COA No. 50818-4-II
Pierce County Superior Court
Honorable Vicki L. Hogan (retired)
No. 13-1-02753-6

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

NO. 97205-2

In re the Personal Restraint of

ENDY DOMINGO-CORNELIO,

Petitioner

SUPPLEMENTAL BRIEF OF PETITIONER

Emily M. Gause
Attorney for Petitioner
GAUSE LAW OFFICES, PLLC
130 Andover Park East, Suite 300
Tukwila, WA 98188
Tel 206-660-8775 ♦ Fax 206-260-7050

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I. INTRODUCTION

In 2017, this Court held "courts *must* consider mitigating qualities of youth at sentencing and *must* have discretion to impose any sentence below the otherwise applicable SRA range and/or sentence enhancements. State v. Houston-Sconiers, 188 Wn.2d 1, 21, 391 P.3d 409, 420 (2017) (emphasis added). These twin requirements did not exist in 2014, when Endy Domingo-Cornelio was sentenced.

When Domingo-Cornelio was sentenced in adult court for conduct that occurred when he was between 14 and 16, the sentencing judge did not consider and weigh the "mitigating qualities" of his youthfulness. Likewise, the parties and the judge treated the bottom of the standard range as the "minimum" amount of time the court could impose. In response, the court sentenced Domingo-Cornelio to the low end, twenty years in prison.

Because Houston-Sconiers is retroactive and material to Domingo-Cornelio's case, and because his sentence is unconstitutional, RAP 16.4(c)(2) and (4) both support relief. This Court should grant this PRP and remand for a new sentencing hearing.

II. ASSIGNMENTS OF ERROR

A. THE SENTENCING COURT ERRED BY FAILING TO CONSIDER AND GIVE WEIGHT TO MITIGATING QUALITIES OF YOUTH

B. THE SENTENCING COURT ERRED BY FAILING TO RECOGNIZE IT HAD THE DISCRETION TO IMPOSE A SENTENCE BELOW THE STANDARD SENTENCING RANGE

C. THE SENTENCE THAT MR. DOMINGO RECEIVED VIOLATES THE EIGHTH AMENDMENT PROHIBITION AGAINST CRUEL AND UNUSUAL PUNISHMENT

III. STATEMENT OF THE CASE

A. Procedural History

Within a year from the end of his direct appeal, Mr. Domingo-Cornelio filed a timely personal restraint petition (PRP) on August 30, 2017, seeking resentencing due to significant changes in the law after State v. Houston-Sconiers. Division II dismissed the PRP in an unpublished opinion. Domingo-Cornelio then filed a timely motion for discretionary review asking this Court to decide whether Houston-Sconiers changed the law making his sentence unconstitutional.

B. Mr. Domingo-Cornelio's Sentencing Hearing

Endy Domingo-Cornelio was convicted by a jury of one count of rape of a child in the first degree and three counts of child molestation in the first degree for acts he allegedly committed when he was between fourteen and sixteen years old. RP 717-19. Because of a delay in reporting, the case was

not initiated, investigated and charged until Domingo-Cornelio was twenty years old. CP 1-2. Thus, he was charged as an adult.

Domingo-Cornelio was sentenced on September 25, 2014. RP 726. He had no felony criminal history. RP 728-29. Nevertheless, his offender score with "other current offenses" resulted in an offender score of 9 with a standard sentencing range of 240-318 months. RP 729.

