted by the Supreme Court only: (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or (2) If the decision

> of the Court of Appeals is in conflict with a published decision of the Court of Appeals; or (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

Mendoza has failed to demonstrate how his case satisfies any of the four requirements for the Court to accept review. His main contention is simply that the court of appeals erred. However, not every error is one of constitutional magnitude, let alone a significant question of law under the constitution. Furthermore, there is no conflict with existing caselaw. Here, the case does not fall under any of the requirements of RAP 13.4(b).

a. Mendoza did not preserve his constitutional claims in the trial court.

The Court of Appeals erred in reviewed Mendoza's constitutional claims because he did not raise them in the trial court. It has long been the law in Washington that an "appellate

court may refuse to review any claim of error which was not raised in the trial court." RAP 2.5(a); *State v. Lyskoski,* 47 Wn.2d 102, 108, 287 P.2d 114 (1955). The underlying policy of the rule is to "encourag[e] the efficient use of judicial resources. The appellate courts will not sanction a party's failure to point out at trial an error which the trial court, if given the opportunity, might have been able to correct to avoid an appeal and a consequent new trial." *State v. Scott,* 110 Wn.2d 682, 685, 757 P.2d 492 (1988). The rule comes from the principle that trial counsel and the defendant are obligated to seek a remedy to errors as they occur, or shortly thereafter. *State v. O'Hara*, 167 Wn.2d 91, 98, 217 P.3d 756, 760 (2009), *as corrected* (Jan. 21, 2010) (citation omitted).

The general rule that an assignment of error be preserved includes an exception when the claimed error is a "manifest error affecting a constitutional right." RAP 2.5(a). This exception encompasses developing case law while ensuring

only certain constitutional questions can be raised for the first time on review. *O'Hara*, 167 Wn.2d at 98 (citation omitted).

To meet RAP 2.5(a) and raise an error for the first time on appeal, an appellant must demonstrate (1) the error is manifest, and (2) the error is truly of constitutional dimension. *State v. Kirkman,* 159 Wn.2d 918, 926, 155 P.3d 125 (2007). Stated another way, the appellant must "identify a constitutional error and show how the alleged error actually affected the [appellant]'s rights at trial." *Id.* at 926–27. If a court determines the claim raises a manifest constitutional error, it may still be subject to a harmless error analysis. *State v. McFarland,* 127 Wn.2d 322, 333, 899 P.2d 1251 (1995).

In analyzing the asserted constitutional interest, courts do not assume the alleged error is of constitutional magnitude. *Scott,* 110 Wn.2d at 687. The courts look to the asserted claim and assess whether, if correct, it implicates a constitutional interest as compared to another form of trial error. *See id.* at 689–91.

After determining the error is of constitutional magnitude, the appellate court must determine whether the error was manifest. "Manifest" in RAP 2.5(a)(3) requires a showing of actual prejudice. *Kirkman,* 159 Wn.2d at 935 (citations omitted). To demonstrate actual prejudice, there must be a plausible showing by the appellant that the asserted error had practical and identifiable consequences in the trial of the case. *Id.* (citations omitted). In determining whether the error was identifiable, the trial record must be sufficient to determine the merits of the claim. *Id.* (citations omitted). "If the facts necessary to adjudicate the claimed error are not in the record on appeal, no actual prejudice is shown and the error is not manifest." *McFarland,* 127 Wn.2d at 333.

It is not the role of an appellate court on direct appeal to address claims where the trial court could not have foreseen the potential error or where the prosecutor or trial counsel could have been justified in their actions or failure to object. *O'Hara*, 167 Wn.2d at 100.

Here, nothing in the record shows that Mendoza ever asked a prosecutor to waive exclusive adult jurisdiction. Nor did he show any cases where exclusive adult jurisdiction was waived by the prosecutor. And he never objected to exclusive adult jurisdiction. In all the cases challenging juvenile court jurisdiction on a constitutional basis, the defendant raised the issue in the trial court in direct appeal.

Here, Mendoza had no right to be tried in juvenile court. *See In re Boot*, 130 Wn.2d 553, 571, 925 P.2d 964 (1996). As such, there was no error. Furthermore, there was nothing manifest about the error. He did not request that the prosecutor waive adult court jurisdiction.

