No. 100222-0

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

In re the Personal Restraint of

RAYMOND MAYFIELD WILLIAMS,

Petitioner.

PETITIONER'S REPLY IN SUPPORT OF MOTION FOR DISCRETIONARY REVIEW

Jessica Levin, WSBA #40837
Robert S. Chang, WSBA #44083
Melissa R. Lee, WSBA #38808
RONALD A. PETERSON LAW CLINIC
SEATTLE UNIVERSITY SCHOOL OF LAW
1112 East Columbia St.
Seattle, WA 98122
Tel: (206) 398-4167
levinje@seattleu.edu
changro@seattleu.edu
leeme@seattleu.edu

Counsel for Petitioner

TABLE OF CONTENTS

TABLE OF AUTHORITIES

STATUTES

RULES

OTHER AUTHORITIES

INTRODUCTION

Punishment, once considered proportionate and constitutional, can later be deemed disproportionate and unconstitutional as society's standards of decency evolve. This Court has played a central role in evolving proportionality principles that recognize juveniles as categorically less culpable than adults, and has applied these principles in a variety of sentencing contexts. Unsettled, though, is whether these evolving standards apply to a class of offenders sentenced to die in prison whose predicate strike offenses occurred when they were children, and whose life sentences are otherwise deemed final. This case affords the Court the opportunity to declare that these evolving standards apply with equal force to this class.

The time-bar exceptions exist to give those already incarcerated meaningful access to judicial review so that this Court can judge whether the sentences offend the evolving standards of decency. This is particularly true when new

proportionality rules are announced, as it reflects a "point at which society's interest in preserving final judgments simply must yield to competing notions of justice and equality."[1] A predicate first strike committed by a child, whose culpability is categorically diminished by the neurobiological differences of the developing brain, cannot aggravate the guilt of the third strike to the same extent as a first strike committed by an adult. This Court should accept review to end the use of juvenile strikes under the POAA.

ARGUMENT

Mr. Williams's sentence is categorically unconstitutional under article I, section 14, and that claim meets the time-bar exception under either RCW 10.73.100(2) or (6).[2] The State suggests that issues concerning the interpretation of time-bar

---

[1] Perry Moriearty, Miller v. Alabama *and the Retroactivity of Proportionality Rules*, 17 J. CONST. L. 929, 980 (2015), https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1554&context=jcl.

[2] In his PRP and in the MDR, Mr. Williams also argues that the sentence violates individual proportionality.

exceptions cannot constitute significant questions of law or issues of substantial public interest sufficient to merit the Court's attention. Answer to Mtn. at 7-8. This contention is disproven by this Court's recent decisions accepting review on time bar issues under RCW 10.73.100(2)[3] and RCW 10.73.100(6).[4] The State's position also misunderstands the Court's role to ensure that post-conviction review is available when there truly exists a question about the very validity of ongoing detention. *In re Pers. Restraint of Runyan*, 121 Wn.2d 432, 453, 853 P.2d 424 (1993) (inviolate principle in post-

[3] *In re Pers. Restraint of Monschke*, 197 Wn.2d 305, 42 P.3d 276 (2021) (analyzing whether aggravated murder statute was unconstitutional-as-applied and therefore an exception to the time bar under RCW 10.73.100(2)).

[4] *In re Pers. Restraint of Domingo-Cornelio*, 196 Wn.2d 255, 474 P.3d 524 (2020), *cert. denied sub nom. Washington v. Domingo-Cornelio*, 141 S. Ct. 1753, 209 L. Ed. 2d 515 (2021) (analyzing whether *Houston-Sconiers* constituted a significant, material, and retroactive change in law under RCW 10.73.100(6) to Domingo-Cornelio's sentence); *In re Pers. Restraint of Light-Roth*, 191 Wn.2d 328, 422 P.3d 444 (2018) (considering whether *State v. O'Dell* met criteria under RCW 10.73.100(6)).

conviction collateral review is the maintenance of "*unlimited access* to review in cases where there truly exists a question as to the validity of the prisoner's continuing detention" (emphasis added)).

