Supreme Court No. _____
COA No. 86055-1-I

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

JUAN MACIAS,

Petitioner.

ON APPEAL FROM THE SUPERIOR COURT
OF KING COUNTY

PETITION FOR REVIEW

OLIVER R. DAVIS
Attorney for Petitioner

WASHINGTON APPELLATE PROJECT
1511 Third Avenue, Suite 610
Seattle, Washington 98101
(206) 587-2711

TABLE OF CONTENTS

TABLE OF AUTHORITIES

UNITED STATES SUPREME COURT CASES

CONSTITUTIONAL PROVISIONS

PRACTICE GUIDES

A. IDENTITY OF PETITIONER

Juan Macias was the appellant below in COA No. 86055-1-I, and is the Petitioner herein.

B. COURT OF APPEALS DECISION

Mr. Macias seeks review of the decision issued by Division One on May 5, 2025. Appx.

C. ISSUES PRESENTED ON REVIEW

1. Did the re-sentencing court abuse its discretion by merely reiterating the facts of the present, 2018 incident and denying the motion for an exceptional sentence where forensic neuropsychological evaluations of Mr. Macias showed that he was suffering from several serious mental disorders at the time of the offense, the result of which, based on expert testimony, was that "[t]he defendant's capacity to appreciate the wrongfulness of his or her conduct, or to conform his or her conduct to the requirements of the law, was significantly impaired, warranting a sentence below the standard range under RCW 9.94A.535(1)(e)?

2. For similar reasons as set forth by the forensic psychological evaluations of Mr. Macias, did the court abuse its discretion by denying the motion for an exceptional sentence where, given the nature of several mental disorders that caused Mr. Macias to have a heighted perception of threat, and the uncontroverted evidence that the decedent had held a gun to Mr. Macias' head during a robbery five weeks earlier, the victim in this case was a "provoker of the incident, warranting a sentence below the standard range under RCW 9.94A.535(1)(a)?"

3. Was an exceptional sentence warranted where the defendant committed the crime under duress, coercion, threat, or compulsion insufficient to constitute a complete defense but which significantly affected his conduct,under RCW 9.94A.535(1)(c)?

4. Did the court abuse its discretion at de novo re-sentencing when it denied the defense motion for an exceptional sentence where Mr. Macias showed that his 2008

convictions were committed as a juvenile, as recognized by law for purposes of current offenses and prior crimes, and as attested to by the forensic psychological assessments of Mr. Macias who described his then existing lack of development of the normal qualities of maturation?

4. Must Mr. Macias' 2008 conviction for second degree robbery be excluded from his offender score, where the conviction was facially invalid for the court's failure to address the Kent factors before decline?

D. STATEMENT OF THE CASE

1. Trial evidence and first sentencing.

Juan Macias, then age 27, was charged with first degree murder of Dallas Esparza, pursuant to RCW 9A.32.030(a). CP 1-2. He was also charged with first degree unlawful possession of a firearm pursuant to RCW 9.41.040(1) and RCW 9.41.010. CP 1-2. Mr. Macias was accused of the February 7, 2018, shooting of Mr. Esparza near a taco truck in the South

Park neighborhood, which resulted in injuries that led to his death at Harborview Hospital a week later. CP 3, 5.

Mr. Macias told police that he saw Mr. Esparza and recognized him as the person who came up to him and robbed him at gunpoint on New Year's Eve. Mr. Macias explained that he shot Mr. Esparza because he feared for his life and acted in self-defense. CP 3-5. This defense failed at trial. See CP 11.

2. Appeal and re-sentencing.

Following appeal in which the Court of Appeals agreed that his offender score had been incorrectly calculated, Mr. Macias was returned to the sentencing court. CP 24. At his de novo re-sentencing, the defense challenged the inclusion of Mr. Macias' 2008 conviction in his offender score, where it had been secured in adult court with no analysis of the Kent factors for purposes of juvenile decline. CP 35. This rendered the 2008 conviction facially invalid, leaving Mr. Macias with an offender score of 2, rather than 3. CP 37. The re-sentencing

court disagreed, and included the offense in Mr. Macias' score. RP 89-90.

Mr. Macias also sought an exceptional sentence below the standard range – asking for 42 months on the conviction for second degree murder, which would run concurrent to the count of unlawful possession of a firearm. RP 91; CP 32. The defendant would then serve a 60 month firearm enhancement following the murder count. CP 32.

Mr. Macias supported his motion, which was based on several mitigating factors, with two pre-sentencing reports, and a forensic neuropsychological report by Dr. Marnee Milner, prepared prior to the re-sentencing hearing. CP 32, 66, 131.

Dr. Milner also testified at the re-sentencing hearing. RP 7-72. With regard to the legislation regarding juvenile points scoring enacted prior to Mr. Macias' remand for re-sentencing, counsel relied on the legislature's statement in seeking a downward departure sentence, also based on other grounds. RP 77-79; CP 47-48; see infra.

The re-sentencing court denied the defense motion. The court's reasoning can only be read as an affirmative rejection of the proposition that a person's conduct could possibly be mitigated by "mental health diagnoses, traumas, PTSD, adverse childhood events and so forth," since Mr. Macias appeared to advance forward to shoot Mr. Esparza. RP 112.

The court did not credit the theory that Mr. Macias' developmental disorders and PTSD heightened his perception of threat and caused him to act with the impulsivity of a person without his frontal lobe deficiencies, therefore rejecting the notion of a failed defense. RP 112.

The trial court did not substantively evaluate the issue of Mr. Macias' 2008 juvenile convictions and whether they were a mitigating factor. RP 111-14.