On appeal, he cited to studies that are not part of the trial court record below. As a result, the State had no opportunity to challenge the studies or data relied upon in the trial court. When additional studies were submitted after oral argument, the State also did not have an opportunity to challenge them. These studies should have been presented at the trial court level,

where the conclusions and data could be challenged by the State.

Because Mendoza did not object or preserve any errors at the trial level, this court should deny review on that basis alone. The Court of Appeal erred in finding that the issue could be raised for the first time on appeal. The issue should have been rejected under RAP 2.5.

b. The Court of Appeals correctly found no equal protection or due process violations.

Although the Court of Appeals should have found no manifest error subject to review, they were correct in finding no equal protection or due process violations.

Equal protection requires that all similarly situated persons "with respect to the legitimate purpose of the law receive like treatment." *State v. Simmons*, 152 Wn.2d 450, 458, 98 P.3d 789 (2004). Equal protection is not intended to provide complete equality among individuals but is instead intended to provide equal application of the laws. *Id.* "A party challenging

the application of a law as violating equal protection principles has the burden of showing that the law is irrelevant to maintaining a state objective or that it creates an arbitrary classification." *Id*.

Courts have typically used three levels of scrutiny to determine whether equal protection has been violated: (1) the "rational relationship" test, the lowest level of scrutiny; (2) the "intermediate scrutiny" test; and (3) the "strict scrutiny" test, the highest level of scrutiny. *State v. Schaat*, 109 Wn.2d 1, 17, 743 P.2d 240 (1987). Courts use the "strict scrutiny" test if the allegedly discriminatory classification affects a suspect class or a fundamental right. *State v. Osman*, 157 Wn.2d 474, 484, 139 P.3d 334 (2006). The "intermediate scrutiny" test is used if gender-based classifications are at issue or if the allegedly discriminatory classification affects a "semisuspect" class. *Id.*

The rational relationship test applies here because this Court previously held "[j]uveniles are neither a suspect class nor

semisuspect class." *In re Boot*, 130 Wn.2d at 572-73. The "rational basis" test has been described as:

> [T]he most relaxed and tolerant form of judicial scrutiny under the equal protection clause. Under this test, the legislative classification will be upheld unless it rests on grounds wholly irrelevant to achievement of legitimate state objectives. The burden of proving the legislative classification unconstitutional is upon the party challenging the legislation. That party has the heavy burden of overcoming a presumption that the statute is constitutional.

State v. Shawn P., 122 Wn.2d 553, 561, 859 P.2d 1220 (1993).

In *Boot*, this Court held that RCW 13.04.030 does not violate equal protection by automatically assigning juveniles who meet certain requirements to adult court. 130 Wn.2d at 572. There, the argument was that it was impermissible for the

legislature to "draw a distinction between a young person who commits a crime one second before his sixteenth birthday, and one who commits a crime one second after his sixteenth birthday." *Id.* at 573. However, this Court disagreed, noting that the legislature's objective in enacting the statute was to increase the severity and certainty of punishment for youth and adults who commit violent acts, which was a "rational basis" for the statute. *Id.* (citation omitted).

Mendoza argues that RCW 13.04.030(1)(e)(v)(C)(III) violates equal protection because it affords the prosecutor unfettered discretion to decide when to remove a case to juvenile court. But agreement of both parties and the court is required to waive adult court jurisdiction. Consequently, the prosecutor lacks sole discretion to determine when and if a juvenile will be tried in adult court. Further, granting prosecutors discretion regarding whether to prosecute serious offenses in juvenile versus adult court is not arbitrary. Indeed, prosecutors are

afforded wide latitude in their decisions to bring charges and whether to offer plea deals to defendants.

Mendoza argues due process requires a *Kent*[1] hearing to determine whether the adult court should waive adult criminal court jurisdiction. But this Court has already determined that RCW 13.04.030 does not deprive a juvenile of due process because there is no constitutional right to be tried as a juvenile. *Boot*, 130 Wn.2d at 571 (citations omitted).