Resolving the time-bar exceptions raised here[5] meets three criteria under RAP 13.4(b), as set forth in the opening motion and below. RCW 10.73.100(6) applies because Mr. Williams's PRP implicates core state constitutional questions about the materiality of *State v. Bassett*, 192 Wn.2d 67, 428 P.3d 343 (2018), to claims involving the diminished culpability of an entire class of offenders—those serving LWOP based on juvenile predicates. RAP 13.4(b)(3). Review is also warranted

[5] Mr. Williams need only prevail on one time-bar exception to reach the merits and prevail on the constitutional claim that use of juvenile strikes is categorically barred under article I, section 14. Alternatively, the Court could consider the core constitutional argument without needing to find any exception to the time bar, as use of a juvenile strike to support LWOP makes the 2008 judgment invalid on its face under RCW 10.73.090(1), rendering the one-year bar inapplicable to Mr. Williams's claim.

to correct the lower court's decision interpreting *State v. Moretti*, 193 Wn.2d 809, 446 P.3d 609 (2019), to limit proportionality review to consider only the last strike, as this conflicts with decades of jurisprudence requiring proportionality review to encompass predicate and final strikes. RAP 13.4(b)(1), (3).

Review is warranted under RAP 13.4(b)(3) to address whether the POAA, which allows convictions for most serious offenses to count as predicates without regard to a person's age at the time of the crime, renders that portion of the SRA's definition of "most serious offense" unconstitutional as applied to Mr. Williams and the class to which he belongs, and whether that argument meets the time-bar exception under RCW 10.73.100(2).

Finally, both time-bar exceptions are issues of substantial public interest as a decision on either would benefit not only Mr. Williams, but an entire class of offenders—as of 2009, roughly 10% of the 229 three strikers were convicted of at least

one strike offense prior to age 18. RAP 13.4(b)(4).[6] Further, this offender class is very likely disproportionately Black. Relief would help ameliorate a particularly vexing aspect of Washington's criminal legal system, in which Black persons are disproportionately subjected to life and long sentences.[7]

I. Review Is Warranted to Correct the Court of Appeals' Materiality Analysis Under RCW 10.73.100(6) Because It Wholly Ignores *Bassett*'s Requirement that Claims Involving the Culpability of Children as a Class Be Resolved Through Categorical Proportionality.

A significant change in law is "material if it affects the sentence a trial court actually imposed." *In re Pers. Restraint of Zamora*, 14 Wn. App. 2d 858, 865, 474 P.3d 1072 (2020)

---

[6] Columbia Legal Services, *Washington's Three Strikes Law: Public Safety & Cost Implications of Life Without Parole* 7 (2010), https://columbialegal.org/wp-content/uploads/2019/03/CLS-Report_Washingtons-Three-Strikes-Law.pdf. If review is granted, Mr. Williams and/or amici will endeavor to present more current data.

[7] *See* Katherine Beckett & Heather D. Evans, *About Time: How Long and Life Sentences Fuel Mass Incarceration in Washington State* (2020), https://www.aclu-wa.org/docs/about-time-how-long-and-life-sentences-fuel-mass-incarceration-washington-state.

(citing *Domingo-Cornelio*, 196 Wn.2d at 265). The Court's decision in *Bassett* is material to Mr. Williams's sentence because it necessarily affects the proportionality norms by which Washington courts assess whether imposition of LWOP based on a juvenile predicate is cruel. In determining that *Bassett* was not material to Mr. Williams's claim, the Court of Appeals misconstrued this Court's jurisprudence in two different areas, and those two areas require this Court's attention under RAP 13.4(b)(1) and (3).

First, the State ignores that the import of *Bassett* extends beyond the context of JLWOP by this Court's explicit holding that categorical proportionality is required for *any* claim involving the "characteristics of children." 192 Wn.2d at 85; Mtn. for Discretionary Rev. at 19-20. That holding alone makes *Bassett* material to Mr. Williams's sentence, as it fundamentally alters the constitutional analysis that is required to define cruel punishment. Before *Bassett*, there was no avenue for consideration of claims based on the culpability of an offender

class. When Mr. Williams was sentenced in 2008, there was no basis on which to argue that the POAA's failure to distinguish between strike offenses committed by juveniles and those committed by fully culpable adults rendered it unconstitutional under article I, section 14. We know now that strike offenses committed by children cannot, by definition, aggravate punishment for the third strike the way an adult-strike would. Though Mr. Williams was not a child when he received his life sentence, his life sentence was imposed based on juvenile conduct, and the sentencing court was required to use the juvenile strike in sentencing him to LWOP.

Second, the Court of Appeals misconstrued this Court's decision in *Moretti* as limiting the scope of proportionality review to only the last offense, and therefore controlling the question of *Bassett*'s materiality. But the proportionality challenge here is based on a juvenile strike and is fundamentally different from the challenge in *Moretti*, which involved cases where all three strike offenses were committed

as adults. 193 Wn.2d ¶¶ 3, 7, 11. Mr. Williams was only 16 years old when he received his first strike. The State[8] and the Court of Appeals improperly extend *Moretti* beyond its holding, asserting that *Moretti* decided the very question it explicitly left open. 193 Wn.2d ¶ 22 n.5 ("We express no opinion on whether it is constitutional to apply the POAA to an offender who committed a strike offense as a juvenile and was convicted in adult court.").

