Supreme Court No. ____
(COA No. 58258-9-II)

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

ALBERT MCCLENDON,

Petitioner.

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR PIERCE COUNTY

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER AND DECISION BELOW

Albert McClendon, petitioner here and appellant below, asks this Court to accept review of the Court of Appeals decision terminating review dated March 25, 2025, for which reconsideration was denied on April 28, 2025, pursuant to RAP 13.3(a)(2)(b) and RAP 13.4(b). Copies are attached.

B. ISSUES PRESENTED FOR REVIEW

1. Albert McClendon, a young Black man, was brought to court in shackles for sentencing following his guilty plea. The trial court refused to remove the shackles, citing the presence of spectators and Mr. McClendon's potential punishment of at least 15 years. The Court of Appeals decision approving of this justification significantly departs from this Court's precedent. There was no evidence Mr. McClendon was emotional or otherwise misbehaving. If spectators were disruptive, the court had a ready-made less restrictive alternative with an available Zoom link.

The Court of Appeals disregarded the controlling analysis prohibiting shackling a young Black man in court when there are available alternatives and absent valid security concerns. This conflict with case law and shackling's devastating impact on the appearance of fairness demonstrate the substantial public interest in this Court's review.

2. A sentencing court must take into account a person's age, their intellectual functioning, and the proven circumstances of the crime when imposing punishment under the Sentencing Reform Act and consistent with the Sixth and Eighth Amendments as well as article I, sections 14 and 22.

Here, the court disregarded undisputed mitigating evidence reducing Mr. McClendon's culpability due to his intellectual deficits and young age and overstated the allegations against him. It imposed proportionally more prison time on Mr. McClendon than on his older and substantially more culpable co-defendant. It ruled Mr. McClendon's young age justified a harsher sentence, claiming it needed to imprison

him until his brain matured. This Court should grant review because the trial court's sentencing conflicts with the governing statutory scheme and undermines a young person's right to have a sentence commensurate with their actual culpability.

C. STATEMENT OF THE CASE

When Albert McClendon was 20 years old, he accompanied an older friend, Terrell Harris, to steal drugs from Nouman Saysuwan. CP 41, 43. They ran away when Mr. Saysuwan pointed a gun at them. CP 43. Mr. Saysuwan fired in their direction as they fled and shot Mr. McClendon in the face. *Id*. As Mr. Saysuwan fired at them, Mr. Harris returned fire first, then Mr. McClendon did. 10/21/22RP 23. Someone's shot killed Mr. Saysuwan. *Id.*

Mr. McClendon pled guilty to felony murder in the second degree, predicated on second degree assault, with a firearm enhancement. CP 21.

Jail officers brought Mr. McClendon to his sentencing hearing in shackles and the State informed Mr. McClendon's

lawyer he could not request to have them removed. 10/21/22RP 31. The court noticed them while Mr. McClendon trying to tell the court how sorry he was for his actions. 10/21/22RP 30-31. The judge asked why he was shackled. 10/21/22RP 32. The jail officer said it was "[b]ased on the jail's policies." *Id.* The prosecution said it was "just common policy." *Id.*

The court said it wanted to "clean the record up so this is not something we have to do again." 10/21/22RP 32. It stated, "there are a number of individuals present, and the nature of this particular charge will require a sentence well in excess of 15-plus years. As such, I do find [the restraint] is necessary for this purpose." 10/21/22RP 33.

These court proceedings were also broadcast on Zoom and spectators were present via that link while some were in the courtroom. 10/21/22RP 3, 6.

Mr. McClendon asked the court for a low-end sentence based on his youth, his intellectual deficits, and his susceptibility to peer pressure. 10/21/22RP 5, 25. An

intelligence test showed he had an IQ of 69, and was diagnosed with borderline intellectual disability. CP 68-69. He had experienced learning struggles throughout his education and was diagnosed with dyslexia and ADHD as a child, but neither he nor his family were aware of the extent of his cognitive deficits until he was tested in the course of this criminal case. CP 44, 53-54, 67-68; 10/21/22RP 21.

A psychologist evaluated Mr. McClendon and concluded that he lacked the executive functioning of an adult. CP 46; RP 80. He was substantially less able to consider the consequences of his actions and more easily influenced by others and susceptible to peer pressure than someone else would be. CP 58; 10/21/22RP 21-22.

Despite his cognitive limitations, Mr. McClendon had graduated from high school and was steadily employed before this incident. CP 45, 58. His only criminal history was for a juvenile offense that occurred on his 12th birthday. CP 42, 44. Community members were "shocked" by Mr. McClendon's

behavior because it was "so out of character" for him. CP 46-47.