His trial attorney did not request a sentence below the standard sentencing range and did not present evidence of the mitigating qualities of Domingo-Cornelio's youthfulness at the time of the offenses. RP 731-32. The only mention of Domingo-Cornelio's age was the following statement:

> "My client has a lot of family support, Your Honor. **He was a juvenile when these incidents took place**. I would like the Court to consider the fact that my client did not take the witness stand at this trial. He sat through the trial. He heard what was testified to. **The standard range starts out at 20 years, Your Honor, 240 months**. Now, I don't know what benefit to either my client's psychological or psychosexual health or to society or to the victim and their family it would do to give him **more than the low end. 20 years**, Your Honor. **He is barely 20 himself. 20 years is a very long time in prison,** and yes, the standard range goes above that quite a bit, but I would ask the Court to consider that the victim seems to be progressing through school right on time, on course. I believe she has been able to move on with her life after these acts, and I am glad that she has, and I hope that she has a decent -- better than a decent, a good life.
>
> **I think that society, in general, does not demand acts that a teenager did, which weren't reported for four or five years, should result in *more* than 20 years in prison**, and I'm asking that the Court consider all of the facts here, the

> lack of information from the family of the victim in the Presentence Investigation, and consider that Endy Domingo-Cornelio **will be in prison for a minimum of 240 months**, and that is long enough, Your Honor.

RP 731-32 (emphasis added), attached hereto as Appendix C.

Trial counsel did not provide any argument for a sentence below the standard sentencing range. He did not provide information regarding the mitigating qualities of youth. He did not provide any sentencing memorandum nor cite to any authority that would have assisted the court in its analysis.

When it imposed sentence, the court did not consider Domingo-Cornelio's youth or developmental maturity at the time of the offenses. There is no reference to age in the Court's explanation of reasons for its sentence. RP 733.The court did not address whether the fact that Domingo-Cornelio was just fourteen years old at the time of the crime warranted a sentence below the standard sentencing range. RP 733-740.

IV. SUPPLEMENTAL ARGUMENT

A. HOUSTON-SCONIERS ANNOUNCED A NEW RULE THAT WAS PREMISED ON MILLER'S "CHILDREN ARE DIFFERENT" DOCTRINE

In 2017, this Court boldly led the nation for juvenile law reform with its decision in State v. Houston-Sconiers, 188 Wn.2d 1, 18, 391 P.3d 409, 418 (2017).

> "**In accordance with Miller**, we hold that sentencing courts must have complete discretion to consider mitigating circumstances associated with the youth of any juvenile defendant, even in the adult criminal justice system, regardless of whether the juvenile is there following a decline hearing or not. To the extent our state statutes have been interpreted to bar such discretion with regard to juveniles, they are overruled. **Trial courts must consider mitigating qualities of youth at sentencing** and must have discretion to impose any sentence below the otherwise applicable SRA range and/or sentence enhancements."

Houston-Sconiers, at 21 (emphasis added).

This Court relied on the reasoning and analysis set forth in Miller v. Alabama, 567 U.S. 460, 465, 132 S. Ct. 2455, 2461, 183 L. Ed. 2d 407 (2012) in holding that the Eighth Amendment *requires* judges to consider and give weight to the mitigating qualities of youth at every sentencing hearing where juveniles are sentenced in adult court, including cases where the sentence is less than life. Houston-Sconiers, at 18.

The core reasoning of Miller was "the Eighth Amendment's prohibition of cruel and unusual punishment guarantees individuals the right not to be subjected to excessive sanctions." Miller, at 469, citing Roper v. Simmons, 543 U.S., at 560, 125 S.Ct. 1183, 161 L. Ed. 2d 1 (2005). Houston-Sconiers agreed with Miller's concern with mandatory sentencing schemes for juvenile offenders because those laws fail to consider a juvenile's "lessened culpability" and greater "capacity for change". *See* Miller, at 465 ("in neither case did the sentencing authority have any

discretion to impose a different punishment"), citing Graham v. Florida, 560 U.S. 48, 68, 74, 130 S.Ct. 2011, 2026–2027, 2029–2030, 176 L.Ed.2d 825 (2010).

The specific holdings differed. Miller abolished mandatory sentences of life without the possibility of parole for juvenile offenders. Houston-Sconiers abolished all mandatory sentencing schemes for juvenile offenders in Washington. The underlying reasoning was the same: "Children are different." Houston-Sconiers, at 8; Miller, at 471 ("Children are constitutionally different from adults for purposes of sentencing, and because juveniles have diminished culpability and greater prospects for reform, they are less deserving of the most severe punishments.")