"[T]he Due Process Clause provides that certain substantive rights—life, liberty, and property—cannot be deprived except pursuant to constitutionally adequate procedures." *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 541, 105 S. Ct. 1487, 84 L. Ed. 2d 494 (1985). "Compliance with procedural due process requires the court to identify the private interest affected by the official action, the risk of erroneous deprivation, the probable value of additional

[1] *Kent v. United States*, 383 U.S. 541, 86 S.Ct. 1045, 16 L.Ed.2d 84 (1966).

safeguards, and the State's interests." *State v. Watkins*, 191 Wn.2d 530, 537, 423 P.3d 830 (2018).

Our Supreme Court recently reaffirmed that " '[t]here is no constitutional right to be tried in juvenile court.' " *Id.* (quoting *Boot*, 130 Wn.2d at 571). Further, "the right [to a *Kent* hearing] attaches only if a court is given statutory *discretion* to assign juvenile or adult court jurisdiction." *State v. Salavea*, 151 Wn.2d 133, 140, 86 P.3d 125 (2004) (emphasis added). Our Supreme Court has upheld the constitutionality of automatic adult criminal court jurisdiction for certain enumerated offenses in RCW 9.94A.030. *Boot*, 130 Wn.2d at 557-58.

But Mendoza does not explain how RCW 13.04.030(1)(e)(v)(C)(III) would confer him a right to a *Kent* hearing. The court does not have statutory discretion to decide when to decline adult court jurisdiction. Rather, the court may only decline adult court jurisdiction if both parties agree. As such, the statute does not violate due process or equal protection.

c. The Court of Appeals correctly held that the trial court meaningfully considered mitigating qualities of youth.

A sentencing court's determination will not be asset aside absent an abuse of discretion. *State v. Cunningham*, 96 Wn.2d 31, 34, 633 P.2d 886 (1981). An abuse of discretion exists only where it can be said that no reasonable judge would have taken the view adopted by the trial court. *State v. Blight*, 89 Wn.2d 38, 41, 569 P.2d 1129 (1977).

"Generally, a criminal defendant is permitted to appeal a standard range sentence only if the sentencing court fails to follow an established procedure." *State v. M.L.*, 114 Wn. App. 358, 361, 57 P.3d 644 (2002). When a defendant challenges a standard range sentence, the appellate courts reviews the challenge only to determine whether the trial court complied with statutory and constitutional requirements in imposing the sentence. *Osman*, 157 Wn.2d at 481-82.

A court sentencing a juvenile must "consider the mitigating qualities of youth" and must have discretion to

impose a sentence below the standard range. *State v. Houston-Sconiers*, 188 Wn.2d 1, 19, 391 P.3d 409 (2017); *Miller v. Alabama*, 567 U.S. 460, 481, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012). However, youth is not a *per se* mitigating factor. *State v. Ramos*, 187 Wn.2d 420, 443, 387 P.3d 650 (2017).

However, the trial court still retains discretion to impose a standard range sentence. *State v. Gregg*, 196 Wn.2d 473, 478, 474 P.3d 539 (2020). And the burden is still on the defendant to prove substantial and compelling reasons to justify imposing an exceptional sentence on the defendant. RCW 9.94A.535. There is no presumption that a mitigated sentence is required. Gregg, 196 Wn.2d at 482. A standard range sentence does not become an exceptional sentence upward merely because it is imposed on a juvenile. *Id*. at 428-83.

The sentencing court must consider factors like the nature of the defendant's surrounding environment and family circumstances, the extent of the defendant's participation in the crime, and the way familial and peer pressures may have

affected him. *Houston-Sconiers*, 188 Wn.2d at 23 (citation omitted). The sentencing court must also consider those qualities of youth including immaturity, impetuosity, and failure to appreciate risks and consequences. *Id.* Finally, the sentencing court must consider how the defendant's youth impacted any legal defense, along with any factors suggesting that the child might be successfully rehabilitated. *Id.*

Here, the sentencing court properly considered Mendoza's youthfulness, and the factors related to his youth. 4/21/23 RP 62-66. First, the court correctly found this was not an impulsive crime. *Id*. at 63. The record also reflects that this was a coordinated ambush-style attack. Mendoza followed the victim, a rival gang member, and shot at her several times. *Id*. He was not in danger or acting to protect himself. *Id*. And this was not a crime of passion occurring within seconds. The crime involved Mendoza spotting Ms. Nunez and Mr. Ayala, arming himself, going outside with Mr. Rivera, following Ms. Nunez and Mr. Ayala, and shooting at her. CP 4, 117.