Mr. McClendon said he accepted "full responsibility" for his actions, promised he was "sincere," and hoped his name would be associated "not for bad but for good" in the future. 10/21/22RP 20, 30-31. He politely and remorsefully asked for leniency. 10/21/RP 29-31.

Mr. McClendon faced a standard range of 204-304 months, including a 60-month firearm enhancement. RP 4-5. His co-defendant Mr. Harris had a much higher standard range due to his significant criminal history and received a 288-month sentence, which was 33 months above the low-end of his standard range. RP 25.

The court imposed a sentence of 270 months on Mr. McClendon, close to the high-end of Mr. McClendon's standard range. RP 40. The court said this sentence was "commensurate" with his co-defendant, without mentioning that it was 66 months above the low end of his standard range,

while the co-defendant's sentence was 33 months above the low-end. RP 25, 38.

The facts are further explained in Appellant's Opening Brief, in the relevant factual and argument sections, and are incorporated herein.

D. ARGUMENT

1. Mr. McClendon was impermissibly and prejudicially shackled at his sentencing without the mandatory case-specific showing of necessity, contrary to this Court's precedent.

a. Shackling is inherently prejudicial and undermines public confidence in the judiciary's fairness.

Shackling a young Black man at a hearing to determine how long a prison sentence he must serve necessarily evokes our country's racist underpinnings, as this Court recognized and condemned in *State v. Jackson*, 195 Wn.2d 841, 851, 467 P.3d 97 (2020). Shackles are a symbolic "means of control and oppression" against Black people. *Id*. "Shackles and restraints remain an image of the transatlantic slave trade and the systemic abuse and ownership of African persons." *Id*.

In all cases, restraints are "an extreme measure to be used only when necessary to prevent injury to those in the courtroom, to prevent disorderly conduct at trial, or to prevent an escape." *State v. Luthi*, 3 Wn.3d 249, 268, 549 P.3d 712 (2024) (quoting *State v. Hartzog*, 96 Wn.2d 383, 398, 635 P.2d 694 (1981)). The use of shackles in the courtroom is an "affront" to the "dignity and decorum of judicial proceedings that the judge is seeking to uphold." *Deck v. Missouri*, 544 U.S. 622, 630, 125 S. Ct. 2007, 161 L. Ed. 2d 953 (2007) (quoting *Illinois v. Allen*, 397 U.S. 337, 344, 90 S. Ct. 1057, 25 L. Ed. 2d 353 (1970)). Restraints impact the proceedings "whether or not a jury is present" because they undermine the "[r]espect for the dignity of the individual and the court" that is a core judicial value. *State v. Walker*, 185 Wn. App. 790, 799, 344 P.3d 227 (2015) (quoting *Solomon v. Superior Court of Los Angeles County*, 122 Cal.App.3d 532, 536 (1981)).

Shackles were wholly unnecessary here. The State only sought to restrain Mr. McClendon based on a jail policy. This

Court unequivocally rejected that rationale in *Jackson*. But the Court of Appeals continues to permit such unnecessary shackling of young men of color.

b. The Court of Appeals disregarded the necessity of examining less restrictive alternatives.

Shackling is the "last resort" and the court must first consider the "availability of alternative remedies." *Jackson*, 195 Wn.2d at 853; *State v. Finch*, 137 Wn.2d 792, 850, 975 P.2d 967 (1999).

The Court of Appeals construed the judge's reasoning as determining shackling was needed due to spectator emotions, even though the trial court just said "[t]here are a number of individuals present." RP 33; Slip op. at 7.

But if the court thought spectators were too emotional, there are other far less intrusive ways for courts address such disruptions when they occur. The court may demand audience silence or direct those who cannot be silent to leave the courtroom. *State v. Lormor*, 172 Wn.2d 85, 93-94, 257 P.3d

624 (2011). The court's "power to control the proceedings" includes "the power to remove distracting spectators." *Id.* at 94.

Under no circumstances does a spectator's lack of decorum justify shackling the defendant. Contrary to the Court of Appeals decision, the threshold "security concerns" that may permit shackling rest on the defendant's behavior, such as "case specific" evidence of an escape risk, not spectator emotions. *Deck*, 544 U.S. at 633. None of those security concerns were present here.

The Court of Appeals' perception that the hearing was so "emotionally charged" that it justified Mr. McClendon's shackling is belied by the record. Slip op. at 6. The trial court merely said that there were spectators present and laid ground rules for their behavior. 10/21/22RP 3. There is no evidence anyone violated those ground rules, much less that Mr. McClendon would.