The court sentenced Mr. Macias on an offender score of 3. CP 466-69. He was given 240 months on the murder count (with 34 months concurrent on the unlawful possession of a

firearm), along with a 60 month firearm enhancement. CP 468-69. The Court of Appeals affirmed. Appx.

E. ARGUMENT

(1). At de novo re-sentencing, Juan Macias was entitled to an exceptional sentence below the standard range.

The defense motion for an exceptional sentence was supported by forensic reports from two evaluators and by the June 16, 2023 report and testimony of Dr. Marnee Milner. CP 131; CP 53 (Barrett report); CP 66 (Dr. Fabian report). In addition. testimony was taken of Dr. Milner at the December 1, 2023 re-sentencing hearing. RP 1 to 120 (Transcript, with Index at pp. 1-38); see RP 74-79 (argument regarding juvenile record).

Review is warranted where court's failure to exercise discretion is itself an abuse of discretion. State v. O'Dell, 183 Wn.2d 680, 697, 358 P.3d 359 (2015); State v. Grayson, 154 Wn.2d 333, 342, 111 P.3d 1183 (2005). Here, review is warranted under RAP 13.4(b)(1) and (3).

a. Mitigating factors can support an exceptional sentence where there are compelling reasons to impose a downward departure sentence and the term proposed is not clearly too lenient.

Under the Sentencing Reform Act, a sentencing court has the discretion to impose a sentence that departs from the standard range when it finds "that there are substantial and compelling reasons justifying an exceptional sentence." RCW 9.94A.390. A number of mitigating factors are expressly recognized by the legislature, but the statutory list of mitigating factors is not exclusive.

b. Standard of review - failure to address all proffered mitigating factors.

Generally, the standard of review of a sentencing court's decision to deny an exceptional sentence is abuse of discretion. State v. McGill, 112 Wn. App. 95, 100, 47 P.3d 173 (2002). However, where the sentencing court failed to properly consider all of the mitigating factors proffered by Mr. Macias, this is legal error in the form of a failure to exercise discretion, which is itself an abuse of discretion, subject to reversal. State

v. O'Dell, 183 Wn.2d at 697; State v. Grayson, 154 Wn.2d at 342.

Courts also review de novo whether proffered mitigating reasons justify departing from the standard range. State v. Law, 154 Wn.2d 85, 94, 110 P.3d 717 (2005). In Mr. Macias' case, the psychological assessments of several experts and in particular Dr. Marnee Milner revealed disorders that ran in common through the several statutory mitigating factors Mr. Macias proffered with regard to the current offenses. See infra.

In addition, the sentencing court failed to recognize the legal import, nor did it substantively consider, the non-statutory mitigating factor that Mr. Macias' prior record was composed of offenses committed with lessened culpability, when he was a juvenile - a sentencing consideration that Mr. Macias, for no substantive reason except the date of enactment of a new law could not take advantage of for purposes of his offender score. See Part E.1(e), infra.

c. Impaired capacity and a perception of threat resulting in a "failed defense" are statutory mitigating factors which are interrelated in this case, as a result of Mr. Macias' PTSD and neurodevelopmental disorders.

Our state recognizes the mitigating factor that "[t]he defendant's capacity to appreciate the wrongfulness of his or her conduct, or to conform his or her conduct to the requirements of the law, was significantly impaired." RCW 9.94A.535(1)(e); see, e.g., State v. Smith, 139 Wn. App. 600, 601, 161 P.3d 483 (2007) (in rape of a child case, court lawfully imposed downward departure where the defendant's developmental delay resulted in significant impairment of his capacity to appreciate the wrongfulness of his conduct).

In addition, the Legislature has determined that a failed defense may constitute a mitigating factor supporting an exceptional sentence below the standard range. State v. Jeannotte, 133 Wn.2d 847, 851, 947 P.2d 1192 (1997). Commentators have emphasized that this mitigating factor in the SRA allows leniency where circumstances exist which

warrant an instruction on self-defense – but the jury convicts nonetheless. State v. Hutsell, 120 Wn.2d 913, 921, 845 P.2d 1325 (1993) (citing D. Boerner, *Sentencing in Washington*, section 9–23 (1985). See RCW 9.94A.535(c) (the defendant committed the crime under duress or threat insufficient to constitute a complete defense but which significantly affected his or her conduct).

d. Mr. Macias' capacity was significantly impaired, and his disorders, including a heightened sense of fear, caused him to lack a capacity to appreciate wrongfulness, and caused him to believe he was rightly defending himself.

(i).Dr. Marnee Miller first reviewed the prior evaluations of Mr. Macias.

As shown by the reports and testimony of medical professionals, Mr. Macias was suffering from significant mental and developmental deficits at the time of the offense, which also continue to this day. Dr. Marnee Milner evaluated Juan Macias beginning in December 7, 2022, for purposes of the present re-sentencing. CP 131. As noted at sentencing by counsel and by Dr. Milner, Mr. Macias has a long history of

mental illness, including a serious suicide attempt shortly before the charged incident; as a result, he was prescribed psychiatric medications at the jail following his arrest. CP 131; RP 35, 44-47.

