No. 98858-7

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

In re the Personal Restraint of

RAYMOND MAYFIELD WILLIAMS,

Petitioner.

PETITIONER'S MOTION FOR DISCRETIONARY REVIEW

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Mr. Raymond Williams asks this Court, pursuant to RAP 13.5A(a)(1), to accept review of the Court of Appeals decision terminating review, dated August 17, 2021, attached as an appendix to this motion.

ISSUES PRESENTED FOR REVIEW

Mr. Williams is sentenced to die in prison under the Persistent Offender Accountability Act (POAA) based on a nonviolent strike offense he committed when he was just 16. This Court has consistently held that mandatory schemes that fail to account for a young person's inherently diminished culpability are unconstitutional. Mr. Williams's motion for discretionary review presents the following issues:

1. Whether this Court should apply its juvenile justice jurisprudence to bring the POAA within the constitutional bounds of article I, section 14 by categorically barring the use of juvenile strikes, ensuring that the state's harshest punishment is not

imposed based on a strike offense committed as a child; in the alternative, whether Mr. Williams's sentence violates individual proportionality under article I, section 14.

2. Whether the Court of Appeals' time bar analysis under RCW 10.73.100(6), holding that this Court's decision in *State v. Bassett*, 192 Wn.2d 67, 428 P.3d 343 (2018), is not material to Mr. Williams's categorical challenge to the use of juvenile strikes under the POAA, conflicts with *Bassett*'s explicit holding that categorical proportionality is the proper test to use for claims regarding the diminished culpability of children.
3. Whether the Court of Appeals properly interpreted this Court's split decision in *In re Pers. Restraint of Monschke*, 197 Wn.2d 305, 482 P.3d 276 (2021), regarding the applicability of RCW 10.73.100(2) as a vehicle to challenge not only the statute a person is

convicted of violating, but also to challenge unconstitutional sentencing statutes.

STATEMENT OF THE CASE

Mr. Williams is serving life without parole based, in part, on a crime he committed as a child. Mr. Williams pleaded guilty to first degree burglary, his first strike offense, after waiving his right to a decline hearing.[1] At that time, he was experiencing homelessness and suffering severe mental health issues and drug addiction. Pet'r Br., App'x H (Williams Decl. ¶

[1] Represented by different counsel, Mr. Williams's first PRP, filed on November 28, 2016, challenged his restraint under the 2008 LWOP sentence due to an improper declination procedure regarding the first strike offense. Mr. Williams maintained that his PRP met an exception to the time bar under RCW 10.73.100(5), because the 2008 sentencing court lacked jurisdiction to use his juvenile strike offense because of the improper decline. The Court of Appeals dismissed the PRP as time barred. *In re Pers. Restraint of Williams*, No. 49894-4-II, 2019 WL 949431, at *4-5 (Wash. Ct. App. Feb. 26, 2019). In this counseled successor PRP, Mr. Williams raises only issues not previously heard and determined on the merits, and which could not have been raised in the first PRP. The instant PRP does not prejudice any arguments Mr. Williams may wish to raise in a future PRP attacking his restraint pursuant to the 1997 conviction.

2). He "wanted out of Thurston County Juvenile Detention Center," where he had experienced abuse by the staff. *Id.* ¶ 13.

Mr. Williams's childhood was marked by multiple adverse childhood experiences (ACEs). By the age of 9, Mr. Williams had already attempted to run away from his abusive home. *Id.* ¶ 3. His father was incarcerated, and his mother struggled with addiction. By his early teens, he was on the path to becoming a state-raised youth. *Id.* ¶ 3.

While Mr. Williams initially thought that foster care would save him from further abuse, his foster care experience only reinforced his worldview at the time that adults could not be trusted, and that everyone was out to hurt him. *Id.* ¶ 4. He had been placed in several foster homes and group homes, but all were abusive and hostile. *Id.* ¶ 4. The only place he felt safe was on the streets of Olympia. *Id.* ¶ 10. He never finished middle school, completing only sixth grade. *Id.* ¶ 5. Before the age of 15, he had been placed in lockdown mental health facilities three times. *Id.* ¶¶ 6-8. As a young teenager, he was

hospitalized at least three times for attempting suicide. *Id.* ¶¶ 8-9.

After serving his sentence for his first strike offense, he was released at the age of 19 into a homeless shelter in Port Angeles. *Id.* ¶ 15. A few years later, in 2004, at the age of 23, he was convicted of a second strike offense—burglary in the first degree. Finally, in 2008, at the age of 28, Mr. Williams pleaded guilty to his third strike offense of assault in the second degree. He has no other adult criminal history.

Since being sentenced to life without parole in 2008, Mr. Williams has demonstrated remarkable rehabilitation. Here are some highlights:

- He is working toward his Associates degree.[2] *See* Williams Decl. ¶ 18.
- From 2009 – 2015, he served on the Earned Incentive Team that helped administer activities and programs to reduce violence in the Washington State Penitentiary

[2] When the petition was filed in 2019, Mr. Williams anticipated finishing his degree in 2020. Due to the pandemic, Mr. Williams was unable to pursue completion of his degree for over a year. He now has 66 credits and will obtain his degree after four more classes.

(WSP). *Id*. ¶ 19.

- In 2012, he helped start the Sustainable Practices Lab at WSP that provided jobs to the prison population and donated numerous items to the community. *Id*. ¶ 22.
- He has helped to lead The Redemption Project since 2013 at both the WSP and Monroe Correctional Complex. *Id*. ¶ 23.
- He helped to start the State Raised Working Group in 2016 to address systemic issues that lead to disproportionate representation of foster youth within the criminal justice system. *Id*. ¶ 20.
- And in 2016, he saved the life of a corrections officer who was being bludgeoned in the head by another prisoner. *Id*. ¶ 24.
- Since 2017, he has served as a leader for the Concerned Lifers Organization and in February 2019 testified[3] before the Senate Human Services, Reentry and Rehabilitation Committee regarding sentencing reforms that could address systemic inequities in our justice system. *Id*. ¶ 26.

Not only do his accomplishments reflect his deep capacity for personal change, they also reflect his commitment to the communities of which he is a part, both within and outside the walls of prison. *See id*. ¶¶ 16-32.

[3] https://www.tvw.org/watch/?eventID=2019021111 (testimony at 25:20-32:15).

