SUPREME COURT NO. _____

NO. 86046-1-I

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

SHAQUILLE JONES,

Petitioner.

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

The Honorable Jon T. Scott, Judge

PETITION FOR REVIEW

JENNIFER WINKLER
Attorney for Petitioner

NIELSEN KOCH & GRANNIS, PLLC
The Denny Building
2200 Sixth Avenue, Suite 1250
Seattle, Washington 98121
206-623-2373

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

WASHINGTON CASES

TABLE OF AUTHORITIES (CONT'D)

Page

TABLE OF AUTHORITIES (CONT'D)

Page

FEDERAL CASES

TABLE OF AUTHORITIES (CONT'D)

Page

RULES, STATUTES AND OTHER AUTHORITIES

TABLE OF AUTHORITIES (CONT'D)

Page

A. PETITIONER & COURT OF APPEALS DECISION

Petitioner Shaquille Jones seeks review of the Court of Appeals' July 28, 2025 unpublished opinion in State v. Shaquille Jones. App. A. The Court of Appeals denied Mr. Jones's motion for reconsideration on August 21. App. B.

B. ISSUES PRESENTED

1. "[S]ome bright statutory lines fail to comply" with constitutional protections. In re Personal Restraint of Monschke, 197 Wn.2d 305, 317, 482 P.3d 276 (2021). Should this Court grant review determine that mandatory weapon penalty stacking is cruel as applied to a less culpable youthful emerging adult defendant such as Jones, based on Monschke and State v. Houston-Sconiers, 188 Wn.2d 1, 391 P.3d 409 (2017), and based on application of the State v. Gunwall, 106 Wn.2d 54, 720 P.2d 808 (1986) factors?

2. Jones moved to file RAP 10.1(h) supplemental briefing raising this issue early in the appeal process—before the reply brief was due—after undersigned counsel substituted for

Jones's original court-appointed attorney. The Rules of Appellate Procedure emphasize the promotion of justice and the preference for resolution of issues on their merits. Bypassing the language of the rules, the Court of Appeals relied on decisions disallowing issues raised in RAP 13.7(d) supplemental briefing *in this Court* to reject Jones's supplemental issue Does the Court of Appeals' elision of two different forms of "supplemental" briefing reflect a misapprehension of the law?

C. STATEMENT OF THE CASE

In 2016, Jones was convicted of several crimes, including three counts of first degree assault with firearm special verdicts, and unlawful firearm possession. State v. Shaquille Jones, noted at 21 Wn. App. 2d 1054, 2022 WL 1133164, at *1. The crimes occurred when Jones was 21 years old, technically an adult. CP 34. Jones's standard sentencing range was 486-586 months. This term included three consecutive RCW 9.94A.533 firearm penalties totaling 180 months. CP 38.

Because Jones's unlawful firearm possession conviction

was predicated on an invalid conviction, the Court of Appeals granted his personal restraint petition and remanded for resentencing in 2022. Jones, 2022 WL 1133164 at *1.

Jones submitted significant mitigation materials for resentencing. CP 39-40, 45-47, 49-54, 56-61. These included an expert evaluation by Dr. Marnee Milner. CP 72-86. According to Milner, Jones's typical youthful characteristics were exacerbated by a childhood and adolescence marked by "parental abandonment, neglect, physical []and emotional abuse, community violence, [and] substance use." CP 77. Jones also experienced several traumatic and destabilizing childhood events—including prolonged periods of housing insecurity—that contributed to cognitive, emotional, social, psychological, and behavioral dysfunction leading to the criminal incident. CP 73-75, 78.

Jones's mother was schizophrenic and addicted to drugs, including at the time of his birth. CP 74, 78. Jones, who was eventually taken in by his grandmother, began using drugs at age

11 or 12. CP 73- 75, 79. Jones struggled with impulsivity, hyperactivity, and inattention, and he was eventually diagnosed with attention deficit hyperactivity disorder. CP 73, 79. Based on Jones's traumatic childhood experiences, however Milner believed Jones's ADHD symptoms reflected, instead, "Complex or Developmental Trauma (C-PTSD)." CP 80. This condition affects behavioral control, cognition, and other functioning. CP 80.

Jones began skipping school in elementary school and barely participated in ninth grade, the last year he attended. CP 75-76, 79. He reported there was so much violence and death in his neighborhood he became numb. CP 74, 78-79.

Having left his grandmother's home, Jones spent a portion of his teen years with his mother, who remained drug addicted. CP 74. Jones was essentially unsupervised. RP 79. Fulfilling Jones's need for guidance, gang members supplied him with the tenets for survival. CP 74. Jones sold drugs to afford necessities, including food. CP 74.

At the time of the 2016 incident, Jones was undergoing rapid brain development; but at 21, abstract thinking, reasoning , and decision-making are still "primitive." CP 81-82. Dr. Milner concluded that Jones's typical immaturity at age 21, combined with his childhood trauma and neurodivergence—which increased impulsivity and decreased consequential reasoning—left Jones without "ability to think of alternative actions and analyze the risks and consequences of his behavior" with respect to the underlying crimes. CP 84; see also CP 80.

Jones had, nonetheless, made remarkable strides. He had never received treatment but had, through fortitude and persistence, developed insight into his circumstances and behaviors. Jones's conduct since incarceration in 2016 reflected evolution into a "prosocial and productive" adult. CP 84.

