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STATE OF WASHINGTON
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No. 97704-6

IN THE SUPREME COURT OF THE
STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

vs.

DAKOTA MIKALLE COLLINS,

Petitioner.

Court of Appeals No. 51511-3-II
Appeal from the Superior Court of Pierce County
Superior Court Cause Number 16-1-02182-6
The Honorable Stephanie Arend, Judge

SUPPLEMENTAL BRIEF OF PETITIONER
REGARDING *DELBOSQUE*

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I. ARGUMENT & AUTHORITIES

The United States Supreme Court has recognized “that children are constitutionally different from adults for purposes of sentencing.” *Miller v. Alabama*, 567 U.S. 460, 472, 132 S. Ct. 2455, 2470, 183 L. Ed. 2d 407 (2012) (citing *Roper v. Simmons*, 543 U.S. 551, 125 S. Ct. 1183, 161 L. Ed. 2d 1 (2005), *Graham v. Florida*, 560 U.S. 48, 130 S. Ct. 2011, 176 L. Ed. 2d 825 (2010)). *Miller* held the Eighth Amendment’s ban on cruel and unusual punishment prohibits mandatory life without parole sentences for juveniles and requires sentencing judges to consider “how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison.” *Miller*, 567 U.S. at 480; U.S. Const. amend. VIII.

As a result of *Miller* and its federal and state court progeny, it is now well recognized that youth may diminish a defendant’s culpability and therefore may serve as a mitigating factor justifying a sentence below the standard range. *State v. Ronquillo*, 190 Wn. App. 765, 769, 361 P.3d 779 (2015); *State v. O’Dell*, 183 Wn.2d 680, 358 P.3d 359 (2015); RCW 9.94A.535(1)(e). Dakota sought an exceptional sentence downward based on this factor, but the trial court rejected the request.

Also as a result of *Miller*, the Washington Legislature passed

legislation amending several RCW chapters relating to juvenile sentencing. Delbosque's case involved provisions concerning unlawful mandatory life without parole sentences for juveniles convicted of aggravated first degree murder. *State v. Delbosque*, 195 Wn.2d 106, 112, 456 P.3d 806 (2020). The relevant statute, RCW 10.95.035(1), provides that juveniles who received such sentences prior to June 1, 2014 "shall be returned to the sentencing court or the sentencing court's successor for sentencing consistent with RCW 10.95.030."

RCW 10.95.030 requires the resentencing court to "take into account mitigating factors that account for the diminished culpability of youth ... including, but not limited to, the age of the individual, the youth's childhood and life experience, the degree of responsibility the youth was capable of exercising, and the youth's chances of becoming rehabilitated." RCW 10.95.030(3)(b).

Delbosque and Dakota were before their respective sentencing courts under different procedural and statutory grounds. But in both cases, the sentencing court was obligated to consider the whether youth diminished their culpability. What that consideration involves does not change based on how a youthful defendant arrives before the court. The facts and circumstances a court must consider

remain the same. Accordingly, *Delbosque*'s critique of the sentencing court's decision in that case is relevant here.

The *Delbosque* Court reiterated that a sentencing court should not focus on the defendant's behavior before or during the crime. "[S]entencing courts 'must reorient the sentencing analysis to a forward-looking assessment of the defendant's capacity for change or propensity for incorrigibility, rather than a backward-focused review of the defendant's criminal history.'" *Delbosque*, 195 Wn.2d at 122 (quoting *United States v. Briones*, 929 F.3d 1057, 1066 (9th Cir. 2019)). "The key question is whether the defendant is capable of change." *Delbosque*, 195 Wn.2d at 122 (quoting *Briones*, 929 F.3d at 1067).

The *Delbosque* court found that "[t]he resentencing court failed to adequately 'acknowledge Delbosque's mitigation evidence demonstrating his capacity for change' and did not adequately 'consider mitigation evidence that would support a finding of diminished culpability[.]'" *Delbosque*, 195 Wn.2d at 119, 120.

The sentencing court here also did not make a forward-looking assessment of Dakota's capacity for change, and instead focused on Dakota's behavior during the incident. (10/05/17 RP 72, 74, 75) The sentencing court failed to adequately consider Dakota's

mitigation evidence that would support a finding of diminished culpability. And the court ignored the fact that Dakota had been responding favorably to the structure and the treatment that finally become available to him at Remann Hall, and whether that showed his capacity to change. (CP 300-01)

Like the sentencing court in *Delbosque*, the court here “did not “meaningfully consider ‘mitigating factors that account for the diminished culpability of youth,’ including ‘the youth’s chances of becoming rehabilitated.’” *Delbosque*, 195 Wn.2d at 120 (quoting RCW 10.95.030(3)(b)). The court therefore failed to properly exercise its discretion at sentencing, and Dakota’s case should be remanded for a new sentencing hearing.

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II. CONCLUSION

Delbosque confirms that a sentencing court must thoroughly and thoughtfully consider whether the defendant's youth diminished their culpability and to consider the defendant's capacity to change and rehabilitate. That was not done in Dakota's case. This Court should accept review, and remand this matter for a new sentencing hearing.

DATED: April 17 2020



STEPHANIE C. CUNNINGHAM
WSB #26436
Petitioner Dakota Mikalle Collins

CERTIFICATE OF MAILING

I certify that on 04/17/2020, I caused to be placed in the mails of the United States, first class postage pre-paid, a copy of this document addressed to: Dakota Mikalle Collins #402786, Washington Corrections Center, P.O. Box 900 , Shelton, WA 98584.



STEPHANIE C. CUNNINGHAM, WSBA #26436

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