Procedural History

Mr. Williams filed the instant PRP in this Court on September 20, 2019, challenging his Cowlitz County Superior Court Judgment and Sentence in Cause No. 08-01-00735-6, entered on October 15, 2008, that classified him as a persistent offender, RCW 9.94A.570, and subjected him to life without parole. Mr. Williams invoked this Court's original concurrent jurisdiction under RAP 16.3, asking this Court to determine that article I, section 14 categorically bars use of a strike offense committed as a child to support life without parole under the POAA—an issue the Court explicitly left open in *State v. Moretti*, 193 Wn.2d 809, 821 n.5, 446 P.3d 609 (2019) ("We express no opinion on whether it is constitutional to apply the POAA to an offender who committed a strike offense as a juvenile.").

The PRP was transferred to Division II (No. 53879-2-II). On August 4, 2020, after completion of the briefing before Division II, Mr. Williams sought to transfer his PRP back to

this Court, pursuant to RAP 4.4 and RCW 2.06.030. On September 8, 2020, Commissioner Johnston denied the motion to transfer. On August 17, 2021, Division II of the Court of Appeals denied the PRP, determining that it met neither the time bar exception of RCW 10.73.100(2) nor (6).

ARGUMENT

Mr. Williams is sentenced to die in prison, even though one of his three most serious offenses was committed when he was only 16 years old. The use of juvenile strike offenses to support imposition of the State's harshest punishment is out of step with this Court's juvenile justice jurisprudence, as it leaves in place a scheme mandating disproportionate punishment on a class of offenders who are inherently less culpable than those who commit all strike offenses as adults. This Court should answer the precise question left open in *Moretti*, 193 Wn.2d 809, ¶ 22 n.5—"a significant question of law under the Constitution of the State of Washington," RAP 13.4(b)(3), and

"an issue of substantial public interest" under RAP 13.4(b)(4). Review is warranted to end this cruel practice.

Mr. Williams's case also warrants review under RAP 13.4(b)(1) and (3) to correct the Court of Appeals' constricted reading of *Bassett* as material "only to those offenders who have been sentenced to LWOP under RCW 10.95.030," *In re Pers. Restraint of Williams*, No. 53879-2-II, 2021 WL 3627730, at *7 (Wash. Ct. App. Aug. 17, 2021), when in fact *Bassett* is material to Mr. Williams's categorical challenge involving the diminished culpability of children as a class. *Bassett* explicitly held that the categorical bar analysis is the proper test to use for claims about the diminished culpability of children, as it "allows us to consider the characteristics of youth, the crux of this categorical challenge." *Bassett*, 192 Wn.2d at 85. Further, the Court of Appeals' materiality analysis entirely disregards the materiality of *Bassett*'s substantive independent judgment analysis regarding the diminished culpability of children.

Finally, Mr. Williams's case warrants review to clarify this Court's plurality opinion in *Monschke*, 197 Wn.2d 305, regarding the time bar analysis of RCW 10.73.100(2), and to address the applicability of RCW 10.73.100(2) to the POAA, "an issue of substantial public interest" under RAP 13.4(b)(4). Further clarification of this avenue for post-conviction relief from unconstitutional sentences is vital to Washington's ongoing commitment to correcting unjust laws and beginning to undo mass incarceration.

I. Review Is Warranted to Bring the POAA Within Constitutional Bounds and to Harmonize It With This Court's Juvenile Justice Jurisprudence.

Imposition of life without parole based in part on inherently less-culpable juvenile conduct violates the categorical proportionality principles of article I, section 14 articulated in *Bassett*, 192 Wn.2d 67, as well as this Court's repeated pronouncements that mandatory sentencing schemes that fail to account for the diminished culpability of children are constitutionally infirm. *Id.* (mandating categorical test for

claims based on the diminished culpability of children as a class and categorically barring juvenile life without parole); *State v. Houston-Sconiers*, 188 Wn.2d 1, 391 P.3d 409 (2017) (requiring consideration of mitigating circumstances of youth at sentencing and holding that courts have full discretion to depart from any adult sentencing range and/or mandatory enhancements); *State v. Gilbert*, 193 Wn.2d 169, 438 P.3d 133 (2019) (sentencing courts possess discretion to consider downward sentences for juvenile offenders regardless of any sentencing provision to the contrary); *Monschke*, 197 Wn.2d 305 (heightened protection of article I, section 14 requires *Miller*'s guarantee of individualized sentencing extend to those aged 18-21 who are convicted of aggravated murder).

The POAA mandates that strike offenses committed as juveniles support a life without parole sentence—the harshest sentence available in Washington. *See* RCW 9.94A.030(34) (an "offender" is either over 18 or under 18 and declined to adult court); RCW 9.94A.030(37) (defining persistent offender as

one convicted of a most serious offense who has also been "convicted as an offender on at least two separate occasions" of most serious offenses); RCW 9.94A.570 (requiring life without parole to be imposed on persistent offenders); *State v. Gregory*, 192 Wn.2d 1, 427 P.3d 621 (2018) (invalidating the death penalty statute and converting all death sentences to life without parole).

Mr. Williams has squarely challenged the cruelty of his punishment under article I, section 14. This Court has a duty to interpret the state constitution; after *Gregory*, this Court also has a duty to engage in "a serious reexamination of our mandatory sentencing practices . . . to ensure a just and proportionate sentencing scheme." *Moretti*, 193 Wn.2d ¶ 50 (Yu, J., concurring). The mandatory imposition of life without parole is cruel when applied to Mr. Williams and the class of offenders of which he is a part, who were convicted of a strike offense as a child. To treat a strike offense committed by a child identically to a strike offense committed by an adult violates the

promise of our constitution to protect against cruel punishment. Children are less criminally culpable than adults, and the characteristics of youth do not support the penological goals of a life without parole sentence. *Bassett*, 192 Wn.2d ¶ 44; *see also id.* ¶ 39 (because children have "lessened culpability they are less deserving of the most severe punishments"). *Bassett* provides new grounds to find that outdated assumptions about "offenders" and culpability are constitutionally flawed when applied to strike offenses committed by children. Review of Mr. Williams's core constitutional challenge to the POAA is warranted under RAP 13.4(b)(3) and (4).

Review of the core constitutional challenge to the POAA will also permit this Court to reiterate that proportionality review of POAA sentences requires consideration of both the qualifying and predicate strikes. This is required to comport with article I, section 14, regardless of whether the sentence imposed is viewed as punishment for all three strikes, or whether the predicate strikes "aggravate[] the guilt of the last

conviction and justifies a heavier penalty for the crime." *Williams*, 2021 WL 3627730, at *7-8 (quoting *Moretti*, 193 Wn.2d at 826). For the same reasons that it is cruel to sentence someone to die in prison for a strike offense committed as a child, it is cruel to assume that a juvenile strike would aggravate the guilt of the third strike in the same way as a strike offense committed by an adult.