At his resentencing hearing, Jones, then 30, requested an exceptional sentence downward based on his youthfulness and specific neurodivergence at the time of the offense. Jones asked that the court consider if the presumptive sentence '"is clearly

excessive in light of the purpose of this chapter, as expressed in RCW 9.94A.010.' RCW 9.94A.535(1)(g) (emphasis added)." CP 41. Based on the policy goals of the Sentencing Reform Act (SRA), Jones requested a combination of (1) downward departure from standard ranges and/or (2) concurrent sentence terms. With regard to the firearm penalties, Jones asked that the court impose an exceptional downward sentence of 111 months on the first degree assault convictions, to run concurrent with the other convictions; and consecutive to that, 60 months of firearm penalties running concurrently. CP 43. Jones asked the court to sentence him to between 171 to 207 months. CP 42-43.

The State agreed with the recommendation. It was disturbed by the presumptive standard range. RP 5-7. It asked court to resentence Jones to 207 months. RP 7, 9-10.

The court imposed what it believed to be the minimum sentence of 240 months based on RCW 9.94A.540 (mandatory minimum of five years for first degree assault) and RCW 9.94A.533 (consecutive firearm penalties). RP 16-18, 24; CP 22,

35.

Sixty months of this sentence represented an exceptional downward departure from standard range sentences on all Jones's assault convictions. RP 24-25; CP 35. The court justified this departure based on the significant mitigating factors regarding Jones's youth, personal circumstances and characteristics, his demonstrated capacity for reflection and growth, and his community support. RP 25-26. Specifically, the standard range sentence including firearm penalties was "clearly excessive" considering the totality of the circumstances leading to the crime including Jones's upbringing, maturity level, impulsivity, as contrasted with is overall lack of criminal history, maturation, and "substantial efforts at rehabilitation." CP 34-35 (finding/conclusion 5 & 6). Moreover, Jones's "youthful brain development and difficult social history limited his ability to effectively control the impulsivity he experienced in the moment of confrontation." CP 35 (finding/conclusion 7).

As for the firearm penalties, the court stated it did not have

the "authority or discretion in any circumstance, where I'm not sentencing [someone] who's under 18 years old, to run the firearm enhancements concurrently to each other or to any other offense." RP 12; accord RP 16.

Thus, of the total 240 months imposed, 180 months consisted of three consecutive 60-month firearm penalties. RP 24; CP 35-36. But "[h]ad the court determined it [had] discretion" to run the firearm penalties concurrently, "the court would have imposed a sentence within the [171- to 207-month] range as requested." CP 36 (finding/conclusion 9).

Jones appealed. Undersigned counsel's law office was appointed to represent him. Staff attorney Kevin March was initially assigned.

In August of 2024, March filed a brief arguing that under the SRA, a trial court should have discretion to run firearm penalties concurrently as an exceptional sentence downward based on youth. In October of 2024, the State filed a motion to stay the case pending the outcome of case being considered by

this Court that would address a nearly identical issue.

On December 19, 2024, this Court rejected the statutory argument in State v. Kelly, 4 Wn.3d 170, 561 P.3d 246 (2024). The State filed its response brief on December 30, 2024, arguing Kelly controlled the outcome. This Court set the due date for Jones's reply brief as January 29, 2025.

Meanwhile, March resigned, and in late November of 2024, undersigned counsel was assigned. Replacement counsel was, at the time, contending with an unprecedented and overwhelming backlog of case assignments related to the state Office of Public Defense's well-documented over-assignment of cases to this office during the second half of 2023 and first half of 2024.

After Kelly was issued, replacement counsel determined RAP 10.1(h) supplemental briefing was necessary to raise an important constitutional issue. Counsel filed the supplemental briefing on January 28, before the reply brief due date, with an accompanying motion.

This Court of Appeals' commissioner's March 7, 2025 ruling on the motion for supplemental briefing stated: "The State may file by March 17, 2025 a supplemental response that will also be passed to the panel." Commissioner's Ruling. The State filed a supplemental brief on March 17 addressing the merits of Jones's arguments.

Nearly seven months after the supplemental brief, and five months after the State's brief, the Court of Appeals issued a terse decision rejecting Jones's statutory argument under Kelly and refusing to address the supplemental briefing at all.

> Generally, this court will not consider arguments raised for the first time in supplemental briefing. State v. Delbosque, 6 Wn. App. 2d 407, 413 n.3, 430 P.3d 1153 (2018), reversed in part on different grounds, 195 Wn.2d 106 (2020). This includes constitutional challenges. State v. Krajeski, 104 Wn. App. 377, 387, 16 P.3d 69 (2001).
>
> Jones contends that this court should address the added claims because newly appointed counsel determined that constitutional issues arise from sane the facts and RAP 2.5(a)(3) allows consideration of new constitutional claims. But Krajeski specifically

> precludes the analysis Jones requests. 104 Wn. App. at 387.

App. A at 6-7.

Jones now asks that this Court grant review under RAP 13.4(b)(3) to address the constitutional issue the Court of Appeals refused to consider. Alternatively, he asks that this Court remand his case to that court to address the issue.

D. REASONS REVIEW SHOULD BE GRANTED

Review is appropriate under RAP 13.4(b)(3) because the case presents a significant constitutional question; and the Court of Appeals refusal to address the issue represents an abuse of discretion.