Mr. Williams is not, as the State suggests, asking this Court to "simply ignore its own explicit language in *Moretti* that the POAA punishes only the third offense for purposes of a constitutional analysis." Answer to Mtn. at 13–14. Rather, this Court, in reviewing the constitutionality of three strikes sentences, has always considered the third strike *and* prior strikes. But the Court of Appeals read *Moretti* to essentially have overruled this Court's other longstanding jurisprudence in

[8] Answer to Mtn. at 11.

proportionality review that, since *State v. Fain*, 94 Wn.2d 387, 397–98, 617 P.2d 720 (1980), has reviewed both the predicates and the final offenses. Mtn. for Discretionary Rev. at 14-15. Indeed, *Moretti* itself acknowledged the possibility of a different outcome with the proper evidence and argument that the mitigating qualities of youth contributed to the predicate strikes. *See* 193 Wn.2d at 824 ("[defendants] have not produced any evidence that their youth contributed to the commission of the instant offenses, or even that youth contributed to their *prior* offenses." (emphasis added)); *see also Fain*, 94 Wn.2d at 397–98 (examining "each of the crimes that underlies his conviction as a habitual offender" and noting "two of the three would likely be charged as gross misdemeanors at the present time"). Only this Court, and not the Court of Appeals, has the authority to ultimately clarify that *Moretti* did not undercut prior proportionality decisions that guarantee inquiry into the predicate and final strikes.

In the alternative, even if the life sentence is only

punishment for the third offense, *Bassett's* recognition of the diminished culpability of children cannot be squared with unthinking application of the rule relied upon in *Moretti* that "[t]he repetition of criminal conduct aggravates the guilt of the last conviction and justifies a heavier penalty for the crime." 193 Wn.2d at 826. *Bassett*'s recognition that children are fundamentally less culpable than adults necessarily means that a juvenile strike cannot aggravate the guilt of the last conviction or justify a heavier punishment the way an adult strike does. Review is warranted under both RAP 13.4(b)(1) and (3) to correct the Court of Appeals' analysis and to ensure fidelity to *Bassett*.

II. Review Is Warranted to Further Clarify that the Scope of RCW 10.73.100(2) Includes Challenges to Convictions and Certain Sentences.

RCW 10.73.100(2) exempts from the one-year time bar a claim that a "statute that the defendant was convicted of violating was unconstitutional…as applied to the defendant's conduct." RCW 10.73.100(2). Mr. Williams was convicted of

three most serious offenses under RCW 9.94A.030(32) such that he was classified as a "persistent offender" under RCW 9.94A.030(37) (defining persistent offender as one who has three most serious offenses). Mr. Williams argues that RCW 9.94A.030(32) and (37)'s failure to account for the diminished culpability of those under 18 at the time of the commission of a most serious offense is unconstitutional as applied to Mr. Williams and the class of offenders to which he belongs. This argument fits within the legislature's contemplation that convictions may be challenged under RCW 10.73.100(2), because it is a challenge to the classification of the underage convictions themselves as most serious offenses.[9]

In the alternative, Mr. Williams's argument regarding the applicability of *Monschke*'s analysis of RCW 10.73.100(2)

[9] Mr. Williams has made this argument since the inception of the case, Pet'r Br. at 11, 18-23; Reply Br. at 9-10. It is distinct from the argument that classification as a persistent offender triggers mandatory LWOP under RCW 9.94A.570, rendering any distinction between conviction and sentence "absurd." *Monschke*, 197 Wn.2d at 310, n.5.

merits review so that this Court can affirm that this time-bar exception applies to other sentences as well as convictions, where the sentence flows automatically from the conviction. *Monschke*, 197 Wn.2d at 309–11. In *Monschke*, the lead opinion simply noted that RCW 10.73.100(2) provides a time-bar exception for aggravated murder, where the sentence flows automatically from the conviction, but did "not decide…whether RCW 10.73.100(2) provides a time-bar exception for other unconstitutional sentencing statutes." *Id.* at 310.