The Court of Appeals' reliance on *Moretti* for the proposition that "only the third strike offense was relevant to the constitutional analysis," *Williams*, 2021 WL 3627730, at *7, contradicts *State v. Fain*, 94 Wn.2d 387, 617 P.2d 720 (1980), and subsequent POAA decisions of this Court under article I, section 14, which unambiguously require proportionality review to include all offenses. *Fain*, 94 Wn.2d at 397-98 (examining "each of the crimes that underlies his conviction as a habitual offender"); *State v. Thorne*, 129 Wn.2d 736, 773-74, 921 P.2d 514 (1996), *abrogated on other grounds by Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403

(2004) (same); *State v. Manussier*, 129 Wn.2d 652, 677, 921 P.2d 473 (1996) (same); *State v. Rivers*, 129 Wn.2d 697, 713, 714, 921 P.2d 495 (1996) (discussing prior offenses under *Fain* factor 4); *see also Bassett*, 192 Wn.2d, ¶¶ 30-35 (*Fain* adopted individual proportionality analysis because it fit the challenge Fain brought—that his sentence "was grossly disproportionate to his *crimes*") (emphasis added)). To limit proportionality analysis solely to the final "strike" under article I, section 14 would afford less protection than the Eighth Amendment,[4] which is impermissible. *Gregory*, 192 Wn.2d at 36 (Johnson, J., concurring).

Relying on *Moretti*, the Court of Appeals concluded that proportionality review "focuses on the nature of the current offense, not the nature of past offenses." *Williams*, 2021 WL

[4] *Cf. Solem v. Helm*, 463 U.S. 277, 296-97, 103 S. Ct. 3001, 77 L. Ed. 2d 637 (1983) (examining closely both the instant and previous offenses that qualified Helm as a habitual offender); *Rummel v. Estelle*, 445 U.S. 263, 295, 100 S. Ct. 1133, 63 L. Ed. 2d 382 (1980) (Powell, J., dissenting) (considering each of the victimless crimes underlying LWOP sentence).

3627730, at *8 (quoting *Moretti*, 193 Wn.2d at 832). However, it is unclear that former Chief Justice Fairhurst appreciated how this sentence from *Moretti*, if taken literally, would sub silentio reverse *Fain*, *Thorne*, *Manussier*, and *Rivers*. Usually, more is required to reverse 40 years of settled Washington jurisprudence.[5] And this Court is not bound to follow *Moretti* on that point, because *Moretti* did not actually address the tension between its characterization of recidivist punishment and its duty under article I, section 14 and the Eighth Amendment to review all strikes. *See In re Pers. Restraint of Stockwell*, 179 Wn.2d 588, 600, 316 P.3d 1007 (2014) ("Where the literal words of a court opinion appear to control an issue, but where the court did not in fact address or consider the issue,

[5] *See State v. Studd*, 137 Wn.2d 533, 548, 973 P.2d 1049 (1999) ("We will not overrule such binding precedent *sub silentio*."). Justice Fairhurst herself warned against sub silentio overruling of precedent. *Lunsford v. Saberhagen Holdings, Inc.*, 166 Wn.2d 264, 280, 208 P.3d 1092 (2009) (citing *Studd*, 137 Wn.2d at 548) (where Court has "expressed a clear rule of law . . . we will not —and should not—overrule it sub silentio").

the ruling is not dispositive and may be reexamined without violating stare decisis in the same court").

Even if predicate strikes are viewed only as aggravating the guilt of the third strike,[6] a juvenile predicate strike cannot aggravate the guilt of the third strike to the same degree as a predicate strike committed as an adult. Categorically, a predicate first strike committed by a child, whose culpability is always 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. The same inherently diminished culpability of children as a class that drove this Court to categorically bar juvenile life without parole cannot be ignored when it comes to using juvenile strikes to justify imposition of the state's harshest punishment.

Mr. Williams also argued that his sentence violates

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[6] Mr. Williams's PRP sets forth in detail why proportionality review encompasses both the qualifying and predicate strikes, and why the punishment imposed is necessarily for all strikes. Pet'r Br. at 13-17; Reply Br. at 10-14.

individual proportionality, and that this claim meets the time bar exceptions of RCW 10.73.100(2) and (6). Pet'r Br. at 33-37; Reply Br. at 7-8, 20-25. Should the Court determine his PRP is not time-barred but decline to resolve the claim on categorical proportionality, the Court should accept review to explicitly include considerations of the offender into the *Fain* individual proportionality analysis.

II. Review Is Warranted to Correct the Court of Appeals' Materiality Analysis Under RCW 10.73.100(6), Which Reflects an Overly Narrow Understanding of the *Bassett* Decision.

Bassett constitutes a significant change in the law that is retroactive[7] and material to the use of juvenile strikes to justify imposition of life without parole. The crux of Mr. Williams's challenge—that those sentenced to die in prison based on a juvenile predicate are, as a class, less culpable than those who

[7] The Court of Appeals assumed without deciding that *Bassett* constitutes a significant change that applies retroactively. *Williams*, 2021 WL 3627730, at *7.

commit all strikes as adults—is as rooted in the characteristics of children as a class as was Mr. Bassett's challenge.

In its materiality analysis, the Court of Appeals mischaracterized *Bassett* as having only a single holding—barring life without parole imposed on a juvenile offender. *Williams*, 2021 WL 3627730, at *7-8. It thus ignores both the materiality of *Bassett*'s mandate to apply categorical proportionality to claims involving the diminished culpability of children, and the materiality of *Bassett*'s independent judgment of the cruelty of imposing life without parole based on crimes committed by children.

First, the *Bassett* decision is material because it requires the application of categorical proportionality to claims based on the diminished culpability of an offender class—in this instance, offenders serving life without parole based on a juvenile strike. *Bassett* explicitly held that article I, section 14 jurisprudence requires categorical proportionality to be applied to resolve claims about the diminished culpability of children:

> [T]hough we have adopted *Fain* to assess other cruel punishment claims under our state constitution, it is inappropriate to assess Bassett's categorical challenge, which is based on the characteristics of children…Because the categorical bar analysis allows us to consider the characteristics of youth, the crux of this categorical challenge, we adopt it in this instance. This holding does not disturb our *Fain* decision.