Both Miller and Houston-Sconiers were premised on new knowledge about the development of the human brain. We now know a great deal more about juvenile brain development due to science and social science. Miller, at 471-72. "Recent developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds—for example, in parts of the brain involved in behavior control." Miller, at 471. This science is now firmly accepted and provides the factual bedrock for every sentencing hearing involving a juvenile. We now accept as a nation that children must be treated differently by the law, even when they are charged in adult court, and even for the most heinous crimes.

Miller instructed: "imposition of a State's most severe penalties on juvenile offenders cannot proceed as though they were not children." Miller, at 2466. Houston-Sconiers agreed:

> "(I)n exercising full discretion in juvenile sentencing, the court must consider mitigating circumstances related to the defendant's youth—including age and its "hallmark features," such as the juvenile's 'immaturity, impetuosity, and failure to appreciate risks and consequences.' It must also consider factors like the nature of the juvenile's surrounding environment and family circumstances, the extent of the juvenile's participation in the crime, and 'the way familial and peer pressures may have affected him [or her].' And it must consider how youth impacted any legal defense, along with any factors suggesting that the child might be successfully rehabilitated."

Houston-Sconiers, 188 Wn.2d at 23, (internal citations removed).

Montgomery v. Louisiana held that Miller is a new, substantive rule of constitutional law that applies retroactively on collateral review. 136 S.Ct. 718, 723, 193 L.Ed.2d 599 (2016).

B. THE HOLDING OF HOUSTON-SCONIERS IS NEW, SUBSTANTIVE LAW AND RETROACTIVE

Three years after Domingo-Cornelio's sentencing, in 2017, Houston Sconiers changed the law when it held that sentencing judges *must* consider and weigh mitigating factors of youthfulness in every case involving a juvenile and must have discretion to impose any sentence *below the otherwise applicable range* and enhancements. Id. at 3 (emphasis added).

Because the rule announced in Houston-Sconiers springs from and was designed to protect against constitutional disproportionality, it is substantive. Substantive changes in the law, requiring retroactive effect, are those rules "forbidding criminal punishment of certain primary conduct" and rules "prohibiting a certain category of punishment for a class of defendants because of their status or offense." Montgomery, supra, at 723. Houston-Sconiers prohibited "mandatory" sentencing enhancements and other sentencing schemes that might limit a sentence judge's absolute discretion in imposing a sentence for a juvenile offender.

Another test to determine whether an intervening case represents a significant change in the law is whether the defendant could have argued this issue before publication of the decision. Matter of Meippen, 193 Wn.2d 310, 322, 440 P.3d 978, 984 (2019) (quoting State v. Miller, 185 Wn.2d 111, 115, 371 P.3d 528 (2016) (quoting In re Pers. Restraint of Lavery, 154 Wn.2d 249, 258-59, 111 P.3d 837 (2005). Houston-Sconiers represents a significant change in the law because Domingo-Cornelio could not have argued this issue before publication of the decision. Substantive changes in the law are retroactive regardless of when a defendant's conviction became final; for a conviction under an unconstitutional law is not merely erroneous but is illegal and void and cannot be a legal cause of imprisonment." Montgomery, at 724 (internal citations omitted).

It is important to note that Domingo-Cornelio's petition is timely. As a result, he does not need to meet the requirements of RCW 10.73.100(6). Domingo-Cornelio's claim is that the "retroactive change in the law" provision found in RAP 16.4(c)(4) merits relief.