Under RAP 13.4(b)(3), this Court will accept review of a decision where the case involves a "significant question of law" under the state or federal constitution. This is such a case. Further, review is appropriate because the Court of Appeals avoided the question on improper legal grounds. This Court should grant review and rule in Jones's favor. Alternatively, it should remand for the Court of Appeals to address the issue.

1. Resentencing is required because the sentence is cruel as applied.

The Eighth Amendment prohibits cruel and unusual punishment. But article I, section 14 bars "cruel punishment." State v. Witherspoon, 180 Wn.2d 875, 887, 329 P.3d 888 (2014). In the juvenile sentencing context, article I, section 14 provides greater protection. State v. Bassett, 192 Wn.2d 67, 82, 91, 428 P.3d 343 (2018). With the Eighth Amendment providing the floor for constitutional protection, article I, section 14 also provides broader protection in the context of sentencing of late adolescent/emerging adult defendants who have youthful characteristics like those under 18. See Monschke, 197 Wn.2d at 321. [1]

[1] Relief is warranted under the state constitution based on Monschke's language about unconstitutional cruelty, Houston-Sconiers's discussion of mandatory sentence disproportionality, and the lack of any reasoned scientific distinction between youthful under-18-year-olds and slightly older emerging adults. Jones's Court of Appeals briefing also includes a supplementary Gunwall analysis demonstrating the six Gunwall factors support interpreting article I, section 14 more broadly in this specific context. **The analysis is omitted here due to the word limit.**

The United States Supreme Court's decisions of the last two decades recognize that under the Eighth Amendment, juvenile offenders—children—must be treated differently from other offenders. E.g., Miller v. Alabama, 567 U.S. 460, 481 (2012); Graham v. Florida, 560 U.S. 48, 68-70 (2010); Roper v. Simmons, 543 U.S. 551, 569-70 (2005). The Supreme Court has applied this principle in several specific contexts. These include the death penalty, Roper, 543 U.S. at 574; life without parole sentences for nonhomicide offenses, Graham, 560 U.S. at 79; mandatory life without parole sentences for any offense, Miller, 567 U.S. at 465; and police confessions, J.D.B. v. North Carolina, 564 U.S. 261, 277 (2011).

"[T]he Supreme Court has also explained how the courts must address those differences in order to comply with the Eighth Amendment: with discretion to consider the mitigating qualities of youth." Houston-Sconiers, 188 Wn.2d at 19. This diminished culpability results from key mitigating differences between youth and adults: a "'lack of maturity and an underdeveloped

sense of responsibility'" that frequently leads to "'impetuous and ill-considered actions and decisions'"; an increased susceptibility to "negative influences and outside pressures," including a reduced ability to control or escape their environments; and a "more transitory, less fixed" character that is "not as well formed as that of an adult." Id. at 19 n.4 (quoting Roper, 543 U.S. at 571); see also Miller, 567 U.S. at 477-78.

It eventually became clear to this Court that, based on this Eighth Amendment jurisprudence, a sentencing court could order an exceptional sentence downward based on the youthful characteristics of an over-18 defendant. O'Dell, 183 Wn.2d at 698-99.

But Washington courts had yet to hold that a sentencing court could use that discretion to alter the harsh outcome of *mandatory* sentence penalties for youthful emerging adult defendants.

In 2017, this Court issued Houston-Sconiers, which established a category of punishments prohibited by the Eighth

Amendment, that is, adult standard SRA ranges and mandatory weapons penalties that disproportionately punish juveniles who possess diminished culpability. Houston-Sconiers,188 Wn.2d at 18-19, 19 n.4; see In re Pers. Restraint of Li'Anthony Williams, 200 Wn.2d 622, 630, 520 P.3d 933 (2022); In re Pers. Restraint of Ali, 196 Wn.2d 220, 237, 474 P.3d 507 (2020).

To effectuate that rule—i.e., the constitution prohibits imposition of disproportionate standard adult sentences on those less culpable—this Court announced two procedural rules, or "dual mandates." The Eighth Amendment requires that, when a juvenile is sentenced in adult court, "[t]rial courts [1] must consider mitigating qualities of youth at sentencing and [2] must have discretion to impose any sentence below the otherwise applicable SRA range and/or sentence enhancements." Houston-Sconiers, 188 Wn.2d at 21. This includes otherwise mandatory weapons penalties. Id. at 25.

Then, in 2021, this Court decided Monschke. The petitioners, Monschke and Bartholomew, were each convicted of

aggravated first degree murder and sentenced to life in prison without parole (LWOP) for crimes committed when they were 19 and 20, respectively. Monschke, 197 Wn.2d at 306. Years later, they filed personal restraint petitions, contending their mandatory sentences were unconstitutionally cruel as applied. Id. at 308.

Article I, section 14 prohibits "cruel punishment." Monschke, 197 Wn.2d at 311. The provision does not prohibit mandatory—or discretionary—LWOP sentences for *all* aggravated murder defendants. Id. But our state and federal constitutions forbid mandatory LWOP sentences for juvenile (under-18) offenders. Id. Bartholomew and Monschke argued the same protection should extend to them because "they were essentially juveniles in all but name at the time of their crimes." Id. at 312. Five justices agreed, although the fifth, concurring, justice would have reached the merits on different grounds. Id. (lead opinion); id. at 329 (González, C.J., concurring); see also State v. Carter, 3 Wn.3d 198, 205 n.2, 548 P.3d 935 (2024)

("Monschke is a plurality decision, but the concurrence parted with the lead opinion only as to which exception of the time bar applied.").