Bassett, 192 Wn.2d at 85.[8]

Bassett's adoption of categorical proportionality is material because it fundamentally changes the analysis necessary to resolve the constitutionality of Mr. Williams's sentence. *Id.* at 83-84. Before *Bassett*, there was no doctrinal pathway under article I, section 14 to require a court to consider the severity of a particular punishment as it related to the culpability of the offender class. With categorical proportionality, "[i]ssues of culpability, the severity of the

[8] This Court also explicitly held in *Bassett* that article I, section 14 is more protective than the Eighth Amendment. *Id.* at 82 ("Thus, we hold that in the context of juvenile sentencing, article I, section 14 provides greater protection than the Eighth Amendment.").

punishment, and whether penological goals are served all allow the court to include youth-specific reasoning into the analysis." *Id.* at 83-84.[9]

Second, *Bassett*'s independent judgment analysis, wherein this Court recognized the neurodevelopmental differences present in *all* children that diminish their culpability, *Bassett*, 192 Wn.2d at 87-89, is also material to Mr. Williams's claim. The *Bassett* Court surveyed the neuroscience and the United States Supreme Court's Eighth Amendment decisions flowing from that science to determine for the first time that, under article I, section 14, *categorical rules* were necessary to effectuate its heightened protection against cruel

[9] An additional consideration is that the Court of Appeals may have failed to appreciate the expansiveness of this holding, which would seem to cut off post-conviction review of not only claims based on the diminished culpability of children, but claims based on the diminished culpability of other classes. *See, e.g.*, *Atkins v. Virginia*, 536 U.S. 304, 122 S. Ct. 2442, 153 L. Ed. 2d 335 (2002) (imposition of death penalty on people with intellectual disabilities categorically barred due to their diminished personal culpability).

punishment. Further, *Bassett*'s analysis of whether imposition of life without parole serves legitimate penological goals is material because it creates a framework to assess the cruelty of allowing crimes committed by children to support life without parole under the POAA. *See* Pet'r Br. at 27-32 (setting forth independent judgment analysis conducted in *Bassett* and demonstrating it applies, verbatim, to use of juvenile strikes under the POAA). The same characteristics of children that make juvenile life without parole categorically disproportionate weaken the justifications for imposing life without parole on the class of offenders with juvenile strikes.

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) (citing *In re Pers. Restraint of Domingo-Cornelio*, 196 Wn.2d 255, 265, 474 P.3d 524 (2020), *cert. denied sub nom. Washington v. Domingo-Cornelio*, 141 S. Ct. 1753, 209 L. Ed. 2d 515 (2021)). Just as in *Domingo-Cornelio*, where this Court

noted in its materiality analysis of *Houston-Sconiers* that Mr. Domingo Cornelio "received the kind of sentence that implicates *Houston-Sconiers*," *Domingo-Cornelio*, 196 Wn.2d at 265, Mr. Williams has received the kind of sentence that implicates *Bassett*'s core mandate: that challenges based on the characteristics of youth as a class must be analyzed via categorical proportionality. And just as in *Domingo-Cornelio*, where Mr. Domingo-Cornelio "could not have argued that the court was required to consider his youth at sentencing or that it had to consider whether his youth justified any exceptional sentence downward in light of its absolute discretion," *id.*, Mr. Williams could not have argued before *Bassett* that his claim had to be resolved via categorial proportionality, nor that this Court recognized that children as a class share characteristics that preclude imposition of the State's harshest punishment. If Mr. Williams had been able to make those arguments, it is all but certain that his juvenile strike would not have been counted

as a predicate, and he would not have been sentenced to die in prison.

III. Review Is Warranted to Further Clarify the Applicability of RCW 10.73.100(2) to Unconstitutional Sentences as Well as Convictions.

Review is also warranted to give this Court an opportunity to further clarify its plurality opinion in *Monschke* regarding the applicability of the time bar exception to convictions as well as sentences, where the sentence flows automatically from the conviction. *Monschke*, 197 Wn.2d at 309-11.

An overly formalistic interpretation of RCW 10.73.100(2) contravenes this Court's interpretation of the time bar and its exceptions: "In streamlining the postconviction collateral review process, RCW 10.73.090 *et seq*. have preserved *unlimited access* to review in cases where there truly exists a question as to the *validity of the prisoner's continuing detention*." *In re Pers. Restraint of Runyan*, 121 Wn.2d 432, 453, 853 P.2d 424 (1993) (emphasis added).

As the Court of Appeals noted after summarizing the *Monschke* plurality regarding the interpretation of RCW 10.73.100(2), a narrow construction of this time bar exception precludes all restrained offenders from challenging an unconstitutional sentence. *Williams*, 2021 WL 3627730, at *5 (noting Mr. Williams's argument that Mr. Gregory would have been precluded from raising his challenge to the death penalty had it been brought as a PRP rather than as a direct appeal.). The Court of Appeals further noted Mr. Williams "essentially argues that distinguishing between unconstitutional convictions and unconstitutional sentences makes no sense," and that "Mr. Williams may be correct. It is difficult to understand why the legislature limited the exception in RCW 10.73.100(2) to when '[t]he statute that the defendant was convicted of violating' is unconstitutional rather than extending the exception to unconstitutional sentences as well." *Id.* (quoting RCW 10.73.100(2)).

Four justices of this Court agree that in the aggravated murder context, RCW 10.73.100(2) provided a time bar exception because a challenge to the "aggravated murder statute *is* a challenge to the criminal statute they were 'convicted of violating.'" *Monschke*, 197 Wn.2d at 310 (quoting RCW 10.73.100(2)). Because the aggravated murder statute requires life without parole and requires the State to charge and the finder of fact to find the defendant guilty of the very same charge, any distinction in this context between conviction and sentence is "absurd." *Id.*, *id.* n.5 (citing *In re Pers. Restraint of Skylstad*, 160 Wn.2d 944, 952, 162 P.3d 413 (2007)). Four justices opined that the legislature's failure to explicitly include "sentence" in RCW 10.73.100(2) renders that time bar exception applicable only to challenges to unconstitutional convictions. *Id.* at 334-35 (Owens, J., dissenting). Justice González's concurrence, which is formally a full concurrence rather than a partial concurrence and partial dissent, appears to agree with the dissent's time bar analysis. *See id.* at 329

(González, J., concurring). If there is a majority on this point, post-conviction challenges to unconstitutional sentences may simply be unavailable, absent a significant change in the law under RCW 10.73.100(6). But the circumstances that may render a sentence unconstitutional are not wholly encompassed by the significant change exception. *Gregory*, 192 Wn.2d 1.