The defendant has the right to appear in court free from unjustified restraints at all hearings and this right may be

overcome only when demanded by "impelling necessity." *Luthi*, 3 Wn.3d at 256. The court cannot burden the defendant with shackles for commonplace expectations of spectators' emotions at sentencing.

c. The Court of Appeals disregarded this Court's precedent that routine shackling is impermissible.

Shackling a defendant in court "almost inevitably implies" that the court considers the person "a danger to the community." *Deck*, 544 U.S. at 633. It "almost inevitably affects adversely the [fact-finder's] perception of the character of the defendant." *Id.* When the case involves considerations of punishment, which involve "unquantifiable and elusive" perceptions, shackling the defendant puts a "thumb" on the side of more punishment. *Id.*

The Court of Appeals justified shackling Mr. McClendon based on "the gravity of the crime," noting the trial court said Mr. McClendon would face a sentence over 15 years in length. Slip op. at 6.

But this Court has made clear that routine shackling is prohibited at "*every* court appearance." *Luthi*, 3 Wn.3d at 261 (emphasis in original). The fact there is significant jail time at stake in no way alters this principle. The historical prohibition on restraints applies in all cases and is only overcome by extreme, individual circumstances of case-specific threats to safety or risk of escape. *Hartzog*, 96 Wn.2d at 398.

There was nothing extraordinary about Mr. McClendon's sentencing hearing. The prosecution and jail simply claimed they were adhering to a "policy" to shackle. 10/21/22RP 32. Mr. McClendon had pled guilty without any contention or disruption. 10/21/22RP 4. He asked for the low end of the standard range, which was 204 months in prison, and did not expect a lesser sentence. 10/21/22RP 4. Mr. McClendon accepted "full responsibility" for his actions, promised he was "sincere," and hoped his name would be associated "not for bad but for good" in the future. 10/21/22RP 20, 30-31. He remorsefully asked for leniency. 10/21/RP 29-31.

Punishment is always at issue at a sentencing hearing. Even where the prosecution and defense agree to a certain term, the court is not bound by any agreements and has authority to impose a different amount of punishment. *State v. Barber*, 152 Wn. App. 223, 227, 217 P.3d 346 (2009). The fact that punishment was at issue, or that this sentence would be at least 15 years, did not make Mr. McClendon dangerous in the courtroom or justify restraining him.

The punishment is at issue does not distinguish this hearing from any other sentencing hearing. It does not allow a court to justify shackling Mr. McClendon, who did not misbehave, threaten anyone, or challenge the court's sentencing authority in any way, contrary to the Court of Appeals.

d. The Court of Appeals' failure to presume prejudice demonstrates the need for this Court to adopt a more effective deterrent.

In *Deck*, the United States Supreme Court recognized that shackling a defendant in court "almost inevitably" shows

they are dangerous and more deserving of harsh punishment. 544 U.S. at 633.

In *Jackson*, this Court "disavowed" any requirement that the defendant prove a "substantial or injurious" effect from being shackled in court. 195 Wn.2d at 856. It acknowledged "the practical impossibility" of a defendant proving a judge "was unconsciously prejudiced by the restraints" during the proceedings. *Id*. It recognized that in any case, there are "unknown risks of prejudice from implicit bias" that "may impair decision-making," by any decision-maker. *Id*.

But the Court of Appeals disregarded this Court's recognition of prejudice and ruled any error in shackling Mr. McClendon is harmless because Mr. McClendon did not "allege" any inference with his ability to talk to his lawyer or speak in court and "the trial court expressly stated on the record that it 'in no way utilized [McClendon's restraints] in any way against him,'" which "undermin[es] the risk of unconscious bias." Slip op. at 7.

This Court has plainly held that prejudice must be presumed. *Jackson*, 195 Wn.2d at 857. A judge's claim that they are not biased ignores the unconscious level at which racial biases at issue operate. *Id*. at 851, 856. Any decision-maker, "[r]egardless of whether" they are "a judge or a jury," is susceptible to being "unconsciously prejudiced by the restraints at any point during the case." *Luthi*, 3 Wn.3d at 261 (quoting *Jackson*, 195 Wn.2d at 856).

In *Jackson* and *Luthi*, this Court sent a clear message that shackles may not be placed on a person in court as a matter of policy or absent significant individual risk of danger. An "almost inevitable" perception of dangerousness flows from seeing a defendant shackled in court and encourages harsher punishment. *Deck*, 544 U.S. at 633.