This Court recognized "many youthful defendants older than 18 share the same developing brains and impulsive behavioral attributes as those under 18." Monschke, 197 Wn.2d at 313. "Thus," this Court held, "these 19- and 20-year-old petitioners must qualify for some of the same constitutional protections as well." Id. Courts must therefore have discretion to consider individual attributes of youthfulness "as they apply to each individual youthful offender. That is why mandatory sentences for youthful defendants are unconstitutional." Id. at 323.

Preliminarily, this Court did not embark on State v. Fain[2] proportionality analysis, or Bassett categorical bar analysis, because Fain proportionality analysis did not fit the situation, and

[2] 94 Wn.2d 387, 617 P.2d 720 (1980).

"categorical" analysis was unnecessary considering that preexisting decisions already established the constitutional right in question. Moreover, the "rigid bright line"[3] of 18 years old was an impermissible arbitrary cutoff. Monschke, 197 Wn.2d at 312.

This Court's decision, while invoking the state constitution,[4] derived from the Miller v. Alabama requirement of individualized sentencing for offenders manifesting certain youthful characteristics. But Monschke expanded it, stating that under the SRA "'age may well mitigate a defendant's culpability, even if that defendant is over the age of 18.'" Monschke, 197 Wn.2d at 321 (quoting O'Dell, 183 Wn.2d at 695).

As this Court noted in Monschke, the O'Dell court was swayed by the fact that the legislature, which did not include age as a mitigating factor, and the State v. Ha'mim, 132 Wn.2d 834,

[3] Monschke, 197 Wn.2d at 318.

[4] E.g., Monschke, 197 Wn.2d at 325-26.

940 P.2d 633 (1997) court, which had limited the relevance of youthfulness as a mitigator, did not have the benefit of psychological and neurological studies demonstrating that the areas of the brain affecting behavioral control continued to develop into the 20s. O'Dell, 183 Wn.2d at 692 & 692 n.5.

Studies have only strengthened the relevant scientific conclusions. See Monschke, 197 Wn.2d at 322 (citing several studies); see also Vincent Schiraldi & Bruce Westerns, Why 21 Year-Old Offenders Should be Tried in Family Court, Wash. Post (Oct. 2, 2015) (emerging adults are "more similar to adolescents than fully mature adults. They are more susceptive to peer pressure, less future-oriented and more volatile in emotionally charged settings.");[5] Selen Siringil Perker, et al., Emerging Adult Justice in Illinois: Toward an Age-Appropriate Approach, Columbia University Justice Lab, Jan. 24, 2019, at 2

[5] https://www.washingtonpost.com/opinions/time-to-raise-the-juvenile-age limit/2015/10/02/948e317c-6862-11e5-9ef3-fde1882507eac_story.html. [https://perma.cc/FV36-XURC].

("[T]here is mounting scientific evidence that youth ages 18-24 are developmentally distinct from older adults and should be treated as such by the justice system[. T]here is no magic birthday that transforms a youth into an adult and the transition period is longer that previously understood.").[6]

"The overarching conclusion compelled by these sources is clear: 'biological and psychological development continues into the early twenties, well beyond the age of majority.'" Monschke, 197 Wn.2d at 322 (citing Elizabeth S. Scott, et al., Young Adulthood as a Transitional Legal Category: Science, Social Change, and Justice Policy, 85 FORDHAM L. REV. 641, 642 (2016)).

Monschke deemed the "objective scientific differences between 18- to 20-year-olds . . . on the one hand, and persons with fully developed brains on the other hand, to be

[6]https://justicelab.columbia.edu/sites/default/files/content/EAJ%20in%20Illinois%20Report%20Final_1.pdf (last accessed Sept. 16, 2025).

constitutionally significant under article I, section 14." Monschke, 197 Wn.2d at 325. Conversely, no meaningful neurological bright line exists between a 17-year-old and a 19-year-old. Id. at 318-19, 325-26 (analogizing situation to Hall v. Florida, 572 U.S. 701 (2014), which held a fixed IQ cutoff for presentation of intellectual disability evidence to be unconstitutional).

Again, life without parole sentences were not categorically barred as to 19- and 20-year-olds. But under the state constitution, sentencing courts "must have discretion to take the mitigating qualities of youth—those qualities emphasized in Miller[ ] and Houston-Sconiers—into account for defendants younger and older than 18." Monschke, 197 Wn.2d at 325-26.

Drawing from Houston-Sconiers's "substantive" rule, prohibiting disproportionate standard adult sentences from being imposed on less culpable juveniles, see 188 Wn.2d at 18-19, it follows that any "mandatory" adult sentence resulting in disproportionate punishment for a youthful offender with

diminished culpability is, likewise, constitutionally infirm. Monschke's rationale, taken to its logical extension, prohibits a mandatory sentence as applied to an emerging adult defendant who exhibits the mitigating qualities and rehabilitative potential that are characteristic of youth, such that the mandatory sentence is disproportionate to culpability. That is what the resentencing court found here. See finding/conclusion 4, 5, 6, and 7. Monschke's reasoning for why mandatory life imprisonment is unconstitutionally cruel when applied to an emerging adult with youthful characteristics also applies to disproportionate-as-applied mandatory weapon penalty stacking under the SRA. There is no meaningful difference between technical juveniles and many 18- to 21-year-olds in terms of neurological development and attendant culpability, so courts must be able to exercise individualized discretion in fashioning an appropriate sentence. See Monschke, 197 Wn.2d at 325-26.