The same absurdity Justice Gordon McCloud noted in *Monschke* of any distinction between conviction and sentence in the aggravated murder statute exists in the POAA context as well.[10] Mr. Williams pleaded guilty to Assault 2, which is a "most serious offense" under RCW 9.94A.030(32). Because of his two previous strikes, this triggered the court to convict him as a "persistent offender," RCW 9.94A.030(37)(a). The judgment and sentence itself states that the court "f[i]nd[s] the defendant to be a Persistent Offender. RCW 9.94A.570." Pet'r

[10] While the POAA is part of the SRA, it functions as an independent mandatory sentencing scheme, unlike the rest of the SRA, which is rooted in a sentencer's discretion in applying the sentencing grid.

Br., App'x A-6. Classification as a persistent offender under RCW 9.94A.030(37) triggers automatic and mandatory imposition of life without parole, RCW 9.94A.570, just as a conviction of aggravated murder automatically triggers mandatory life without parole. *Monschke*, 197 Wn.2d at 310. The cruel sentence applied to Mr. Williams as a result of his being convicted of a "most serious offense," thus satisfies RCW 10.73.100(2). Review is warranted to clarify the applicability of RCW 10.73.100(2) as a vehicle for review of unconstitutional sentences under the POAA.

CONCLUSION

When the POAA was approved by voters in 1993, the existing statutory definition of "offender" meant that children prosecuted in adult court were swept under the broad reach of the POAA and treated the same as adults. We didn't know any better then. We know better now. Mr. Williams respectfully requests that the Court grant discretionary review to bring the

POAA within the bounds of this Court's juvenile justice jurisprudence.

DATED this 16th day of September, 2021.

Respectfully Submitted:

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APPENDIX

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In re the Personal Restraint Petition of: RAYMOND MAYFIELD WILLIAMS, JR., Petitioner.	No. 53879-2-II PUBLISHED OPINION

MAXA, J. – In this personal restraint petition (PRP), Raymond Williams seeks relief from personal restraint imposed for his 2008 guilty plea to second degree assault. Because this was his third strike offense under Washington's Persistent Offender Accountability Act (POAA), chapter 9.94A RCW, Williams was given a mandatory sentence of life without release.

Under the POAA, a person is classified as a persistent offender pursuant to RCW 9.94A.030(37)[1] when he or she has been convicted of a felony that is considered a most serious offense for the third time after two previous convictions of most serious offenses. Williams was 16 years old when he pled guilty to his first strike offense, first degree burglary. His second strike offense, also first degree burglary, occurred when he was 23 years old. His third strike offense occurred when he was 28 years old.

[1] The POAA has been amended many times since Williams's 2008 conviction, but those amendments are not material to this case. Therefore, we cite to the current versions of the relevant statutes.

Williams argues that his PRP meets two different exceptions to the one-year time bar for PRPs. He claims that (1) RCW 10.73.100(2) applies because the use of a juvenile strike offense as a predicate offense to impose a life without release sentence under the POAA is unconstitutional, and (2) RCW 10.73.100(6) applies because *State v. Bassett*, 192 Wn.2d 67, 428 P.3d 343 (2018), which held that a life without release or parole sentence for a juvenile offender is unconstitutional, was a significant change in the law that is retroactive and material to his sentence.

On the merits, Williams argues that the POAA violates the cruel punishment provision of article I, section 14 of the Washington Constitution because it requires a life without release sentence even when one of the predicate strike offenses was committed as a juvenile.

We hold that Williams's PRP claim is untimely and does not meet the exceptions provided under (1) RCW 10.73.100(2), because Williams challenges only the constitutionality of the POAA, not the statute under which he was convicted; and (2) RCW 10.73.100(6), because the holding in *Bassett* is not material to Williams's POAA sentence for an offense he committed when he was an adult. Accordingly, we deny Williams's PRP.

FACTS

In May 1997, the State charged Williams in juvenile court with first degree burglary for an incident that occurred in February 1997 when he was 16 years old. Williams waived his right to a decline hearing and his case was transferred to adult court. Williams ultimately pled guilty to one count of first degree burglary and one count of custodial assault and was sentenced as an adult. He was sentenced to 31 months of confinement.

In a declaration attached to his PRP, Williams explained that at the time of his 1997 conviction he was emotionally unstable and had a long history of mental illness, trauma, and

drug addiction. He finished only the sixth grade, had lived in several foster and group homes, and had been placed in mental health lockdown facilities three times. He also was hospitalized at least twice for attempted suicides.

Williams stated that he did not understand the consequences of being tried in adult court when he waived his right to be tried in juvenile court, and neither the court nor his attorney explained those consequences. He was just desperate to be transferred out of the abusive juvenile detention facility where he had been confined.

In April 2004, Williams was convicted of first degree burglary for an incident that occurred in September 2003. He was sentenced to 48 months of confinement. Williams was 23 years old when he committed this offense.

In October 2008, Williams pled guilty to second degree assault under RCW 9A.36.021(1)(c), assault with a deadly weapon. Williams was 28 years old at the time of the plea and sentencing. Because this was his third strike under the POAA, the superior court imposed a mandatory sentence of confinement for life without the possibility of release. Williams did not appeal his conviction or his sentence.

In 2016, Williams filed his first PRP, arguing that the 1997 conviction should not have counted as a strike offense. *In re Pers. Restraint of Williams*, No. 49894-4-II, slip op. at *1-2 (Wash. Ct. App. Feb. 26, 2019) (unpublished), https://www.courts.wa.gov/opinions/pdf/D2%2049894-4-II%20Unpublished%20Opinion.pdf. He argued that his PRP was not time barred because his sentence was imposed in excess of the superior court's jurisdiction and that a significant change in the law had occurred. *Id.* This court held that neither exception to the one-year time bar applied and denied his PRP. *Id.*

Williams filed his second PRP in September 2019, almost 10 years after his judgment was final. His PRP included his declaration, which showed that he had been rehabilitated to a significant degree while in prison.

ANALYSIS

A. POAA PROVISIONS

Under RCW 9.94A.570, a person classified as a "persistent offender" must be sentenced to "total confinement for life without the possibility of release." RCW 9.94A.030(37) defines "persistent offender" to include an offender who has been convicted of a "most serious offense" and who previously has been convicted at least two separate times for most serious offenses. RCW 9.94A.030(32) defines "most serious offense" as all class A felonies and a number of other listed felonies, including second degree assault.