However, it is clear that Houston-Sconiers did announce a new rule. It does meet the requirements under RCW 10.73.100(6). A new rule is one that "breaks new ground or was not dictated by precedent existing at the time the defendant's conviction became final." In re Pers. Restraint of Colbert, 186 Wn.2d 614, 623, 380 P.3d 504 (2016) (internal quotation marks omitted) (quoting In re Pers. Restraint of Haghighi, 178 Wn.2d 435, 443, 309 P.3d 459 (2013). The rule in Houston-Sconiers expressly overrules prior cases that indicate the inflexibility of the SRA. Meippen, at 328. Houston-Sconiers expressly overruled State v. Brown, 139 Wn.2d 20, 983 P.2d 608 (1999). Brown indicated that judges had no discretion to depart from the requirements of the SRA. 139 Wn.2d at 29, 983 P.2d 608. Domingo-Cornelio's sentencing occurred entirely within the framework of the SRA, without any indication in the record that anyone believed it possible to go outside that range (indeed, defense counsel told the sentencing judge that the low-end was the "minimum" amount the judge could impose). Therefore, Brown effectively controlled a material issue in

Domingo-Cornelio's case. By overturning Brown, Houston-Sconiers was a significant change in the law. *See* Meippen, at 321–22.

Further, Houston-Sconiers is a new rule because it *requires* sentencing judges to consider a juvenile defendant's youth at every sentencing. Houston-Sconiers went beyond Supreme Court cases like Miller v. Alabama, which required consideration of youth when the sentence was life without parole. Houston-Sconiers at 18; Miller at 479-30.

Houston-Sconiers is based on the same analysis that Montgomery v. Louisiana made clear were substantive. 136 S.Ct. at 734. Houston-Sconiers itself referred to them at substantive. 188 Wn.2d at 19 n.4. Thus, it is clear Houston-Sconiers is a new substantive rule of constitutional law that applies retroactively on collateral review.

C. THE COURT ERRED WHEN IT FAILED TO CONSIDER AND WEIGH THE MITIGATING QUALITIES OF YOUTH AND FAILED TO UNDERSTAND ITS DISCRETION TO IMPOSE A SENTENCE BELOW THE STANDARD SENTENCING RANGE

Houston-Sconiers changed the law when it held that sentencing judges must consider and weigh mitigating factors of youthfulness in every case involving a juvenile. 188 Wn.2d at 9. And, it further changed the law when it articulated that judges "must have discretion to impose any sentence below the otherwise applicable range and enhancements." Id. at 3.

1. The Sentencing Court Erred When It Failed to Consider and Weigh Mitigating Factors of Youthfulness

Domingo's sentencing court did not consider mitigating qualities of youth (1) because it was not presented by Domingo's attorney, and (2) because it was not required to in 2015 when Domingo was sentenced. Domingo's sentencing court today would have been *required* to conduct a Miller analysis.

The only mention of Domingo's age at sentencing was:

> **I think that society, in general, does not demand acts that a teenager did, which weren't reported for four or five years, should result in *more* than 20 years in prison**, and I'm asking that the Court consider all of the facts here, the lack of information from the family of the victim in the Presentence Investigation, and consider that Endy Domingo-Cornelio **will be in prison for a minimum of 240 months**, and that is long enough, Your Honor.

RP 731-32 (emphasis added); Exhibit C to MDR.

Trial counsel did not provide any argument for a sentence below the standard sentencing range under RCW 9.94A.535. Further, counsel did not articulate why Domingo-Cornelio's young age, just 14-16 years old at the time of the offense, was important for consideration by the court as a mitigating quality. He did not tie Domingo-Cornelio's age to factors that the Court must consider, such as his immaturity and failure to appreciate risks or consequences, the nature of his environment and family circumstances, the extent of his participation in the crime, the way familial

or peer pressures may have affected him, how his age impacted any legal defense, and any other factors that suggest that Domingo-Cornelio might be successfully rehabilitated. Houston-Sconiers, 188 Wn.2d at 23 (quoting and citing Miller). Trial counsel did not provide any sentencing memorandum nor cite to any authority that would have assisted the court in its analysis. Domingo's counsel made the only argument then feasible: that the low end of the sentencing range was appropriate for Domingo because of his age at the time of the offense. He did not, because he could not, argue that the judge was *required* to take youth into account. *See* Meippen, at 322.