The individualized sentencing principle is not limited to those with LWOP sentences. For example, Houston-Sconiers,

rather than engaging in Fain proportionality analysis, took the Miller "individualized sentencing" approach and applied it to juveniles sentenced to less than life without parole. Monschke, 197 Wn.2d at 328 n.20. Indeed, for those under 18, Houston-Sconiers's substantive constitutional rule (and dual procedural requirements) applies not only to mandatory life sentences but also to "mandatory" weapons penalties. See Ali, 196 Wn.2d at 235 (rejecting argument that Houston-Sconiers was not material, because the holding was not limited "to life sentences or the functional equivalent"). And Monschke establishes Jones is constitutionally like the Houston-Sconiers children.

In summary, mandatory firearm penalty stacking for a youthful defendant like Jones is cruel as applied where, as here, the resentencing court makes an unchallenged determination is that the sentence is disproportionate to culpability. Article I, section 14 therefore requires RCW 9.94A.533 to be read to permit courts discretion to sentence demonstrably youthful emerging adult offenders to concurrent firearm penalties, where

appropriate, based on Miller considerations. See Carter, 3 Wn.3d at 216-17 (determinate sentences are permissible RCW 10.95.030(1) where LWOP cannot be mandatory).

As a final matter, the rule derived in part from Monschke applies even though Jones was 21 years old, not 20, at the time of the offenses. In State v. Meza, 22 Wn. App. 2d 514, 512 P.3d 608, review denied, 200 Wn.2d 1021 (2022), the Court of Appeals remarked that "while Monschke did not specifically extend mitigation for youthfulness to 21-year-olds, [it says] there is no bright line rule and that it is up to the discretion of the sentencing judge to apply youthfulness principles on a case by case basis." Meza, 22 Wn. App. 2d at 544-45 (citing Monschke, 197 Wn.2d at 317, 319 & 326).

In In re Personal Restraint of Davis, 200 Wn.2d 75, 514 P.3d 653 (2022), on the other hand, the fact that Davis was 21 when he committed his crimes was one factor that posed a barrier to relief. There, however, Davis had filed an untimely collateral attack challenging his lengthy sentence under Monschke. Id. at

79-81. To overcome the one-year time bar, Davis had to demonstrate Monschke was a retroactive change in the law *material* to his sentence. Davis, 200 Wn.2d at 83. This Court found Monschke was not material in part because he was 21, whereas the petitioners in Monschke were 19 and 20. Davis, 200 Wn.2d at 84. It makes sense that a 21-year-old seeking untimely collateral relief could not show materiality. Indeed, this Court applies the concept of materiality quite narrowly due to society's interest in finality of judgments. E.g., State v. Willyard, 3 Wn.3d 703, 710-12, 555 P.3d 876 (2024). Unlike the Davis petitioner, Jones raises this constitutional challenge on direct appeal.

2. By refusing to consider Jones's cruel punishment claim, the Court of Appeals exercised its discretion based on an erroneous view of the law.

A court improperly exercises discretion when it employes the wrong legal standard or bases its ruling on an erroneous view of the law. Gildon v. Simon Prop. Grp., Inc., 158 Wn.2d 483, 494, 145 P.3d 1196 (2006). The Court of Appeals abused its discretion when it refused to consider Jones's argument simply

because it was raised in "supplemental" briefing. From the decision, one would not know there are different kinds of supplemental briefing. The Court of Appeals denied Jones's motion for reconsideration, which made this argument. App. B.

Criminal defendants have "the right to appeal in all cases." CONST. art. I, § 22; accord State v. Rolax, 104 Wn.2d 129, 134-35, 702 P.3d 1185 (1985).

Nonetheless, appellate courts may refuse to address belatedly raised issues. E.g., Cowiche Canyon Conservancy v. Bosley, 118 Wn.2d 801, 809, 828 P.2d 549 (1992). Courts follow this practice out of fairness to the respondent. See City of Spokane v. White, 102 Wn. App. 955, 963, 10 P.3d 1095 (2000).

Despite this precept, however, appellate courts will address a party's belated argument in order to fully and finally resolve the issues presented. PacifiCorp v. Washington Utilities & Transp. Comm'n, 194 Wn. App. 571, 606, 376 P.3d 389 (2016). Indeed, appellate courts have discretion to consider a case on the merits, despite technical flaws. State v. Olson, 126

Wn.2d 315, 318, 323, 893 P.2d 629 (1995) (citing RAP 1.2(a) and allowing amendment of opening brief to add assignment of error).

RAP 10.1(h), for example, permits the Court of Appeals to order or accept additional briefs other than those named in RAP 10.1(b). RAP 18.8(a) allows the appellate court to waive or alter the provisions of any of the rules of appellate procedure to serve the ends of justice. And underpinning these rules is the guiding principle of RAP 1.2(a): The rules "will be liberally interpreted to promote justice and facilitate the decision of cases on the merits."