As *Jackson* recognized, "the use of shackling as a means of control and oppression, primarily against people of color, has been rampant in the history of this country." 195 Wn.2d at 851. The trial court's statement that it would not "utilize" these

shackles against Mr. McClendon does not establish that the court could not be impacted by the deeply embedded biases these shackles evoke unconsciously and implicitly.

Mr. McClendon was visibly shackled when he asked the court to impose a sentence of 204 months, the low end of the standard range, expressed remorse, and sought mercy. 10/21/22RP 29-31. The court imposed a 270-month sentence, far exceeding Mr. McClendon's request and much closer to the 304-month sentence the State requested. It premised this sentence on its perception of Mr. McClendon's dangerousness. Because these shackles *could have* impacted some degree of the court's sentence, a new sentencing hearing should be ordered.

Mr. McClendon's case demonstrates the on-going use of unnecessary restraints against young Black defendants as a matter of routine policy. This Court's recent case law has not ended this practice. This Court should grant review and address this issue of substantial public interest. A stronger incentive for eradicating this practice appears necessary, like the structural

error approach this Court adopted in *State v. Zamora*, 199 Wn.2d 698, 722, 512 P.3d 512 (2022), after its "past efforts" to curb race-based misconduct had not sufficiently deterred the practice.

2. The court's failure to take Mr. McClendon's youth and cognitive disabilities into account, while adultifying his behavior, undermine the validity of the sentence imposed.

a. A sentencing court must follow the dictates of the SRA and the prohibition against cruel punishment.

The SRA dictates the considerations on which a court may rest their sentencing decision, in addition to the constraints imposed by the Sixth and Eighth Amendments and article I, sections 14 and 22. *State v. Buck*, 2 Wn.3d 806, 824, 544 P.3d 506 (2024); *Blakely v. Washington,* 542 U.S. 296, 303-04, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004); U.S. Const. amends. VI, VII; Const. art. I, §§ 14, 22.

However, the SRA was not constructed to account for the diminished culpability of youthful defendants. *State v. O'Dell*, 183 Wn.2d 680, 691-92, 358 P.3d 359 (2015). Consequently,

the court's sentencing authority is further limited by the imperative of meaningfully weighing a young person's culpability based on their age, brain development, and other mitigating circumstances. *Id.*; *see Matter of Monschke*, 197 Wn.2d 305, 313, 482 P.3d 276 (2021).

Under the "real facts" doctrine, a sentencing court can never increase a person's sentence on uncharged, unproven allegations. RCW 9.94A.530(2). In the context of a guilty plea, it "may rely on no more information than is admitted by the plea agreement," or admitted at sentencing. *Id.*

The SRA requires that a sentence be proportionate, not only to the seriousness of a defendant's offense, but also to "the offender's criminal history." RCW 9.94A.010(1). It also directs that discretionary sentences should be commensurate with the punishment imposed on others committing similar offenses. RCW 9.94A.010(3).

The court did not follow these mandates.

b. The trial court's failure to meaningfully weigh uncontested mitigating factors and instead overstate Mr. McClendon's culpability merits review.

Mr. McClendon was 20 years old at the time of the crime. CP 44. He offered undisputed evidence of his significant intellectual deficits that impaired his ability to make reasoned, mature choices, even more than others his same age. CP 46, 68, 80. Despite being in special education classes due to his learning disabilities from kindergarten, he was unaware of his very low IQ until testing occurred in the course of this case and never received services targeted toward this disability. CP 44.

Yet the court blamed Mr. McClendon more than his older co-defendant and imposed a proportionally harsher punishment on Mr. McClendon than Mr. Harris received.

The court imposed this proportionally harsher sentence even though Mr. McClendon was the last person to fire a gun. Both he and his co-defendant were fleeing at the time gunfire erupted, instigated by the decedent. CP 43. Then Mr. Harris

fired back. *Id.* Mr. McClendon was shot in the face, unlike his co-defendant. *Id.*

Mr. McClendon had no criminal history other than a conviction for an offense he committed on the day of he turned 12 years old. CP 42. His older co-defendant had multiple prior felonies. CP 41. Community members said this offense was totally "out of character" for Mr. McClendon and expressed shock. CP 46-47. There was no evidence he had a criminal disposition or posed a regular threat of violence to the community, yet the trial court deemed him to pose this type of permanent threat to the public. 10/22/21RP 37-39.