If Domingo-Cornelio was convicted and sentenced today, he would have experienced a drastically different sentencing hearing. His attorney, now knowing the wisdom set forth in Houston-Sconiers, would have likely requested a sentence well below the standard sentencing range. He would have known the court would be required to engage in a Miller analysis and provided briefing and argument in support of that analysis.

This Court recently reiterated what sentencing courts are *required* to do after Houston-Sconiers:

> [T]he court must consider the mitigating circumstances related to the defendant's youth, including, but not limited to, the juvenile's immaturity, impetuosity, and failure to appreciate risks and consequences—the nature of the juvenile's surrounding environment and family circumstances, the extent of the juvenile's participation in the crime, the way familial and peer pressures may have affected him

> or her, how youth impacted any legal defense, and any factors suggesting that the juvenile might be successfully rehabilitated.

State v. Gilbert, 193 Wn.2d 169, 176, 438 P.3d 133 (2019) (citing Houston-Sconiers, 188 Wn.2d at 23 (quoting and citing Miller). In Domingo-Cornelio's case, the sentencing court did not consider *any* of these factors when imposing sentence. Here, the court explained the sentence as follows:

> "The Court did, Mr. Shaw, have a chance to review the letters that were filed from your client's mother, his aunt and uncle, a separate letter from a different uncle, his brother, numerous friends, best friends, work, employees that your client supervised, his girlfriend. The Court, in considering all of the information before the Court will impose 240 months in the Department of Corrections on Count I. On Counts II, III and IV, 198 months which will run concurrent, not consecutive, to Count I. 36 months of community custody supervision when you are released from prison."

RP 733-740; Appendix C to MDR.

It is clear the court did not consider Domingo-Cornelio's youth or developmental maturity at the time of the offenses in its sentencing decision. RP 733. There is no evidence the court analyzed any the Miller factors before imposing a sentence.

In addition, the sentencing court erred by not thoroughly explaining its reasoning, and not specifying whether it considered imposition of a sentence below the standard range. State v. Gilbert, 193 Wn.2d 169, 438 P.3d 133 (2019) (sentencing court is required to consider youth as a

mitigating factor, should also consider the convictions at issue, the standard sentencing ranges, and any other relevant factors, then determine whether to impose an exceptional sentence, *taking care to thoroughly explain its reasoning.*)

2. The Sentencing Court Erred by Failing to Recognize It Had the Discretion to Impose a Sentence Below the Standard Sentencing Range

Domingo-Cornelio's attorney repeatedly told the sentencing court that the low-end of the standard sentencing range was the "minimum" amount that it could impose: "Domingo- Cornelio will be in prison for a **minimum** of 240 months, and that is long enough, Your Honor." RP 731-32 (emphasis added); Exhibit C to MDR.

Today, after Houston-Sconiers, we know that the low end, 240 months, is not the minimum amount the court could impose.

Domingo-Cornelio's case is similar to Houston-Sconiers, where the judge, prosecutor, and defense counsel all believed that a sentence below the SRA range due to the defendant's age was "technically illegal." Houston-Sconiers, at 21. Houston-Sconiers reversed sentences similar to what Domingo-Cornelio received. Defendant Houston-Sconiers, who was 17 at the time of the offense, received a 31-year sentence. Defendant Roberts, who was 16 at the time of the offense, received 26 years of incarceration. Like Houston-Sconiers, Domingo-Cornelio was not

sentenced to a de facto life sentence. He was sentenced to twenty years for offenses he committed when he was between 14 and 16 years old.

We cannot presume the sentencing court took Domingo-Cornelio's youth into account when it gave absolutely no indication of having done so. *See* Meippen, at 323. Silence does not constitute reasoning. Id., citing State v. Ramos, 187 Wn.2d 420, 444, 387 P.3d 650 (2017). We cannot presume the court knew it had discretion to sentence Domingo-Cornelio to less than twenty years.