This Court highlighted RAP 1.2(a) in Olson, stating "[i]t is clear from the language of RAP 1.2(a), and the cases decided by this Court, that an appellate court may exercise its discretion to consider cases and issues on their merits. This is true despite one or more technical flaws in an appellant's compliance" with the RAPs. Olson, 126 Wn.2d at 323. The Court continued, "This discretion . . . should normally be exercised unless there are

compelling reasons *not* to do so." Id. (emphasis added). Consideration of prejudice to the respondent and inconvenience to the court should be weighed against the promotion of justice and the preference for fully litigating cases on the merits. Id. at 319. "This result is particularly warranted where the violation is minor and results in no prejudice to the other party and no more than a minimal inconvenience to the appellate court." Id.

The Court of Appeals' refusal to address Jones's January 2025 supplemental briefing, in contrast, ignores this Court's tolerance for technical defects where justice should allow for a measure of grace. Instead, the court primarily relies on the premise that appellate courts will not consider arguments raised for the first time in "supplemental briefing." App. A at 6-7.

The Court of Appeals extends the meaning of the word "supplemental" beyond its intended use. The asserted premise is true with respect to RAP 13.7 supplemental briefing. But the Court of Appeals conflates the RAP 10.1(h) supplemental briefing—which replacement counsel asked permission to file

even before the reply brief due date—with supplemental briefing in this Court. Considering the RAP preference that cases be decided on their merits, and that technical defects (or explainable delays) be overlooked, it is necessary to examine precisely what these cases mean by "supplemental briefing."

One cited case, Delbosque, does address briefing in the Court of Appeals. But there, the Court of Appeals refused to address an issue (whether RCW 10.95.035(3) violated Delbosque's right to appeal) that, according to the Court of Appeals, was raised for the first time in supplemental briefing. See Delbosque, 6 Wn. App. 2d at 413 n.3. But this Court reached that very issue and held that Delbosque *could* appeal the constitutionality of the statute. So, this Court disagreed with the Court of Appeals on the precise point for which it is cited.

Moreover, in refusing to consider an argument, the Court of Appeals' Delbosque decision itself relies on Krajeski. And Krajeski, while rejecting an issue in a belatedly filed amended brief, skips the language of the RAPs and primarily relies on

decisions involving issues raised for the first time in supplemental briefing *in this Court*. See Krajeski, 104 Wn. App. at 387 (citing State v. Hudson, 124 Wn.2d 107, 120, 874 P.2d 160 (1994) (declining to consider issue raised for first time in RAP 13.7 supplemental brief); State v. Collins, 121 Wn.2d 168, 179, 847 P.2d 919 (1993) (declining to consider an issue not clearly delineated in issue statement, as required by RAPs, in RAP 13.4 petition for review *or* in RAP 13.7 supplemental brief); Douglas v. Freeman, 117 Wn.2d 242, 258, 814 P.2d 1160 (1991) (declining to consider issue raised for first time in RAP 13.7 supplemental brief); and In re Donohoe, 90 Wn.2d 173, 175, 580 P.2d 1093 (1978) (in attorney discipline appeal, lamenting that issue that should have been raised in opening brief was raised in belated reply brief—but reaching the issue anyway)).

This Court is understandably loath to excuse raising an issue only after it has granted review on some other issue, not least because the parties' supplemental briefs are not filed sequentially but, typically, contemporaneously. See RAP

13.7(d). As such, the inconvenience to this Court and prejudice to the opposing party will always be much greater at that late stage.

In contrast, in the present case, replacement counsel, as soon as was practicable in the context of the 2023-2024 over-assignment crisis, determined that supplemental briefing was necessary, sought leave to file supplemental briefing, and then the State had an opportunity to respond to the supplemental briefing. All this occurred several months before the Court of Appeals even set the case for consideration on appeal.

Jones recognizes that the RAPs grant the Court of Appeals discretion to reject issues raised after an appellant's initial brief is filed. However, by appearing to reject RAP 10.1(h) "supplemental" briefing based solely on the fact that it was called "supplemental," the Court of Appeals undermines the spirit of other RAPs, which encourage appellate courts to liberally interpret the rules to promote just results and resolution of issues

on the merits. This Court of Appeals misapplied the law in avoiding Jones's constitutional cruel punishment claim.

E. CONCLUSION

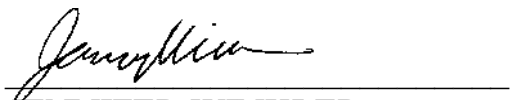
Mr. Jones asks that this Court grant review and address his cruel punishment claim. Alternatively, this Court should remand for the Court of Appeals to address it.

I certify this document is prepared in 14-point font and contains 4,986 words excluding RAP 18.17 exceptions.

DATED this 19th day of September, 2025.