While the Court of Appeals and the State read *Monschke* as a 5-4 majority that RCW 10.73.100(2) permits review only of unconstitutional *convictions*, the four dissenting justices understood there to be a 5-4 majority that RCW 10.73.100(2) permits review of *sentences* as well, as it characterized the Court's lead opinion to "now permit[] virtually all challenges to sentences." *Monschke*, 197 Wn.2d ¶ 70 (Owens, J., dissenting). The dissent is correct—a majority of the Court agreed that

petitioners were entitled to resentencing because the sentences themselves were substantively unconstitutional. This necessarily means that while Justice González appeared to agree with the dissent's analysis regarding RCW 10.73.100(2), he ultimately concurred with the lead opinion that RCW 10.73.100(2) must be interpreted to provide a time-bar exception in that case. Meeting an exception to the time bar is a prerequisite to relief, RCW 10.73.100; RAP 16.4(a), (d), and the time-bar exception Justice González thought should apply is entirely foreclosed by *Light-Roth*, 191 Wn.2d 328. Justice González's opinion was a full concurrence with the majority, rather than a concurrence in part and dissent in part. *See Monschke*, 197 Wn.2d at 329 (González J., concurring). If the concurrence were an actual dissent on this point, which by its own terms is not, no relief could have been awarded.

III. The Offender Class Is Likely Disproportionately Black, Which Independently Merits This Court's Attention.

This Court is well-aware of Washington's long history of

severe race disproportionality in incarceration. Through pending record requests to DOC, undersigned counsel is endeavoring to provide the Court with a precise picture of exactly how many lifers have juvenile strikes, and the race disproportionality of that group. Even without a precise demographic picture, as of October 2020, DOC's preliminary response showed 146 individuals serving LWOP under the POAA with one or more juvenile offenses on their record. The race disproportionality among this group is stark: 46 of 146 are Black. In addition, significant racial disproportionality in imposition of the POAA exists across all types of strike offenses: "Approximately 53% of three strikers are from minority racial groups, while minority groups make up only 25.4% of the state's population."[10] The greatest disparity exists for the Black community: "almost 40% of three strikes offenders sentenced are African American, while only 3.9% of

[10] *Washington's Three Strikes Law*, *supra* note 6, at 7.

the state's population is African American."[11] It is not unreasonable to assume similar race disproportionality among three strikers with juvenile strikes.

CONCLUSION

Mr. Williams respectfully requests that the Court grant discretionary review to bring the POAA within the bounds of this Court's juvenile justice jurisprudence.

CERTIFICATE OF COMPLIANCE WITH RAP 18.17

Undersigned counsel certifies that, pursuant to RAP 18.17(b), the document contains 2,499 words, exclusive of words contained in the appendices, title sheet, table of contents, table of authorities, certificates of compliance and signature blocks, and pictorial images, and therefore meets the word count limitation of reply briefs in support of motions for discretionary review of 2,500 words as required by RAP 18.17(c)(17).

---

[11] *Id.*

DATED this 16th day of November 2021.

Respectfully Submitted:

/s/ Jessica Levin
Jessica Levin, WSBA #40837
Robert S. Chang, WSBA #44083
Melissa R. Lee, WSBA #38808
Counsel for Petitioner*

*Counsel recognize Civil Rights Clinic law student Denise Chen, ’22 for her contributions to this brief.

DECLARATION OF SERVICE

I declare under penalty of perjury under the laws of the State of Washington, that on November 16, 2021, the forgoing document was electronically filed with the Washington State's Appellate Court Portal, which will send notification of such filing to all attorneys of record.

Signed in Seattle, Washington, this 16th day of November, 2021.

/s/ Jessica Levin
Jessica Levin
Counsel for Petitioner

KOREMATSU CENTER FOR LAW AND EQUALITY

November 16, 2021 - 4:01 PM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	100,222-0
Appellate Court Case Title:	Personal Restraint Petition of Raymond Mayfield Williams Jr.
Superior Court Case Number:	08-1-00735-6

The following documents have been uploaded:

- 1002220_Answer_Reply_20211116160141SC164047_1931.pdf
  This File Contains:
  Answer/Reply - Reply to Answer to Motion for Discretionary Review
  The Original File Name was MDR PRP Williams Reply - Final.pdf

A copy of the uploaded files will be sent to:

- Tom.ladouceur@co.cowlitz.wa.us
- appeals@co.cowlitz.wa.us
- changro@seattleu.edu
- leeme@seattleu.edu

Comments:

Sender Name: Jessica Levin - Email: levinje@seattleu.edu
Address:
901 12TH AVE
KOREMATSU CENTER FOR LAW & EQUALITY
SEATTLE, WA, 98122-4411
Phone: 206-398-4167

Note: The Filing Id is 20211116160141SC164047