Dr. Milner's evaluation of Mr. Macias was independent, and expansive, and included a review of prior evaluations for purposes of Mr. Macias' first sentencing - including assessments of Mr. Macias with which Dr. Milner agreed. One of the prior evaluators, Dr. Barrett, detailed a number of risk factors for impulsive conduct without thought - abusive physical discipline, exposure to other domestic violence, and experiences of community violence. CP 57; RP 46. And Dr. Fabian reported that Mr. Macias has a full-scale IQ of 79 - full scale, or FSIQ, being a measure of a person's overall intellectual and cognitive functioning. CP 38. This placed Mr. Macias in the 8th percentile, categorizing him as being within the mildly impaired to borderline impaired range. CP 38.

The consequences of Juan's family life and developmental deficits also included a neurocognitive disorder and posttraumatic stress disorder (PTSD). CP 38-39. These foundational deficits went directly to his mental state on 2018.

Dr. Fabian reached definitive conclusions regarding capacity and perception as affected by Juan's neurodevelopmental disorders - his expert opinion was that Juan's "ability to deliberate was "compromised by these impairments and conditions," which caused him to overreact and put himself in an immediate defensive survival mode out of fear. CP 39, 43, 108-09.

(ii).Dr. Milner determined that Mr. Macias had limited capacity to appreciate wrongful conduct and a heightened sense of fear.

In addition to the doctors' conclusions being validated by Dr. Milner, who conducted the most recent psychological evaluation of Juan, Milner reached her own detained conclusions. When this case was reversed and the full de novo re-sentencing was set, the defense was permitted to retain Dr.

Milner, who also has a law degree. CP 40. Dr. Milner's independent diagnosis of Juan Macias focused first on the determination that he suffered from complex PTSD. CP 139.

Dr. Milner believed that Mr. Macias' diagnosed psychological functioning around the time of the charged incident - and the fact that he had never had access to treatment - was the cause of his actions. CP 140. Milner believed that Mr. Macias had longstanding cognitive, emotional, social, physiological, and behavioral dysfunctions which led up to his behavior and psychological state on or before the time of the 2018 criminal incident – yet, Milner noted, Mr. Macias has never received empirically based mental health treatment for his childhood trauma."). CP 41.

Although Mr. Macias was 27 years old at the time of the current offense, his mental deficits were inextricably linked to the same sort of mental incapacity associated with youth. Dr. Milner reported that Mr. Macias' cognitive deficits, and his approximate IQ of 79, were outwardly manifested by

observable deficits in frontal lobe functions and therefore severe deficits in impulsivity. CP 141. Mr. Macias' preexisting mental deficits precluded him from any ability to function as an adult on February 7, 2018. CP 141.

Dr. Milner made clear that she believed that Mr. Macias's impaired capacity at the time of the charged incident, when combined with the fact that that Mr. Macias had recently been robbed by the decedent at gunpoint, caused him to think he was going to die. CP 144. In Dr. Milner's words, these mental deficits were in accord with the fact that when Mr. Macias "saw his physically larger assailant, [he] reported feeling panicked and told police he just reacted and that he did not want to get shot." CP 144. Dr. Milner stated,

> This is a classic flight or fight response consistent with PTSD in which the limbic system (the emotional center of the brain) overrides the prefrontal cortex (the logical, executive functioning, decision-making portion of the brain). Mr. Macias seems to have been emotionally flooded and unable to access his ability to think logically and rationally.

CP 144.

In law, given the interplay of a lack of full mental capacity and actions taken in self-defense where a perceived threat was less grave than it may have been, Dr. Milner's expert assessment supported a finding by the re-sentencing court that "[t]he defendant's capacity to appreciate the wrongfulness of his or her conduct, or to conform his or her conduct to the requirements of the law, was significantly impaired." RCW 9.94A.535(1)(e).

Dr. Milner concurred with Dr. Fabian's ultimate conclusion that Mr. Macias' "complex trauma and PTSD and [an] especially recent traumatic death threat by the alleged victim." along with his neurodevelopmental disorders indicated "a significantly diminished . . . capacity to act with premeditated intent at the time of the charged offense." CP 144.

Further, Mr. Macias' heightened perception of fear, likely leading to a failed defense of self-defense, was directly related to his cognitive impairments - the threat he faced on July 7 of 2018 was, in his mind, all too real. See, e.g., State v. Pascal, 108 Wn.2d 125, 137, 736 P.2d 1065 (1987) (manslaughter conviction warranted downward departure after failure of claim of self-defense based on battered woman syndrome).

e. The fact that Juan Macias' prior convictions for purposes of his offender score were committed when he was the age of a juvenile is a mitigating factor.

(i).Review is warranted.

Punishment should be proportional to the crime committed. Weems v. United States, 217 U.S. 349, 367, 30 S. Ct. 544, 54 L. Ed. 793 (1910); State v. Bassett, 192 Wn.2d 67, 91, P.3d 343 (2018); U.S. Const. amend. XIV; Const. art. I, § 14. In light of this principle, the U.S. Supreme Court has held that individuals with "lessened culpability are less deserving of

the most severe punishments." Graham v. Florida, 560 U.S. 48, 68, 130 S. Ct. 2011, 176 L. Ed. 2d 825 (2010).

The question of lessened culpability related to offenses committed by persons within the age range of juvenile to youthful adults is a rapidly developing area of case law in Washington, and this Supreme Court has held that trial courts have always possessed the authority - and indeed are required to consider age at the time of the offense - when issuing sentence, even as the scope of that existing authority has been set forth in very recent decisions. State v. Houston-Sconiers, 188 Wn.2d 1, 9, 391 P.3d 409 (2017); State v. O'Dell, 183 Wn.2d at 695-96; In re Monschke, 197 Wn.2d 305, 306, 482 P.3d 276 (2021).