Mr. McClendon's cognitive limitations, in conjunction with his young age, made it more difficult for him to resist his impulses and break from peer pressure. He felt "compelled" to participate in the crime because of his co-defendant. CP 81. Yet the trial court insisted he "made a choice" and risked harm to innocent people, justifying this sentence. 10/22/21RP 37.

While no one disputed that Mr. McClendon engaged in wrongful and reckless behavior, the court was required to meaningfully account for the psychologist's evaluation explaining Mr. McClendon's uncontested diminished culpability. The court never weighed or mentioned the intellectual deficits that made Mr. McClendon more susceptible to peer pressure from his older co-defendant in addition the diminished executive functioning that accompanies his youth.

The court imposed a sentence close to the high-end of the range that a mature adult could receive for this offense. It reasoned that Mr. McClendon should remain in jail for 22 and one-half years to ensure his brain matures. 10/22/21RP 39. This reasoning is untenable and contrary to this Court's precedent.

The court falsely inflated Mr. McClendon's involvement while disregarding the proportionality required by the SRA as well as the considerations of youthfulness mandated by *O'Dell*. This Court should grant review due to the trial court's misapprehension of the statutory and constitutional requirements

that it weigh the mitigating nature of youth, intellectual deficits, and lesser culpability of an accomplice who is reacting to peer pressure from an older co-defendant to impose a proportionate sentence.

E. CONCLUSION

Based on the foregoing, Petitioner Albert McClendon respectfully requests that review be granted pursuant to RAP 13.4(b).

Counsel certifies this document contains 3484 words and complies with RAP 18.17(b).

DATED this 28th day of May 2025.

Respectfully submitted,

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APPENDIX A

Filed
Washington State
Court of Appeals
Division Two

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. ALBERT JERMAINE MCCLENDON, Appellant.	No. 58258-9-II UNPUBLISHED OPINION

GLASGOW, J.—Albert McClendon pleaded guilty to second degree murder after he and another person shot and killed a man while robbing him on his front porch. Consistent with the plea agreement, McClendon argued for a low-end standard sentence, and the State argued for a high-end standard sentence. Ultimately, the trial court imposed a sentence in the middle of the standard range.

McClendon appeals his standard range sentence arguing that he was unconstitutionally shackled during sentencing, that the trial court failed to adhere to the guidance of the Sentencing Reform Act of 1981, ch. 9.94A RCW (SRA), and that the trial court erred by imposing a "Victim Penalty Assessment" (VPA) and ordering restitution interest. We hold that although McClendon was restrained during sentencing, his restraint was not unconstitutional, any error was harmless, and he cannot otherwise appeal his standard range sentence. We further hold that remand is necessary to strike the VPA and reconsider restitution interest. Accordingly, we affirm and remand for the trail court to strike the VPA.

FACTS

One afternoon, NS and his girlfriend returned home from the store for NS's sister's birthday party. Before they could enter the home, McClendon, who was 20 years old at the time, and another man approached them on the porch, pointed guns at them and demanded they give them "everything." Clerk's Paper (CP) at 2. NS's girlfriend dropped her phone and entered the home. NS fired shots at McClendon and his accomplice as they left the scene. Both assailants returned fire, two shots of which struck and killed NS on his porch.

The State originally charged McClendon with first degree murder, first degree robbery, and first degree unlawful possession of a firearm. In exchange for McClendon's guilty plea, the State amended the charges to one count of second degree murder with a firearm sentencing enhancement. The parties agreed that the State could argue for a sentence at the high end of the standard sentencing range and McClendon could argue for a sentence at the low end of the standard sentencing range.

At the sentencing hearing, the trial court recognized the heightened emotions of those in attendance.

> Folks, I understand this is very emotional. I understand the nature of what this is, but I need everyone to understand a couple of rules.
>
> First of all, there will be no outbursts, there will be no emotional anything other than when you're speaking to the Court. All of your comments are to be addressed to me, not to the defendant, and if there's any violations of the rules, I will deal with it accordingly. It's going to be very strict rules about what occurs in here.

Verbatim Rep. of Proc. (VRP) (Oct. 21, 2022) at 3. The trial court stated that it had read the presentence evaluation, McClendon's sentencing memorandum, all the letters from both the victim's and McClendon's family, and the declaration of probable cause.

In support of its argument that the trial court impose a high-end standard sentence, the State explained that it had considered McClendon's youthfulness in forming the plea agreement to reduced charges. The State also explained that McClendon's co-offender pleaded guilty months earlier than McClendon.

The trial court watched video footage of the incident and heard a statement from the victim's mother.