RCW 9.94A.030(34) defines "offender" to include only adults and juveniles who have been convicted in adult court. Therefore, adjudications in juvenile court are not counted as strikes under the POAA. *State v. Moretti*, 193 Wn.2d 809, 819, 446 P.3d 609 (2019).

B. PRP TIME BAR

1. Legal Principles

RCW 10.73.090(1) provides that a petitioner generally must file a PRP within one year after a trial court judgment becomes final. A judgment is final on the date that it is filed with the clerk of the trial court. RCW 10.73.090(3)(a). However, RCW 10.73.100 lists six exceptions to the one-year time limit.

The two exceptions that potentially are applicable here are RCW 10.73.100(2) and RCW 10.73.100(6). RCW 10.73.100(2) states that the time bar does not apply if "*[t]he statute that the defendant was convicted of violating* was unconstitutional on its face or as applied to the defendant's conduct." (Emphasis added.)

RCW 10.73.100(6) states that the time bar does not apply if:

> [t]here has been a *significant change in the law*, whether substantive or procedural, *which is material* to the conviction, sentence, or other order entered in a criminal or civil proceeding instituted by the state or local government, and either the legislature has expressly provided that the change in the law is to be applied retroactively, or a court, in interpreting a change in the law that lacks express legislative intent regarding retroactive application, determines that sufficient reasons exist to require retroactive application of the changed legal standard.

(Emphasis added.)

Here, Williams's judgment and sentence became final in 2009. But he did not file the current PRP until 2019. Therefore, the question is whether Williams's PRP is exempt from the one-year time bar under either RCW 10.73.100(2) or (6).[2]

2. Applicability of RCW 10.73.100(2)

Williams argues that his PRP meets the exception provided under RCW 10.73.100(2) because the application of the POAA is unconstitutional when it is based on a strike offense committed when the offender was a juvenile. The State argues that RCW 10.73.100(2) is inapplicable because the exception only applies to the particular substantive criminal statute that

[2] Williams previously filed a PRP that was dismissed. *Williams*, No. 49894-4-II, slip op. at *1. In general, the Court of Appeals is barred from considering a subsequent PRP if the petitioner raises similar grounds to those raised in the previous petition or the petitioner raises a new ground for relief and fails to show good cause for not having raised the new ground in the previous petition. RCW 10.73.140; *see In re Pers. Restraint of Bell*, 187 Wn.2d 558, 562, 387 P.3d 719 (2017). Williams asserts that this PRP is not barred as a successive petition because he raises a new issue that was not determined on the merits in the first PRP. The State does not argue that Williams's second PRP is barred as a successive petition. Therefore, we do not address this issue.

Williams was convicted of violating – second degree assault under RCW 9A.36.021 – not the life without release sentence itself as imposed under the POAA. We agree with the State.

a. Statutory Language

As stated above, RCW 10.73.100(2) states that the time bar does not apply if "*[t]he statute that the defendant was convicted of violating* was unconstitutional on its face or as applied to the defendant's conduct." (Emphasis added.)

The primary goal of statutory interpretation is to ascertain and give effect to the legislature's intent, which we determine by first looking to the plain language of the statute. *In re Pers. Restraint of Pugh*, 7 Wn. App. 2d 412, 418, 433 P.3d 872 (2019). To determine legislative intent, we focus on the plain meaning of the statutory language, the context of the provision within the statute, related provisions, and the statutory scheme as a whole. *Id.* If the plain meaning of a statute is unambiguous, then we must apply that plain meaning without further construction. *In re Pers. Restraint of Dove*, 196 Wn. App. 148, 155, 381 P.3d 1280 (2016). When interpreting a statute, every word must be given meaning to avoid rendering any language meaningless or superfluous. *State v. Larson*, 184 Wn.2d 843, 850, 365 P.3d 740 (2015).

b. *Monschke* Split Decision

In *In re Personal Restraint of Monschke*, two petitioners who were 19 and 20 years old each were convicted of aggravated first degree murder and given mandatory life without release or parole (LWOP) sentences pursuant to RCW 10.95.030(1), which mandates a life sentence for aggravated first degree murder. 197 Wn.2d 305, 306, 482 P.3d 276 (2021). In a 5-4 decision, the Supreme Court held that mandatory life sentences for 18-, 19-, or 20-year-old offenders are unconstitutional. *Id.* at 329. The court remanded each case "for a new sentencing hearing at

which the trial court must consider whether each defendant was subject to the mitigating qualities of youth." *Id.*

As a threshold question, Justice Gordon McLeod's lead opinion – joined by three other justices – addressed whether RCW 10.73.100(2) applied as an exception to the one-year time bar for a challenge to a sentencing statute. *Id.* at 309-11. The opinion noted that the petitioners were not challenging the statute that defined aggravated murder, but stated:

> [I]n this case, the petitioners challenge not a regular sentencing statute but the aggravated murder statute. The aggravated murder statute is different than other sentencing statutes – it requires the State to charge and the jury (or other trier of fact) to find the defendant "guilty" of that very same aggravated murder charge. In other words, petitioners' challenge to the constitutionality of the aggravated murder statute, which criminalizes premeditated first degree murder as aggravated murder in certain circumstances, *is* a challenge to the criminal statute that they were "convicted of violating."

Id. at 310. The opinion declined to extend its ruling to all unconstitutional sentencing statutes; the ruling was limited to the application of RCW 10.95.030(1). *Id.*

Justice Owens's dissenting opinion, joined by three other justices, disagreed with the lead opinion's RCW 10.73.100(2) analysis. *Id.* at 334-35 (Owens, dissenting). The opinion stated:

> This "constitutionality" exception is inapplicable according to the very plain language of the statute. This exception limits the challenge to the *statute* that the defendant "*was convicted of violating*." This exception is inapplicable because the petitioners were not convicted of violating the mandatory LWOP sentencing statute, RCW 10.95.030. They were convicted of aggravated murder – RCW 10.95.020. The legislature clearly distinguishes between sentences and convictions in the collateral attack statute. *See* RCW 10.73.100(5), (6).

Id. (citations omitted).