D. UNLIKE MEIPPEN, MR. DOMINGO-CORNELIO CAN SHOW ACTUAL AND SUBSTANTIAL PREJUDICE

Recently, in Meippen, this Court declined to reach the question of whether Houston-Sconiers was retroactive because it held that Meippen did not show by a preponderance of the evidence that his sentence would have been shorter if the trial court knew it had absolute discretion to depart from the SRA at the time of sentencing. 193 Wn.2d 310, 440 P.3d 978 (2019).

This case can be distinguished from Meippen on two grounds: (1) Domingo-Cornelio was sentenced to the low end of the range which was mischaracterized as the "minimum" term available; and (2) when the court imposed sentence, it completely failed to consider and give effect to the mitigating qualities of youth. Domingo-Cornelio was prejudiced by each error.

In Meippen, after hearing argument related to youthfulness, the court sentenced him to *the high end* of the standard sentencing range and imposed a firearm enhancement. Id. at 313. Mieppen's attorney, like Domingo's attorney, argued for a sentence at the bottom end of the sentencing range. Id. Meippen, however, did not refer to the bottom end of the range as "the minimum" amount the court could impose. Meippen's attorney, unlike Mr. Domingo's attorney, tied the offense conduct to juvenile brain development, arguing that Meippen was too young to appreciate the nature and consequences of his actions and that he "lacked an understanding … of the seriousness of the situation he involved himself in." Id. at 313. The sentencing court weighed these arguments and rejected the defense recommendation, stating, "I find [Meippen's] behavior cold, calculated, and it showed complete indifference towards another human being." Id. It imposed a sentence of 231 months, the high end of the standard sentencing range, along with a 60-month firearm enhancement. Id.

Mr. Domingo-Cornelio was not sent to adult court by way of automatic or discretionary decline. There was never a hearing to determine if he should be sent to adult court. The legislature did not require he be sent to adult court due to the nature of his alleged criminal act. He ended up in the adult system due to a delay in reporting the crime. By the time the allegation was made, Mr. Domingo-Cornelio was twenty years old.

Unlike Meippen, Domingo-Cornelio's attorney did not ask the court to consider the mitigating qualities of his youth at sentencing. His attorney did not request a sentence below the standard sentencing range. Mr. Domingo-Cornelio was 20 years old when the court imposed the low-end 20-year prison sentence. He had no prior criminal history points, and his offender score was based entirely on his current offense scoring.

Prior to its decision in Houston-Sconiers, this Court hosted a Symposium focused on adolescent brain development and its connection to juvenile justice reform. Washington Supreme Court Symposium "Looking to the Future: Adolescent Brain Development and the Juvenile Justice System (May 20, 2014). Dr. B.J. Casey explained the science behind juvenile brain development and that the "peak" of adolescent brain development is occurring at ages 14 and 15. At the symposium, Marsha Levick explained that there is well-developed, and uncontroverted body of research about juvenile sex offenders articulating why they are different from adult sex offenders. Id. Juvenile sex acts are much more exploratory in nature, rather than predatory. Id. Because of this, recidivism rates for juvenile sex offenders is somewhere between two and four percent. Id. Further, "research on the neurophysiology of the brain and the neurofunctional developmental changes in the brain suggest a qualitatively different basis for much of the behavior that falls under sexual offense if the

behavior is that of an adolescent rather than an adult."[1] Thus, these are factors suggesting that Domingo-Cornelio would be successfully rehabilitated pertinent to the court's sentencing decision.

Even a cursory review of the sentencing in this case reveals the harm resulting from the failure to present the mitigating qualities of Domingo-Cornelio's youth along with the failure of the court to consider those facts and to be invested with the corresponding unlimited discretion to impose a sentence below the bottom of the range. Given the circumstances of this case, and the fact that the judge imposed a sentence at the bottom of the range, it is clear that Domingo-Cornelio suffered actual and substantial prejudice when his attorney did not present this information in support of a sentence below the standard sentencing range.