McClendon's counsel argued for a low-end standard sentence based on his youth at the time of the incident, his diagnosis of borderline intellectual functioning, and the fact that the victim fired shots first causing McClendon to fear for his life. McClendon's counsel explained that McClendon's youth and fear at being shot at were factors the court could consider to impose an exceptional downward sentence, but counsel reiterated that McClendon was only seeking a low end standard-range sentence. McClendon explained to the trial court that his co-offender was sentenced to 33 months above the low end of his standard sentencing range.

McClendon made a statement to the trial court. At the conclusion of his statement, the trial court acknowledged that McClendon had restraints on his hands.

> It appears the defendant has shackles. We did not do a *Lundstrom* hearing.
>
> Just for the record, I just noticed that as he was speaking. I in no way utilized that in any way against him, but for the record, I first need to establish whether or not counsel has any objection to him being shackled during this hearing or if counsel stipulates.

VRP (Oct. 21, 2022) at 31. McClendon's counsel responded, "It's a little late for that at this point. I was informed that due to the nature of this hearing that, unlike at his plea, that was not something I could request at this point." *Id.* The trial court then asked the transport deputy to establish the reasons for McClendon to be restrained. The deputy responded that because McClendon was

postconviction, there was no reason to not keep the restraints on him based on the jail's policies. The State noted that it was a murder case and postconviction and explained that it would defer to the trial court and jail staff on the issue.

The trial court reiterated that it did not know McClendon was shackled until he stood to make his statement, stating, "I will find it necessary for the security of this courtroom that he be shackled. There are a number of individuals present, and the nature of this particular charge will require a sentence well in excess of 15-plus years. As such, I do find it is necessary for that purpose." VRP (Oct. 21, 2022) at 33.

In issuing its sentence, the trial court explained that McClendon made a choice to enter a residential area, armed with a firearm, and engaged in a violent shootout where bullets entered a home and put innocent people at risk. The trial court explained,

> [W]hen the Court considers all those factors as well as the fact you were young, you were dealing with a number of mental health issues, and a number of other factors, the Court has to balance all that against the clear fact that there's a young man who is never going to go home to his family, and there's a family that is heartbroken behind you, and there's a family that is going to be dealing with this for the rest of their lives.

Id. at 37-38.

The trial court commented that RCW 9.94A.010 identifies the purposes of sentencing, and noted that the first purpose is to ensure that punishment is proportionate to the seriousness of the offense. The court noted the gravity of the crime at hand, explaining, "The reality of this case is you took a man's life. . . . a man's life was lost, which means there can be no more serious offense than what occurred on that day." VRP (Oct. 21, 2022) at 38. The trial court considered that the punishment is to be commensurate with that imposed in similar offenses and noted that

McClendon's co-offender received a sentence of 288 months. The trial court emphasized its duty to protect the public and to give McClendon an opportunity to improve himself.

Ultimately, the trial court imposed a sentence in the middle of the sentencing range for a total of 270 months confinement. McClendon appeals his sentence.

ANALYSIS

I. RESTRAINTS IN THE COURTROOM DURING SENTENCING

McClendon argues that his due process rights were violated when he was shackled at his sentencing hearing. We disagree.

We review a trial court's decision to restrain a criminal defendant for an abuse of discretion. *State v. Jackson*, 195 Wn.2d 841, 850, 467 P.3d 97 (2020). "A trial court abuses its discretion when its 'decision is manifestly unreasonable, or is exercised on untenable grounds, or for untenable reasons.'" *Id.* (internal quotation marks omitted) (quoting *State v. Turner*, 143 Wn.2d 715, 724, 23 P.3d 499 (2001)).

"A defendant's right to appear in court free from unjustified restraints is well established as a matter of federal and state due process law." *State v. Luthi*, 3 Wn.3d 249, 256, 549 P.3d 712 (2024). "Restraints are viewed with disfavor because they may abridge important constitutional rights, including the presumption of innocence, privilege of testifying in one's own behalf, and right to consult with counsel during trial." *State v. Hartzog*, 96 Wn.2d 383, 398, 635 P.2d 694 (1981).

However, "the right to be free from restraint is not absolute, and trial court judges are vested with the discretion to determine measures that implicate courtroom security, including whether to restrain a defendant in some capacity in order to prevent injury." *Jackson*, 195 Wn.2d

at 852. Thus, before restraining a defendant, "[a] trial court must engage in an individualized inquiry into the use of restraints prior to every court appearance" and determine whether the restraints are necessary. *Id.* at 854; *see also Hartzog*, 96 Wn.2d at 400. The trial court should consider the following factors before ordering the use of restraints in the courtroom:

> "[T]he seriousness of the present charge against the defendant; defendant's temperament and character; [their] age and physical attributes; [their] past record; past escapes or attempted escapes, and evidence of a present plan to escape; threats to harm others or cause a disturbance; self-destructive tendencies; the risk of mob violence or of attempted revenge by others; the possibility of rescue by other offenders still at large; the size and mood of the audience; the nature and physical security of the courtroom; and the adequacy and availability of alternative remedies."