The notion that these principles regarding age, culpability and sentencing cannot include consideration of age at the time of prior offenses as a mitigating factor permissible for a trial court to consider for an exceptional sentence downward implicates constitutional protections and conflicts with

decisions of this Court. Review is warranted in the present case under RAP 13.4(b)(1) and (3).

(ii).This issue may be raised and requires relief.

Prior to Mr. Macias' re-sentencing hearing, this amendment, House Bill 1324, was signed into law on May 11, 2023, with an effective date of July 23, 2023. See RCW 9.94A.525(1). Under the legislative intent section of HB 1324, the legislature stated that sentencing of an adult based in part on prior juvenile offenses offends due process and Washington's recognition that prior crimes committed by juveniles result in disproportionate punishment for later adults. The Statement of Intent states that this legislation is intended to:

> (1) Give real effect to the juvenile justice system's express goals of rehabilitation and reintegration;
> (2) Bring Washington in line with the majority of states, which do not consider prior juvenile offenses in sentencing range calculations for adults;
> (3) Recognize the expansive body of scientific research on brain development, which shows that adolescent's perception, judgment, and

> decision making differs significantly from that of adults;
> (4) Facilitate the provision of due process by granting the procedural protections of a criminal proceeding in any adjudication which may be used to determine the severity of a criminal sentence; and
> (5) Recognize how grave disproportionality within the juvenile legal system may subsequently impact sentencing ranges in adult court.

2023 c 415 § 1 (Official Statement of Intent). While the new legislation applies to only to sentencing for crimes after its effective date, the rationale of the new legislation - adult offenders should not have their sentence increased based on offenses committed before they developed the brains and sense of an adult - provides a compelling basis for a trial court to impose a downward departure sentence.

Here, the de novo sentencing hearing held December 1, 2023 placed all issues on the table and relied on developing law. As Ms. Holmes briefed, and argued on behalf of Mr. Macias, the fact that Mr. Macias' 2008 offenses were committed as a juvenile warranted an exceptional sentence

downward - in this case. CP 47-49. The State's response to this briefed argument was to note that the new juvenile criminal history scoring statute, which excluded most offenses committed when the defendant was a juvenile, was not retroactive. RP 97-98. This argument simply went unaddressed.

The mitigating factor should have been addressed at this de novo sentencing hearing. In addition to Dr. Milner's evaluation, since the time of Juan Macias' July 22, 2020 sentencing, our state, building upon State v. Houston-Sconiers, 188 Wn.2d 1, 20-21, 391 P.3d 409 (2017), has understood and applied the breadth of the criminal justice system's understanding that juvenile offenders were different. As noted, the list of mitigating factors set forth in RCW 9.94A.535(1) is not exclusive.

An important mitigating factor in this case is that Mr. Macias' offender score was based on prior offenses charged ten years earlier, when he was a juvenile. CP 3-4. On August 13,

2008, when Mr. Macias was seventeen years old, he and four other youths were charged with robbery in the first degree. The victim was Jose Chavez. CP 3. Because of his age and the nature of the charge, Mr. Macias was automatically charged as an adult, and his resultant convictions constitute the entirety of his felony criminal history. CP 47.

The fact that Mr. Macias' 2008 offenses were committed at at time when he was the age of a juvenile warranted an exceptional sentence downward. The evolution of the criminal law, following advances in society's scientific understanding of the juvenile brain, now requires inquiry into the question whether it is fair and just to elevate a defendant's offender score based on conduct committed when he was a juvenile.

The cases undergirding this evolution, including State v. Graham, 181 Wn.2d 878, 887, 337 P.3d 319 (2014), Miller v. Alabama, 567 U.S. 460, 467, 132 S. Ct. 2455, 2462, 183 L. Ed. 2d 407 (2012), and Roper v. Simmons, 543 U.S. 551, 569–70, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005) all recognize that

scientific research proves that biological differences between youths and adults that diminish the culpability of juvenile criminal defendants. See, e.g., State v. Houston-Sconiers, 188 Wn.2d at 20-21 (the reduced culpability of youth requires the sentencing courts have complete discretion, within their wisdom, to impose any sentence).

This sentencing argument asks the Court to recognize a mitigating factor. It does not conflict with the case of State v. Moretti, 193 Wn.2d 809, 822–23, 446 P.3d 609 (2019). In Moretti, the Supreme Court declined to recognize a categorical bar that a three-strikes life without parole sentence could never be based on a prior strike offense committed when the offender was a juvenile. Moretti, 193 Wn.2d at 818, 822-23. The question in Moretti involved cruel punishment under the federal 8th Amendment or article I, section 14 of the Washington Constitution. The case does not conflict with the valid proposition that an offender's prior record being the result of

convictions as a juvenile may, in a given case, warrant an exceptional sentence downward.

As to adult sentencing, in Washington, this evolution in understanding has led to the aforementioned dramatic legislative action in the form of amendment of the SRA to eliminate inclusion of most prior offenses committed when the defendant was a juvenile, in the current adult offender score. Here, Dr. Milner expressly assessed Mr. Macias' functioning as a juvenile in 2008. Dr. Milner stated,

> Like many teens/young adults, Mr. Macias at age 17 had difficulty appreciating the long-term consequences of decisions, and he was less capable of imagining risky consequences of decisions. In other words, he was not able to put the mature cognitive "brakes" on his brain which was given "gas" by the social-emotional system. He had an immature self-regulation system not only because of normative brain development but because of his childhood trauma.