Justice González authored a concurring opinion in which he joined the lead opinion's holding that the petitioners were entitled to a new sentencing hearing at which their ages must be considered as a possible mitigating factor. *Id.* at 329 (González, J., concurring). But Justice González disagreed with the lead opinion's time-bar analysis. *Id.* He stated, "As the dissent

properly notes, RCW 10.73.100(2) applies to violations of substantive criminal statutes that have been found unconstitutional, not sentencing statutes." *Id.* Instead, he agreed that the PRP was not time barred because he believed that the RCW 10.73.100(6) exception for a substantial change in the law applied based on *State v. O'Dell*, 183 Wn.2d 680, 358 P.3d 359 (2015). *Monschke*, 197 Wn.2d at 329.

c. Analysis

Initially, *Monschke* does not control this court's decision. Only four justices signed the lead opinion, and even the lead opinion limited its analysis to the aggravated first degree murder statute. *Monschke*, 197 Wn.2d at 310, 329. Plurality opinions have no binding effect. *In re Pers. Restraint of Isadore*, 151 Wn.2d 294, 302, 88 P.3d 390 (2004), *abrogated on other grounds*, *State v. Buckman*, 190 Wn.2d 51, 409 P.3d 193 (2018). And when there is no majority that agrees on the rationale for a decision, the court's holding is "the narrowest ground upon which a majority agreed." *State v. Patton*, 167 Wn.2d 379, 391, 219 P.3d 651 (2009).

Nevertheless, five justices clearly agreed that the RCW 10.73.100(2) exception does not apply to sentencing statutes. *Monschke*, 197 Wn.2d at 329 (González, J., concurring); *id.* at 334-35, (Owens, J., dissenting). In addition, the reasoning in Justice Owens's dissent in *Monschke* is compelling. The plain language of RCW 10.73.100(2) provides that the one-year time limit does not apply to a PRP when "*[t]he statute that the defendant was convicted of violating* was unconstitutional on its face or as applied to the defendant's conduct." (Emphasis added.) The statute does not provide an exception for when *the statute under which the defendant was sentenced* was unconstitutional.

Further, as Justice Owens's dissent in *Monschke* noted, the legislature distinguished between the terms "conviction" and "sentence" in RCW 10.73.100. *See Monschke*, 197 Wn.2d

at 335 (Owens, J., dissenting). The exception in RCW 10.73.100(5) is limited to a "*sentence* imposed [that] was in excess of the court's jurisdiction." (Emphasis added.) And the exception in RCW 10.73.100(6) expressly applies to a significant change in the law applicable to *both* convictions and sentences. As a result, there is no indication that the legislature intended the exception in RCW 10.73.100(2) to apply to unconstitutional sentencing statutes.

Here, Williams does not challenge the conviction that triggered his third strike or even his juvenile conviction that serves as his first strike. Therefore, under the plain language of RCW 10.73.100(2), that exception to the time bar does not apply.[3]

Williams also argues that if this court finds the State's interpretation more persuasive, then it will preclude all restrained offenders from challenging an unconstitutional incarceration. He references *State v. Gregory*, 192 Wn.2d 1, 427 P.3d 621 (2018) as a hypothetical where Gregory would have been precluded from challenging his death sentence if he had brought his challenge as a PRP rather than as a direct appeal. He essentially argues that distinguishing between unconstitutional convictions and unconstitutional sentences makes no sense.

Williams may be correct. It is difficult to understand why the legislature limited the exception in RCW 10.73.100(2) to when "[t]he statute that the defendant was convicted of violating" is unconstitutional rather than extending the exception to unconstitutional sentences as well. But the legislature is allowed to make such distinctions. "We cannot add words or clauses to an unambiguous statute when the legislature has chosen not to include that language. We assume the legislature 'means exactly what it says.' " *State v. Delgado*, 148 Wn.2d 723, 727, 63

[3] Williams argues that RCW 10.73.100(2) is ambiguous, and therefore the rule of lenity should apply. We decline to apply the rule of lenity because as stated above, the plain language states that a petitioner can only challenge an unconstitutional conviction, not an unconstitutional sentence.

P.3d 792 (2003) (quoting *Davis v. Dep't of Licensing,* 137 Wn.2d 957, 964, 977 P.2d 554 (1999)). Therefore, we cannot ignore the plain language of RCW 10.73.100(2).

Accordingly, we conclude that Williams's PRP is not exempt from the one-year time bar under RCW 10.73.100(2).

3. Applicability of RCW 10.73.100(6)

Williams argues that the exception to the one-year time bar provided under RCW 10.73.100(6) applies because *Bassett* is a significant change in the law that is retroactive and material to his sentence. The State argues that *Bassett* is not material to Williams's sentence. We agree with the State.

a. Legal Background

As stated above, RCW 10.73.100(6) is applicable when (1) there has been a "significant change in the law," (2) the change is "material to the . . . sentence," and (3) "sufficient reasons exist to require retroactive application." *See In re Pers. Restraint of Ali,* 196 Wn.2d 220, 233, 474 P.3d 507 (2020), *cert. denied,* 141 S. Ct. 1754 (2021).

In *Bassett*, the defendant was given three consecutive LWOP sentences under RCW 10.95.030(3)(a)(ii) for three aggravated first degree murders that he committed when he was 16 years old. 192 Wn.2d at 73. The Supreme Court stated its holding as follows:

> We hold that sentencing juvenile offenders to life without parole or early release constitutes cruel punishment and, therefore, RCW 10.95.030(3)(a)(ii) is unconstitutional, insofar as it allows such a sentence, under article I, section 14 of [the] Washington Constitution.

Id. at 91.

The court first determined that article I, section 14 is more protective than the Eighth Amendment to the United States Constitution. *Id.* at 78-82. Second, the court determined that the defendant's claim should be analyzed under a categorical bar analysis rather than the

proportionality analysis expressed in *State v. Fain*, 94 Wn.2d 387, 397, 617 P.2d 720 (1980). *Bassett*, 192 Wn.2d at 82-85. The categorical bar analysis "considers (1) whether there is objective indicia of a national consensus against the sentencing practice at issue and (2) the court's own independent judgment" based on controlling precedents and the court's own understanding of the cruel punishment provision. *Id.* at 83.

In applying the categorical bar analysis, the court noted that (1) there was a national trend toward abandoning LWOP sentences for juveniles and (2) penological goals were not well served by such a harsh sentence due to the characteristics of juvenile offenders, such as an underdeveloped sense of responsibility and consequences. *Id.* at 86-88. Further, the court emphasized that the penological goal of incapacitation was not supported by a LWOP sentence because it is difficult for sentencing courts to determine at what point a juvenile's criminal act is due to " 'unfortunate yet transient immaturity' " rather than " 'irreparable corruption.' " *Id.* at 89 (quoting *Roper v. Simmons*, 543 U.S. 551, 573, 125 S. Ct. 1183, 161 L. Ed. 2d 1 (2005)).