Respectfully submitted,

NIELSEN KOCH & GRANNIS



JENNIFER WINKLER
WSBA No. 35220

Attorneys for Petitioner

APPENDIX A

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, v. SHAQUILLE CAPONE JONES, Appellant.	No. 86046-1-I DIVISION ONE UNPUBLISHED OPINION

SMITH, J. — In 2016, a jury convicted Shaquille Jones of three counts of assault, each with a firearm enhancement; one count of unlawful possession of a firearm; one count of possession of a stolen firearm; and one count of witness tampering. Upon resentencing under *State v. Blake,* 197 Wn.2d 170, 481 P.3d 521 (2021), in 2023, the court granted Jones's request for an exceptional sentence below the standard range. The court declined to run his firearm enhancements concurrently. Jones appeals, asserting that the trial court should have discretion to impose concurrent firearm enhancements and that the Supreme Court should overrule *State v. Brown,* 139 Wn. 2d 20, 983 P.2d 608 (1999) *overruled on other grounds*, *State v. Houston-Sconiers*, 188 Wn.2d 1, 391 P.3d 409 (2017), to that effect.[1]

In a provisional supplemental brief, Jones claims that mandatory stacking weapon enhancements are cruel as applied to 21-year-old offenders, that he

[1] The Washington State Supreme Court's recent opinion in *State v. Kelly*, 4 Wn.3d 170, 561 P.3d 246 (2024), did not overrule *Brown*.

may raise this claim for the first time on appeal under RAP 2.5(a)(3), that resentencing is required based on *Houston-Sconiers* protections, that resentencing is required because the trial court found the sentence disproportionate to his culpability, and that the sentence is cruel under *Monschke*. We affirm and decline to consider Jones' supplemental briefing.

FACTS

Background

In 2016, a jury convicted Shaquille Jones of three counts of assault in the first degree with firearm enhancements, one count of possession of a stolen firearm, one count of unlawful possession of a firearm, and one count of witness tampering. Jones was 21 years old when he committed the offenses and had no prior felony convictions. Based on the three consecutive firearm enhancements and the multiple offense policy under RCW 9.94A.589, the court sentenced Jones within the standard sentencing range of 477 to 573 months.

Resentencing Request

In 2021, the Washington State Supreme Court decided *Blake*, which overturned Washington's drug possession statute. Following *Blake*, Jones brought a personal restraint petition requesting resentencing. *In re Pers. Restraint of Jones*, No. 83076-7-I (Wash. Ct. App. Apr. 18, 2022) (unpublished) https://www.courts.wa.gov/opinions/pdf/830767.pdf. Noting that Jones's unlawful possession of a firearm charge rested on a conviction now constitutionally invalid under *Blake*, this court determined that Jones was entitled to resentencing. *Jones*, No. 83076-7-I, slip op. at 1-2.

Before the resentencing hearing, Jones submitted significant evidence to support the mitigation of his sentence. This evidence included his own writings to the resentencing judge, letters of support from his family and community members, and proof of his completion of a variety of educational and self-improvement focused programs while incarcerated.

Jones also submitted an expert evaluation prepared by Dr. Marnee Milner, documenting the typical immaturity and cognitive brain development of a 21-year-old man, as well as the specific trauma Jones suffered as a young person. Dr. Milner concluded that "aside from the normative adolescent and brain development, [Jones] experienced multiple adverse childhood events that contributed to cognitive, emotional, social psychological, and behavioral dysfunction leading up to his behavior and psychological state on or before the time of the criminal incident." This resulted in impulsivity issues, hyperactivity, and inattention, all of which interfered with Jones's ability to analyze the risks and consequences of his behavior.

Resentencing Hearing

At the 2023 resentencing hearing, Jones requested an exceptional sentence below the standard range based on his youthfulness and particular neurodivergent circumstances. Believing the initial sentence to be "clearly excessive," Jones requested a range of 171 to 207 months. Concerning the firearm enhancements specifically, Jones asked that the trial court impose an exceptional downward sentence of 111 months on the first degree assault convictions, concurrent with the other convictions, and a consecutive 60-month

firearm enhancement, with each enhancement running concurrently. The State primarily agreed with Jones's recommendation, but asked the court to resentence Jones to the higher end of the 171 to 207 range.

Commending Jones for his progress while incarcerated, his thoughtful reflection, and his community support, the trial court imposed a 240-month sentence in line with Sentencing Reform Act requirements. The court imposed 60 months of confinement on each assault count to run concurrently, with an additional 60-month firearm enhancement for each assault count to run consecutively. In doing so, the court imposed the lowest possible sentence for the assault in the first degree conviction and repeatedly stated it did not have the authority or discretion to run the firearm enhancements concurrently for an offender over 18 years old. The court did note, however, that "had [it] determined that it did have the discretion, the court would have imposed a sentence within the range as requested."

Appeal

Jones appealed, asserting that the sentencing court did have the authority to order the mandatory firearm enhancements to run concurrently as part of an exceptionally mitigated sentence. This court stayed the appeal pending the Supreme Court's decision in *State v. Kelly*, 4 Wn.3d 170, 561 P.3d 246 (2024), heard in February 2024.

Jones then filed a supplemental brief, including a supplemental assignment of error. The court commissioner provisionally granted the motion to

allow the supplemental brief, referring it to the panel to decide whether to consider the briefing.

ANALYSIS

Concurrent Firearm Enhancements

Jones asserts that the trial court erred in failing to recognize its discretion to run firearm enhancements concurrently as part of an exceptional sentence. Because RCW 9.94A.533(a)(3) precludes a trial court from exercising such discretion, we disagree.

We review questions of statutory interpretation de novo. *Kelly*, 4 Wn.3d at 191. The goal of statutory interpretation is to ascertain and implement the legislature's intent. *Thurman v. Cowles Company*, 4 Wn.3d 291, 296, 562 P.3d 777 (2025). This includes examining the plain language of the specific statutory provision, as well as the meaning of that language in the context of the whole statute and related statutes. *Thurman*, 4 Wn.3d at 296.