CP 146; CP 48-49. The entire set of facts in Mr. Macias' case establish substantial and compelling reasons for a court to depart from the standard range. In short, when an adult

offender stands before the court to be sentenced, the ground has shifted under the sentencing court's feet. The evolving attitude of the courts toward juvenile offenders renders Mr. Macias' offender score based on his 2008 offense unfairly, but significantly greater than, that of an adult offender who committed their current offense after July of 2023.

The re-sentencing court could not exclude Mr. Macias' 2008 judgment from the offender score (although Mr. Macias also argues that the conviction is invalid on its face, see Part E.2., infra). However, it is beyond cavil that this restriction based on the statute's effective date - which is contrary to the principle that persons sentenced for crimes should receive the same sentence as others similarly situated - is one of pure practicality, and not a legislative categorization of juvenile offenses committed by a person sentenced for an adult offense in June as showing greater culpability and deserving of longer incarceration. The trial court failed to properly consider each of the proffered mitigating factors. In addition, the court at no

juncture stated that it would deny the motion for an exceptional sentence even if it accepted only one mitigating factor. See State v. Nysta, 168 Wn. App. 30, 54, 275 P.3d 1162 (2012).

Finally, the sentence Mr. Macias sought is the equivalent to the mid-range for manslaughter in the second degree, with an offender score of three; it is not "clearly too lenient." RCW 9.94A.585(4)(b); State v. Alexander, 125 Wn.2d 717, 731, 888 P.2d 1176 (1995). Mr. Macias's sentence should be reversed.

(2). The 2008 judgment affirmatively indicates it was entered without jurisdiction of the court.

With only limited exceptions, the juvenile court has exclusive original jurisdiction over juvenile offenses. RCW 13.04.030(e). These exceptions are set forth in RCW 13.04.030(e)(i)-(v). In 2008, Juan was charged with first-degree robbery in adult court for conduct committed as a juvenile. At that time, first-degree robbery qualified for automatic adult court under then RCW 13.04.030(v)(C). In

2018, RCW 13.04.030(v) was amended to remove first-degree robbery from the auto-decline list, by SB 6160.

In court at that time, young Juan Macias faced a tough decision. If he proceeded to trial and was convicted, he faced a sentence of 31 to 41 months. CP 26 (Defense 2023 memo on re-sentencing). Faced with the prospect of three years in adult prison, Mr. Macias entered agreed to a plea to amended charges of robbery in the second degree, and assault. CP 26, 77.

Although these were not auto-decline charges, Mr. Macias entered the pleas in adult court. He was sentenced in that court to serve six months on the robbery, and three months on the assault, concurrently. CP 29. On December 11, 2008, the day of the guilty plea, the Court entered a Stipulated Order of Decline of Juvenile Court Jurisdiction, which provided that "Juvenile Court Jurisdiction over the respondent is declined and the case is transferred to Adult Court for criminal prosecution." Defense 2023 memo, Exhibit A.

No formal "decline" hearing was held pursuant to RCW 13.04.110. The Court did not consider the eight factors required under Kent v. United States, 383 U.S. 541, 566-67, 16 L.Ed.2d 84, 86 S.Ct. 1045 (1966). The Kent factors are:

> 1. The seriousness of the charged offense and whether protection of the community requires prosecution in adult court;
> 2. Whether the offense was committed in an aggressive, violent, premeditated or willful manner;
> 3. Whether the offense was against persons or property;
> 4. The prosecutive merit of the case;
> 5. Whether the defendant had an adult accomplice;
> 6. The defendant's sophistication and maturity;
> 7. The defendant's prior record; and
> 8. The prospects for adequate protection of the public and rehabilitation of the juvenile in the juvenile system.

See Kent v. United States, 383 U.S. at 566-67.

Once the charges were amended to non-auto-decline charges, the adult court no longer had jurisdiction over the case pursuant to what was then RCW 13.04.030(v)(C). "[O]nce a prosecutor amends an information to charge offenses that do not result in automatic adult court jurisdiction, the adult criminal court must remand the matter to the juvenile court for a decline

hearing." In re Personal Restraint Petition of Dalluge, 152 Wn.2d 772, 100 P.3d 279, 286 (2004) (citing State v. Mora, 138 Wn.2d 43, 54, 977 P.2d 564 (1999)).

It is only after the decline hearing that the juvenile court can waive its exclusive jurisdiction by transferring jurisdiction of a particular juvenile to adult criminal court upon a finding that the declination would be in the best interest of the juvenile or the public. See Dalluge at 774, see also RCW 13.04.110(3).

Importantly, before the juvenile court can decline jurisdiction under Kent, "[t]he court shall consider the relevant reports, facts, opinions, and arguments presented by the parties and their counsel." Id. In this case, the charges were reduced to non-auto-decline charges but no hearing was held to assess the Kent factors.

The result is that the court lacked jurisdiction to accept the guilty plea, and to sentence Mr. Macias in adult court. Due to the court's lack of jurisdiction, the conviction is invalid and

cannot be used in Mr. Macias' offender score in this case. State v. Ammons, 105 Wn.2d 175, 187, 713 P.2d 719, 718 P.2d 796 (1986). A conviction is constitutionally invalid on its face if, "without further elaboration," the conviction affirmatively shows a defect of constitutional magnitude. Id. at 188. Such is the case here, and the defendant must be resentenced without the 2008 prior offense. State v. Lewis, 29 Wn. App.2d 565, 580, 541 P.3d 1051 (2024).

F. CONCLUSION

Based on the foregoing, Mr. Macias asks that this Court accept review, reverse his sentence and remand the case to the Superior Court for re-sentencing.

This brief contains 4,843 words in font Times New Roman 14.