A petitioner alleging constitutional error must shoulder the burden of showing, not merely that the errors created a possibility of prejudice, but that the outcome would more likely than not been different had the alleged errors not occurred. Meippen, at 315 (internal citations omitted). Here, Domingo-Cornelio has met his burden of showing that the outcome would have more likely than not been much different had the court weighed

[1] Tolan, P.H., Walker, T., & Reppucci, N.D. (2012). Applying developmental criminology to law: Reconsidering juvenile sex offenses. Justice Research and Policy, 14(1), 117–146.

mitigating qualities of youth, and understood its discretion to depart from the low-end of the sentencing range.

Because of these errors, Domingo-Cornelio received an excessive sentence in violation of the Eighth Amendment. He was not on the cusp of adulthood at the time of his offense conduct. Instead, he was much closer to the age (12) where incapacity is still presumed. We know the younger the child, the less developed his brain.[2] He had no prior criminal history. His offender score was based entirely on his current offenses. Due to a delay in reporting, Domingo-Cornelio was not charged until he was an adult. There was no opportunity for review by way of a Kent hearing.[3] Due to the scoring of current offenses after conviction, Domingo-Cornelio faced an offender score of 9. Thus, the court was told it must sentence him within a standard range of 240-318 months, an equivalent of 20-26 years.

Had Domingo-Cornelio been convicted of the same charges in juvenile court, he would have faced a range of 103 to 129 weeks on Rape of a Child, and 15-36 weeks on each of the Child Molestation charges, for a total standard range of 148 to 237 weeks. The disparity between a juvenile sentencing range of 2.8 to 4.5 years and the 20-year low-end sentence

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[2] Roger Przbylski and Christopher Lobanov-Rostovsky (March 2017). *Unique Considerations Regarding Juveniles Who Commit Sexual Offenses*, Sex Offender Management Assessment and Planning Initiative (citations omitted).

[3] Kent v. United States, 383 U.S. 541, 86 S. Ct. 1045, 16 L. Ed. 2d 84 (1966) (requiring analysis of factors prior to discretionary decline to adult court.)

Domingo faced in adult court could have provided a basis warranting an exceptional sentence. There were no aggravating factors present to otherwise justify a lengthy prison sentence. The judge gave the lowest amount of time she believed she could – the bottom of the range.

Domingo-Cornelio was prejudiced because the court failed to consider and weigh the mitigating qualities of his youth understand its discretion to go below the low-end of twenty years. Meippen did not address prejudice in this context. A sentencing judge must consider a juvenile defendant's youthfulness in every case. When the evidence is not before the court, the judge must demand it. And, a sentencing judge must weigh that mitigating evidence before imposing sentence. When the judge fails to do so, this Court cannot be assured that the requirements of the law have been met. None of that happened here. The result is an unconstitutional sentence.

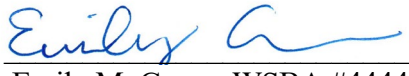
V. CONCLUSION

For the foregoing reasons, this Court should grant Mr. Domingo-Cornelio's petition and remand for resentencing.

DATED this 5th day of December, 2019.

Respectfully submitted,

GAUSE LAW OFFICES, PLLC



Emily M. Gause, WSBA #44446
Attorney for Petitioner

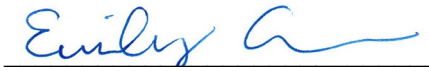
CERTIFICATE OF SERVICE

Emily M. Gause certifies that opposing counsel was served electronically via the Supreme Court portal via email:

Kristie Barham
Teresa Jeanne Chen
Pierce County Office of Prosecuting Attorney
930 Tacoma Avenue South, Room 946
Tacoma, WA 98402-2171

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

SIGNED this 5th day of December, 2019 in Seattle, WA.



Emily Gause, WSBA #44446

GAUSE LAW OFFICES PLLC

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