Jackson, 195 Wn.2d at 853 (internal quotation marks omitted) (quoting *State v. Hutchinson*, 135 Wn.2d 863, 887-88, 959 P.2d 1061 (1998)). There is no requirement that the trial court expressly address every factor. *Id.* at 855. A trial court abuses its discretion and commits constitutional error by requiring a defendant to be restrained without an individualized inquiry into its need. *Id.*

Here, the trial court realized McClendon wore wrist restraints when he stood up for his allocution. The trial court immediately recognized that it was required to make an individualized inquiry into the necessity for restraints. Upon consideration, the trial court ruled that restraints were necessary based on the gravity of the crime and the number of people in attendance at the hearing when it opined, "I will find it necessary for the security of this courtroom that he be shackled. There are a number of individuals present, and the nature of this particular charge will require a sentence well in excess of 15-plus years. As such, I do find it is necessary for that purpose." VRP (Oct. 21, 2022) at 33.

On appeal, McClendon argues that the trial court simply deferred to the jail policy and therefore abused its discretion. While it is true that both the State and the jail transport deputy

offered jail policy and McClendon's postconviction status as reasons for the restraints, the record does not support the contention that the trial court relied on the jail policy in its ruling. The trial court's ruling shows that it primarily based its decision on the seriousness of the charge, the size and mood of the audience, and the nature and physical security of the courtroom—all factors a trial court should consider under *Jackson*. 195 Wn.2d at 853.

The context of the entire sentencing hearing also supports the trial court's reasoning. At the outset of the hearing, the trial court admonished the courtroom that emotions must be kept under control. Multiple family members of both McClendon and the victim were present and the sentencing hearing was understandably emotionally charged. On this record, we hold that it was not manifestly unreasonable for the trial court to determine restraints were necessary.

Moreover, any error in restraining McClendon during sentencing was harmless beyond a reasonable doubt. "Restraints are viewed with disfavor because they may abridge important constitutional rights, including the presumption of innocence, privilege of testifying in one's own behalf, and right to consult with counsel during trial." *Hartzog*, 96 Wn.2d at 398. The Washington Supreme Court has also recognized "the unknown risks of prejudice from implicit bias and how it may impair decision-making." *Jackson*, 195 Wn.2d at 856. But here, McClendon alleges no interference with his rights to consult with counsel or speak to the trial court. Moreover, the trial court expressly stated on the record that it "in no way utilized [McClendon's restraints] in any way against him," showing that the trial court expressly called potential bias to the forefront, undermining the risk of unconscious bias. VRP (Oct. 21, 2022) at 32. Given this clear statement, and that the trial court proceeded to impose a mid-standard range sentence, we hold that any error in restraining McClendon was harmless beyond a reasonable doubt.

II. STANDARD RANGE SENTENCE

McClendon argues that the trial court's reasoning when imposing a standard range sentence was contrary to the SRA and requires resentencing. We disagree.

Generally, sentences within the standard sentence range are not appealable. RCW 9.94A.585(1); *State v. Osman*, 157 Wn.2d 474, 481, 139 P.3d 334 (2006). The sentencing court has discretion to sentence a defendant within the sentence range, and so long as the sentence falls within the standard sentence range, there can be no abuse of discretion as to the sentence's length. Former RCW 9.94A.530(1)(2008); *State v. Williams*, 149 Wn.2d 143, 146-47, 65 P.3d 1214 (2003). A defendant may appeal a standard range sentence only if the sentencing court failed to comply with the procedural requirements of the SRA or constitutional requirements. *Osman*, 157 Wn.2d at 481-82.

McClendon contends that his standard range sentence is appealable because the sentencing court committed a procedural error by violating the real facts doctrine. The real facts doctrine, RCW 9.94A.530(2), provides in part, "In determining any sentence other than a sentence above the standard range, the trial court may rely on no more information than is admitted by the plea agreement, or admitted, acknowledged, or proved in a trial or at the time of sentencing, or proven pursuant to RCW 9.94A.537." RCW 9.94A.530(2) further states, "Where the defendant disputes material facts, the court must either not consider the fact or grant an evidentiary hearing on the point."