Respectfully submitted this 4th day of June, 2025.

s/ Oliver R. Davis
Washington Bar Number 24560
Washington Appellate Project
1511 Third Avenue, Suite 701
Seattle, WA 98102
(206) 587-711
e-mail: Oliver@washapp.org

APPENDIX

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State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

THE STATE OF WASHINGTON, Respondent, v. JUAN JOSE MACIAS, Appellant.	No. 86055-1-I DIVISION ONE UNPUBLISHED OPINION

LEE, J.[1] — In 2020, Juan J. Macias was convicted of murder in the second degree with a firearm sentencing enhancement and unlawful possession of a firearm in the first degree, and sentenced to 300 months of total confinement. Macias appealed, and this court remanded the matter to the trial court for resentencing after the State agreed that errors had been made in calculating the offender scores. *State v. Macias*, No. 81677-2-I, slip op. at 1 (Wash. Ct. App. Dec. 27, 2021) (unpublished), *review denied*, 199 Wn.2d 1014 (2022).[2] On remand, the trial court resentenced Macias to 300 months.

Macias appeals, arguing the resentencing court abused its discretion when it denied his motion for an exceptional downward sentence and erroneously included his 2008 conviction in his offender score. Because Macias fails to show that the court abused its discretion when it denied his request for an exceptional

[1] Judge Lee is serving in Division One of this court pursuant to RCW 2.06.040.

[2] https://www.courts.wa.gov/opinions/pdf/816772.pdf.

sentence and his 2008 conviction was not constitutionally invalid on its face, we affirm Macias' sentence.

FACTS

The background facts of this case were summarized by our court in Macias' original appeal:

> On February 7, 2018, Macias gunned down D.E. as D.E. fled from a confrontation with Macias' friends. Macias fired four shots at D.E., killing the 16-year-old. The State charged Macias with first degree murder and first degree unlawful possession of a firearm. The court bifurcated the two counts for trial.
>
> Macias claimed self-defense. He argued he acted out of fear because D.E. was part of a group of men that robbed Macias at gunpoint five weeks earlier on New Year's Eve. According to Macias, on February 7, D.E. appeared to be holding a gun and made a threatening gesture as he ran away from Macias' friends. Macias said he "panicked," "thinking that [D.E.]'s gonna end up shooting me, too, again."

Macias, No. 81677-2-I, slip op. at 1-2 (footnote omitted).

A jury convicted Macias of the lesser included offense of murder in the second degree while armed with a firearm. The trial court also convicted Macias of unlawful possession of a firearm after a bench trial. Macias appealed the sentence imposed, arguing that the trial court should not have counted one of his prior felony convictions in his offender score because it had "washed out." *Id.* at 1. Macias also argued that the trial court erred by refusing to consider his youth at the time of the 2008 prior conviction as a mitigating factor warranting an exceptional downward sentence. *Id.*

This court agreed with Macias on the offender score issue, reversed Macias' sentence, and remanded for resentencing. *Id.* at 7. This court disagreed with

Macias on the youth as a mitigating factor issue and held that Macias' youth at the time of the 2008 conviction was not a mitigating factor as to the current convictions. *Id.* at 7-8.

At resentencing, Macias argued for an exceptional downward sentence of 102 months. In support, Macias offered expert testimony that he suffered from "an unspecified neurodevelopmental disorder" and "complex PTSD," which impacted his capacity to appreciate the wrongfulness of his conduct. Verbatim Rep. of Proc (VRP) at 19. He contended that D.E. was the primary aggressor of the incident and that Macias' youth at the time of his 2008 conviction was a mitigating circumstance for the current conviction.

Macias also challenged the inclusion of his 2008 robbery conviction in his offender score. Macias argued that in 2008, at the age of 17, he pleaded guilty to robbery in the second degree and assault in the third degree in adult court. With limited exceptions, juvenile courts have exclusive original jurisdiction over all proceedings relating to juveniles, RCW 13.04.030(1)(e), and may transfer its jurisdiction to the criminal division of the adult court "upon a finding that the declination would be in the best interest of the juvenile or the public," RCW 13.40.110(3). Macias argued that the juvenile court did not hold a requisite decline hearing and instead transferred the case to adult court pursuant to a stipulated order. Macias contended that without a decline hearing, the adult court lacked jurisdiction to accept Macias' guilty pleas, making the prior conviction invalid on its face. The resentencing court concluded the 2008 conviction was not

constitutionally invalid on its face, and it included the 2008 robbery conviction when calculating Macias' offender score.

The resentencing court calculated Macias' offender score as 3 for the second degree murder conviction[3] and sentenced Macias to 300 months.[4] Macias appeals.

ANALYSIS

A. DENIAL OF EXCEPTIONAL DOWNWARD SENTENCE

Macias argues the resentencing court abused its discretion when the court denied his request for an exceptional downward sentence because the court failed to "properly consider all the mitigating factors proffered." Br. of Appellant at 8. We disagree.

1. Legal Principles

Generally, a sentence within the standard sentencing range for an offense cannot be appealed. RCW 9.94A.585(1). However, an appellant is not barred from challenging the procedure by which a trial court imposed a sentence within the standard range. *State v. Ammons*, 105 Wn.2d 175, 183, 713 P.2d 719, 718 P.2d 796, *review denied*, 479 U.S. 930 (1986). "While no defendant is entitled to an exceptional sentence below the standard range, every defendant is entitled to ask the trial court to consider such a sentence and to have the alternative sentence

[3] An offender score of 3 made Macias' standard range sentence 154 to 254 months.