Under RCW 9.94A.535, a court may impose an exceptional sentence below the standard range if it finds substantial and compelling reasons justifying an exceptional sentence. RCW 9.94A.533(3)(e) clarifies, however, that all firearm enhancement sentences are mandatory and shall run consecutively to all other sentencing provisions.

In *Brown,* the Washington Supreme Court interpreted RCW 9.94A.533(a)(3) to clearly indicate that the "judicial discretion to impose an exceptional sentence does not extend to a deadly weapon enhancement." 139 Wn.2d at 28. Partially overruling *Brown*, the Supreme Court then extended

judicial discretion regarding weapon enhancements only for juveniles within the adult justice system. *Houston-Sconiers*, 188 Wn.2d 1 at 9. The Supreme Court affirmed both interpretations in *Kelly*, determining that a sentencing court exceeds its authority in ordering firearm enhancements to run concurrently for an adult offender. 4 Wn.3d at 195.

Here, the trial court concluded that it did not have the authority to order Jones's firearm enhancement sentences to run concurrently. Because RCW 9.94A.533(a)(3) expressly requires firearm enhancements to run consecutively, precluding any trial court discretion, the court did not err in imposing the 240-month sentence.

Supplemental Briefing

Following the Supreme Court's holding in *Kelly*, Jones filed a supplemental appeal raising four issues not asserted in the initial appeal. Because we generally do not consider arguments raised for the first time in supplemental briefing and caselaw specifically precludes Jones's requested analysis, we decline to address Jones's additional claims.

Generally, this court will not consider arguments raised for the first time in supplemental briefing. *State v. Delbosque*, 6 Wn. App. 2d 407, 413 n.3, 430 P.3d 1153 (2018), *reversed in part on different grounds*, 195 Wn.2d 106 (2020). This includes constitutional challenges. *State v. Krajeski*, 104 Wn. App. 377, 387, 16 P.3d 69 (2001).

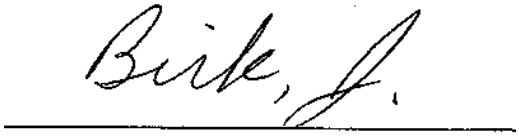
Jones contends that this court should address the added claims because newly appointed counsel determined that constitutional issues arise from the

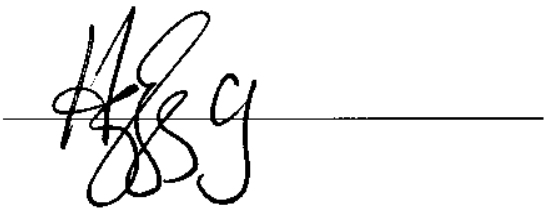
same facts and RAP 2.5(a)(3) allows consideration of new constitutional claims. But *Krajeski* specifically precludes the analysis Jones requests. 104 Wn. App. at 387.

The court in *Krajeski* determined that, "[a]s a general rule, a court is precluded from considering a *Gunwall*[2] analysis when raised for the first time in a supplemental brief. A more liberal rule would encourage appellants to untimely raise issues, leading to unbalanced and incomplete development of issues." 104 Wn. App. at 387 (citation omitted). Jones specifically requests a *Gunwall* analysis, addressing cruel punishments as applied to youthful offenders, for the first time in a provisional supplemental brief. Accordingly, we decline to address Jones's supplemental appeal.

We affirm.

WE CONCUR:





[2] *State v. Gunwall*, 106 Wash.2d 54, 720 P.2d 808 (1986).

APPENDIX B

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

STATE OF WASHINGTON, Respondent, v. SHAQUILLE CAPONE JONES, Appellant.	No. 86046-1-I ORDER DENYING MOTION FOR RECONSIDERATION

Appellant Shaquille Jones moved for reconsideration of the unpublished opinion filed on July 28, 2025. The panel considered the motion pursuant to RAP 12.4 and determined that the motion should be denied.

Now, therefore, it is hereby

ORDERED that the motion for reconsideration is denied.

FOR THE COURT:

Judge

NIELSEN KOCH & GRANNIS P.L.L.C.

September 19, 2025 - 4:02 PM

Transmittal Information

Filed with Court:	Court of Appeals Division I
Appellate Court Case Number:	86046-1
Appellate Court Case Title:	State of Washington, Respondent v. Shaquille Capone Jones, Appellant
Superior Court Case Number:	15-1-01621-5

The following documents have been uploaded:

- 860461_Petition_for_Review_20250919154228D1184671_6996.pdf
  This File Contains:
  Petition for Review
  The Original File Name was State v Jones 860461 PET.pdf

A copy of the uploaded files will be sent to:

- Diane.Kremenich@co.snohomish.wa.us
- Ed.Stemler@co.snohomish.wa.us
- Sloanej@nwattorney.net
- diane.kremenich@snoco.org
- tmontgomery@snoco.org

Comments:

Sender Name: Jennifer Winkler - Email: winklerj@nwattorney.net
Address:
2200 6TH AVE STE 1250
SEATTLE, WA, 98121-1820
Phone: 206-623-2373

Note: The Filing Id is 20250919154228D1184671