But to be entitled to raise a real facts doctrine issue on appeal, McClendon must first show that he raised a "timely and specific objection" to the sentencing court's consideration of the allegedly improper information. *State v. Grayson*, 154 Wn.2d 333, 339, 111 P.3d 1183 (2005).

Moreover, defendants who receive a standard range sentence must object to unproven assertions of fact presented at sentencing to preserve error under the real facts doctrine. *State v. Mail*, 121 Wn.2d 707, 711-12, 854 P.2d 1042 (1993). McClendon fails to make this showing, and his argument therefore fails.

McClendon also contends that the trial court erred by misapplying the guidance of the SRA. Specifically, he argues that the trial court incorrectly stated that McClendon's crime could not have been a more serious crime, improperly weighed the circumstances of the crime, failed to consider psychological evidence showing McClendon was less culpable, and insufficiently considered McClendon's youth. But none of these alleged errors amounts to a procedural or constitutional defect in the trial court's sentencing decision.

Nor does McClendon's argument that the trial court failed to impose a sentence commensurate with his co-offender's sentence establish a procedural or constitutional error. RCW 9.94A.010(3) explains that one purpose of the SRA is to provide a system whereby courts impose sentences that are "commensurate with the punishment imposed on others committing similar offenses." However, RCW 9.94A.010(3) does not establish that co-offenders must receive identical sentences.

Here, McClendon's case was resolved separately from his co-offender, and the details of his co-offender's case are not before this court. McClendon fails to establish any error justifying review of his standard range sentence.

McClendon's arguments ultimately go to *how* the trial court weighed the circumstances of the case and used its discretion to determine the amount of time to be imposed within the standard range. McClendon was entitled to—and did—argue at sentencing that the trial court should impose

a low end sentence. That the trial court disagreed with McClendon's arguments and imposed a midrange-standard sentence, is not a procedural or constitutional defect permitting an appeal of a standard range sentence.

III. LEGAL FINANCIAL OBLIGATIONS

McClendon also argues that the $500 crime victim penalty assessment must be stricken from his judgment and sentence and that the trial court should consider waiving the imposition of interest on his restitution. The State concedes, and we accept its concession.

Effective July 1, 2023, RCW 7.68.035(4) prohibits courts from imposing the crime victim penalty assessment on indigent defendants as defined in RCW 10.01.160(3). *See* LAWS OF 2023, ch. 449, § 1(4); *State v. Ellis*, 27 Wn. App. 2d 1, 16, 530 P.3d 1048 (2023), *review granted*, No. 102378-2 (Wash. Mar. 5, 2025). Additionally, a recent amendment to RCW 10.82.090 states that the trial court "may elect not to impose interest on any restitution the court orders" based on an inquiry into factors such as whether the defendant is indigent. RCW 10.82.090(2); LAWS OF 2022, ch. 260, § 12. Although these amendments took effect after McClendon's sentencing, they apply to cases pending on appeal. *Ellis*, 27 Wn. App. 2d at 16. We accept the State's concession that on remand, the trial court must strike the crime victim penalty assessment and it should consider whether to waive interest on restitution.

CONCLUSION

We affirm McClendon's standard range sentence but remand to the trial court to strike the $500 crime victim penalty assessment and to consider waiving interest on restitution.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

GLASGOW, J.

We concur:

VELJACIC, A.C.J.

PRICE, J.

APPENDIX B

Filed
Washington State
Court of Appeals
Division Two

April 28, 2025

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

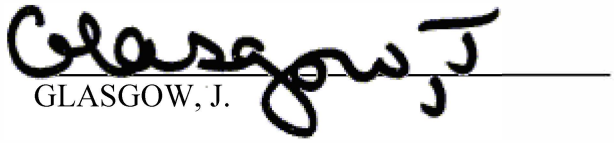
STATE OF WASHINGTON, Respondent, v. ALBERT JERMAINE MCCLENDON, Appellant.	No. 58258-9-II ORDER DENYING MOTION FOR RECONSIDERATION

The unpublished opinion in this matter was filed on March 25, 2025. On April 10, 2025, appellant moved for reconsideration. After consideration, it is hereby

ORDERED that appellant's motion for reconsideration is denied.

PANEL: Jj. Glasgow, Veljacic, Price.

FOR THE COURT



GLASGOW, J.

WASHINGTON APPELLATE PROJECT

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Appellate Court Case Title:	State of Washington, Respondent v. Albert Jermaine McClendon, Appellant
Superior Court Case Number:	20-1-02785-7

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