[4] This included the mandatory 60-month firearm enhancement. The resentencing court also imposed a concurrent 34-month sentence for the unlawful possession of a firearm conviction.

actually considered." *State v. Grayson*, 154 Wn.2d 333, 342, 111 P.3d 1183 (2005). "When a trial court is called on to make a discretionary sentencing decision, the court must meaningfully consider the request in accordance with the applicable law." *State v. McFarland*, 189 Wn.2d 47, 56, 399 P.3d 1106 (2017).

We review a trial court's denial of a defendant's request for an exceptional sentence for an abuse of discretion. *See Grayson*, 154 Wn.2d at 341-42. In this context, a court abuses its discretion if it "refuse[s] to exercise discretion at all or . . . relie[s] on an impermissible basis for refusing to impose an exceptional sentence below the standard range." *State v. Garcia-Martinez*, 88 Wn. App. 322, 330, 944 P.2d 1104 (1997), *review denied*, 136 Wn.2d 1002 (1998). A court "refuses to exercise its discretion if it refuses categorically to impose an exceptional sentence below the standard range under any circumstances; i.e., it takes the position that it will never impose a sentence below the standard range." *Id.* A court relies on an impermissible basis if, for example, it decides "that no drug dealer should get an exceptional sentence" below the standard sentencing range or the court "refuses to consider the request because of the defendant's race, sex or religion." *Id.* However, "a trial court that has considered the facts and has concluded that there is no basis for an exceptional sentence has exercised its discretion, and the defendant may not appeal that ruling." *Id.*

2. Mitigating Factors Considered

Macias argues he was entitled to an exceptional downward sentence based on statutory mitigating factors (RCW 9.94A.535(1)(a), (c), and (e)). The statutory mitigating factors allow a trial court to consider a mitigated sentence when the

victim was a primary aggressor (RCW 9.94A.535(1)(a)), the defendant committed the crime "under duress, coercion, threat, or compulsion insufficient to constitute a complete defense but which significantly affected his or her conduct" (RCW 9.94A.535(1)(c)), or "[t]he defendant's capacity to appreciate the wrongfulness of his or her conduct, or to conform his or her conduct to the requirements of the law, was significantly impaired" (RCW 9.94A.535(1)(e)).

Here, in announcing Macias' sentence, the resentencing court explained:

> I did review the probable cause certification and prosecuting attorney's summary, the information. I reviewed the parties' briefing, memoranda, and all of the supporting materials for their briefing on the resentence.
>
> As I said before, I reviewed the court of appeals' opinion. I reviewed [D.E.'s grandfather's] statement through the victim advocate—advocate office. I reviewed my earlier notes from the prior sentencing proceedings. The court has heard from [Macias' expert] today, I've heard from the attorneys.
>
> I'll cut to the chase, I think I got it right the first time. The state is here asking for a higher standard range sentence than I imposed. I imposed 240 months, which was within the standard range for an offender score of four. Now that the offender score is three, the standard range is 154 to 254 months. The state requests 254 months.
>
> I am not sentencing Mr. Macias to the high end of the range, because while I disagree that his history of mental health diagnoses, traumas, PTSD, adverse childhood events and so forth did not meaningfully impact his decision making at the time that he shot and killed [D.E.], I think those things probably did impact his decision making leading up to those events and in deciding whether to go forward perhaps minutes before.
>
> But when [D.E.] was flushed out from the taco truck and you see on the video him running away from the other participants, and I think I said this at the original sentencing hearing, Mr. Macias runs to him. He runs to intercept him. He is not running away from some kind of misperceived danger. He appears to be running to the person who's trying to run away from the other participants.

> As the prosecution points out, Mr. Macias appears to be drawing a weapon from his own body, his own waist, before [D.E.] reaches for or pulls out or seems to point some object in Mr. Macias' direction.
>
> Mr. Macias was part of a large group. He did not act alone. He did not, at least from the evidence the court heard during the trial, seem to be frightened of [D.E.] in the moment. He seemed to seek him out in order to kill him.
>
> The opinions of the experts seem to suggest that or imply that Mr. Macias might have been acting in a kind of fight or flight situation where he recognized [D.E.] as someone who had hurt him before and had to make a quick decision about defending himself, so he pulled out a gun and shot him. Not only was that not persuasive to the jury, it's not persuasive to the court here for sentencing.
>
> I think the video tells a much, much different story. Not solely the video, but the video is a significant component of the evidence here.

VRP at 111-13.

Macias does not argue that the resentencing court relied on an impermissible basis when it denied him an exceptional sentence. Rather, Macias argues the resentencing court failed to properly consider all the proffered mitigating evidence. The record, however, shows the resentencing court considered Macias' request for an exceptional sentence and declined to grant it based on its assessment of Macias' culpability.

At Macias' resentencing, the court explained that it was not sentencing Macias to the high end of the sentencing range because it believed his diagnoses impacted his decision making; however, the video evidence showed that Macias "seemed to seek [D.E.] out in order to kill him," and the court was not persuaded by expert opinion that Macias was in a "fight or flight situation." VRP at 113. This is an exercise of the resentencing court's discretion. *See Garcia-Martinez*, 88 Wn. App. at 330-31. It is clear the resentencing court properly exercised its discretion

by considering the evidence Macias presented and concluding that an exceptional sentence was not appropriate.

3. Juvenile when 2008 Offenses Committed

Macias also argues the resentencing court failed to consider the fact that he was a juvenile when he committed his 2008 offenses as a proper mitigating factor for an exceptional sentence below the standard range for his current offense.