The court correctly found that Mendoza knew what he did was wrong. 4/21/23 RP 63. The record showed he could appreciate the risks and consequences from his actions. After the crime, he ran away and left the State, an indication that he knew what he did was wrong. *Id;* CP 5. Then, after being arrested, he tried to protect himself during the police interview. 4/21/23 RP 63. The court also noted that he had been in the juvenile court system for many years in the community and had several consequences there. *Id*.

As to Mendoza's participation level, the court correctly noted that he was a major participant. *Id*. at 64. This is supported by the record. Mendoza was the only one who shouted at the victim with a gang reference and the only one who was armed and shot at the victim. CP 118. Importantly, Mendoza never stated that the murder was to impress his fellow gang members or that they put any pressure on him to act when he shot and killed Ms. Nunez. CP 117.

As to Mendoza's upbringing, the court said that it was difficult to read and hard to understand. 4/21/23 RP 63. The State does not dispute that Mendoza had a difficult childhood. However, Mendoza was living an adult lifestyle, a sign of his maturity level. Mendoza "became more independent during adolescence living with various friends." *Id*. CP 128. He was in a relationship with an adult female and had a child with her. *Id*. at 129. He was not in parental control or in school, CP 142, and by any measure, was living as an adult.

As to rehabilitation, the key question is whether the defendant is capable of change. *United States v. Briones*, 929 F.3d 1057, 1066 (9th Cir. 2019)). Here, the trial court believed Mendoza could be successfully rehabilitated. *Id*. at 64. However, as indicated by the defense expert, Dr. Patterson, "The best predictor of violent recidivism is a history of antisocial behavior…" CP 136. Mendoza's criminal history and lack of success after years of probation are significant facts showing a lack of capacity to change. There was nothing to

show that any of the programs or services offered over the years had made a different in rehabilitating Mendoza.

In sum, the trial court here did more than recite the differences between youths and adults. The court stated its reasons on the record, a procedural safeguard that prevents arbitrary sentencing decisions. The court recognized its discretion to go below the standard range and to not impose the firearm enhancement. 4/21/23 RP 62. The court then, on the record, meaningfully considered Mendoza's youth and the relevant factors prior to its imposition of a standard range sentence. And the reasons given for the court's sentence were connected to the evidence presented at sentencing. As such, the court complied with statutory and constitutional requirements in imposing the sentence and exercised sound judicial discretion. It cannot be said that no reasonable judge would have taken the view adopted by the trial court. As such, the Court of Appeals did not err in affirming Mendoza's sentence.

F. CONCLUSION

This case does not meet any of the criteria in RAP 13.4(b). First of all, the decision is not in conflict with a decision of the Supreme Court or another decision of the Court of Appeals. Second, a significant question of law under the Constitution of the State of Washington or of the United States is not involved. Lastly, the petition does not involve an issue of substantial public interest that should be determined by the Supreme Court. As such, his petition for review should be denied.

WORD COUNT CERTIFICATION

This document contains 4014 words, excluding the parts of the document exempted from the word count by RAP 18.17.

Respectfully submitted this 6th day of June, 2025,

s/Tamara A. Hanlon
TAMARA A. HANLON, WSBA # 28345
Deputy Prosecuting Attorney
Benton County Prosecutor's Office

CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on this day I served, via the portal, a true and correct copy of the foregoing document as follows:

Washington Appellate Project
1511 Third Avenue, Suite 610
Seattle, WA 98101

Nancy P Collins
Washington Appellate Project
1511 Third Avenue, Suite 610
Seattle, WA 98101

Signed at Kennewick, Washington on June 6, 2025.

s/Rachel Murstig
Rachel Murstig
Appellate Secretary
Benton County Prosecuting
Attorney's Office

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