This court previously held that Macias' youth in 2008 was not a mitigating factor as to the current convictions. *Macias*, No. 81677-2-I, slip op. at 7-8. The law of the case doctrine binds us to this ruling.

The law of the case doctrine provides an appellate holding enunciating a principle of law must be followed in subsequent stages of the same litigation. *Roberson v. Perez*, 156 Wn.2d 33, 41, 123 P.3d 844 (2005). Under the law of the case doctrine, an appellate court will generally refuse to consider issues that were decided in a prior appeal. *Folsom v. County of Spokane*, 111 Wn.2d 256, 263-64, 759 P.2d 1196 (1988). Thus, we do not consider this argument.[5]

We hold the resentencing court did not abuse its discretion when it denied Macias' request for an exceptional downward sentence and sentenced Macias within the standard sentencing range.

[5] We note that youth is a mitigating factor only if a defendant shows it "relates to the commission of the [current] crime." *In re Pers. Restraint of Light-Roth*, 191 Wn.2d 328, 336, 422 P.3d 444 (2018) (citing *State v. O'Dell*, 183 Wn.2d 680, 689, 358 P.3d 359 (2015)). Macias fails to explain how his youth when he committed his 2008 prior offense relates to the commission of the 2018 crime, committed when he was 27 years old.

B. OFFENDER SCORE

Macias argues the resentencing court erred in considering his 2008 robbery conviction when calculating his offender score because the conviction had been entered by the adult court instead of a juvenile court. Because Macias has not shown that the prior conviction was constitutionally invalid on its face, we disagree.

We review a sentencing court's calculation of an offender score de novo. *State v. Tili*, 148 Wn.2d 350, 358, 60 P.3d 1192 (2003). Prior convictions are used to determine the offender score, which in turn is used to determine the applicable presumptive standard sentencing range. RCW 9.94A.525, .530. Generally, the State does not need to prove the constitutional validity of a defendant's prior conviction for use in a sentencing proceeding. *Ammons*, 105 Wn.2d at 187. However, if a prior conviction was unconstitutionally obtained or constitutionally invalid on its face, it may not be considered. *Id.* at 187-88. A conviction is constitutionally invalid on its face if, "without further elaboration," the conviction "evidences infirmities of a constitutional magnitude." *Id.* at 188.

Courts should not "go behind the verdict and sentence and judgment" to determine whether a conviction should be considered. *Id.* at 189. Rather than merely showing the possibility of a violation, the face of the conviction must affirmatively show that a constitutional violation occurred. *Id.*

In *Ammons*, the court rejected the argument that a prior conviction was facially invalid because the guilty plea form did not show that the appellant was advised of his right to remain silent, did not list the elements of his crime, and did not contain the consequences of pleading guilty. *Id.* The court reasoned that

although the appellant raised valid concerns, no infirmities were evident on the face of his guilty plea. *Id.*

In *State v. Inocencio*, 187 Wn. App. 765, 351 P.3d 183 (2015), the defendant argued that two of his prior convictions committed while he was a minor should not be counted in his offender score because they had been entered by the adult court instead of a juvenile court. *Id.* at 767. The court, distinguishing *State v. Saenz*, 175 Wn.2d 167, 283 P.3d 1094 (2012), and *State v. Knippling*, 166 Wn.2d 93, 206 P.3d 332 (2009), stated that where only an offender score is at issue, the State can meet its burden of proving a defendant's criminal history without proving a prior sentencing court's jurisdiction. *Id.*

In *Saenz* and *Knippling*, both of which involved sentences imposed under the Persistent Offender Accountability Act (POAA) of the Sentencing Reform Act of 1981, chapter 9.94A RCW, our Supreme Court held that the State failed to meet its burden of proving that a defendant had been convicted as an "offender" of a "strike" offense when it offered evidence of a conviction at a time when the defendant was less than 18 years old without demonstrating that they were properly before the adult criminal court. 175 Wn.2d at 181; 166 Wn.2d at 100-01. Notably, "offender" is defined to include both adult felons and

> [a] person who has committed a felony established by state law . . . and is less than 18 years of age but whose case is under superior court jurisdiction under RCW 13.04.030 or has been transferred by the appropriate juvenile court to a criminal court pursuant to RCW 13.40.110.

RCW 9.94A.030(34). However, unlike the defendants in *Saenz* and *Knippling*, Inocencio was not sentenced under the POAA; rather, Inocencio was sentenced

under the Sentencing Reform Act, which requires the State to prove "only a defendant's 'criminal history.'" *Inocencio*, 187 Wn. App. at 775. "'Criminal history' means the list of a defendant's prior convictions and juvenile adjudications, whether in this state, in federal court, or elsewhere." RCW 9.94A.030(11). Citing *Ammons*, the court concluded that Inocencio did not demonstrate that his prior convictions were unconstitutionally obtained or constitutionally invalid on their face. *Inocencio*, 187 Wn. App. at 777-78. Thus, the prior convictions were properly included in his offender score. *Id.* at 778.

Here, like *Inocencio*, Macias was not sentenced under the POAA; thus, Macias has the burden of demonstrating the invalidity of the prior conviction, by showing either that the prior conviction was unconstitutionally obtained or constitutionally invalid on its face. *Ammons*, 105 Wn.2d at 188. He has not done so. Therefore, the resentencing court correctly determined that the 2008 robbery conviction counted in the offender score calculation of Macias' current sentence.

CONCLUSION

We affirm Macias' sentence.

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.

WE CONCUR:

WASHINGTON APPELLATE PROJECT

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