Subsequently, the Supreme Court in *Monschke* held that mandatory life sentences are unconstitutional for offenders who were 18, 19, or 20 years old when they committed their crimes. 197 Wn.2d at 329. The court agreed that the prohibition against mandatory LWOP sentences for juveniles in *Bassett* must extend to young adults because they are "essentially juveniles in all but name." *Id.* at 312.

In *Moretti*, the Supreme Court addressed the imposition of mandatory life without release sentences under the POAA on adult persistent offenders who had committed a strike offense as a young adult. 193 Wn.2d at 813-14. The three petitioners separately were convicted of most serious offenses for the third time, and they each received a life without release sentence as required by the POAA. *Id.* at 814-18. The petitioners each had committed their third strike

offense while in their 30s or 40s, but were young adults who were 19 and 20 years old when they committed their first strike offenses. *Id.* The Supreme Court held that it was not cruel punishment to impose mandatory life without release sentences under the POAA on adult persistent offenders even when they committed a strike offense as a young adult. *Id.* at 830. The court explained that the petitioners were not being punished for their juvenile offenses, but rather had received an aggravated sentence because of their third strike offense. *Id.* at 826.

However, the court expressly stated, "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." *Id.* at 821 n.5.

b. Adoption of Prohibition Against LWOP Sentences for Juveniles

We assume without deciding that the *Bassett* holding that juvenile offenders cannot be given LWOP sentences constitutes a significant change in the law that must be applied retroactively. *See generally, Ali*, 196 Wn.2d at 233-34, 236-46. The issue here is materiality.

There is no question that *Bassett* is not directly applicable to this case. The holding in *Bassett* only applies to offenders who have been sentenced to LWOP under RCW 10.95.030, the aggravated murder statute, for crimes committed when they were juveniles. *See Bassett*, 192 Wn.2d at 91. Here, Williams was sentenced to life without release under the POAA after he committed a third strike offense when he was 28 years old, not when he was a juvenile.

However, Williams and amici argue that *Bassett* is material here because *Bassett* supports the broad proposition that a life without release sentence cannot be imposed based on juvenile conduct. They emphasize that but for the juvenile strike offense, the offender could not receive a life without release sentence. Therefore, they assert that imposing a life without release sentence under the POAA is unconstitutional when one of the strike offenses was committed as a juvenile.

Under this argument, the materiality of *Bassett* depends upon whether we must consider all three strikes offenses or only the third strike offense in determining whether Williams's life without release sentence is unconstitutional. Williams and amici claim that we must consider all three strike offenses in assessing the constitutionality of Williams's life without release sentence. They rely on several cases that reference all the predicate offenses when assessing the constitutionality of life sentences based on an earlier habitual offender statute or the POAA. *See State v. Thorne*, 129 Wn.2d 736, 773, 921 P.2d 514 (1996) (referring to the offenses and the crimes the defendant committed); *State v. Manussier*, 129 Wn.2d 652, 676-77, 921 P.2d 473 (1996) (discussing the nature of all three of the defendant's strike offenses); *State v. Rivers*, 129 Wn.2d 697, 714, 921 P.2d 495 (1996) (noting that the offenses forming the basis for the POAA sentence were serious, violent offenses); *Fain*, 94 Wn.2d at 397 (addressing "each of the crimes that underlies [the defendant's] conviction as a habitual offender").

However, the court in *Moretti* suggested that only the third strike offense was relevant to the constitutional analysis. *See* 193 Wn.2d at 826. In rejecting the defendants' argument that it was unconstitutional to impose a life without release sentence when the first strike offense was committed as a young adult, the court stated:

> The petitioners' argument depends on the assumption that these sentences punish them for crimes they committed as young adults. But these sentences are for the most serious offenses they committed at either age 32 (Moretti) or age 41 (Nguyen and Orr), well into adulthood. *These POAA sentences are not punishment for the crimes the petitioners committed as young adults* because recidivist statutes do not impose "cumulative punishment for prior crimes. The repetition of criminal conduct aggravates the guilt of the last conviction and justifies a heavier penalty for the crime."

Id. (emphasis added) (quoting *State v. Lee*, 87 Wn.2d 932, 937, 558 P.2d 236 (1976)).

Later in the opinion, the court emphasized that its review of the constitutionality of a POAA sentence "focuses on the nature of the current offense, not the nature of past offenses." *Moretti*, 193 Wn.2d at 832. The court noted that the defendants were adults with fully developed brains when they committed their third strike offenses. *Id.*

This court in *State v. Teas*, 10 Wn. App. 2d 111, 447 P.3d 606 (2019), *review denied*, 195 Wn.2d 1008 (2020), made a similar statement in rejecting an argument that imposition of a POAA sentence on an adult offender who committed a predicate strike offense as a youth was cruel punishment. The court stated:

> Teas is not a juvenile being punished for a crime he committed as a juvenile. He was 39 years old when he raped R.C. by forcible compulsion. Therefore, the mitigating factors of youth were not applicable when he was sentenced for this crime.

Id. at 135.

Williams argues that we should ignore the language in *Moretti* that the constitutional analysis must focus on the nature of the third strike offense. He claims that the court could not have meant to overrule sub silentio the previous cases on which he relies: *Thorne*, *Manussier*, *Rivers*, and *Fain*. He also asserts that the language in *Moretti* simply reflects a recognition that recidivist statutes are viewed as punishing only the third offense for purposes of double jeopardy and ex post facto laws. Finally, he claims that *Moretti* can be distinguished because unlike Williams, the petitioners in that case did not show that youth contributed to their prior offenses.

We reject Williams's attempt to ignore the clear statement in *Moretti* that the POAA punishes only the third offense for purposes of a constitutional analysis. And *Moretti* did not overrule the cases on which Williams relies because those cases did not expressly hold that a court must consider all three offenses in reviewing the constitutionality of a POAA sentence.

We follow *Moretti* and conclude that we must consider only the third strike offense in determining whether Williams's life without release sentence is unconstitutional. Here, there is no question that *Bassett* does not address the imposition of a life without release sentence on an adult offender. Therefore, we conclude that *Bassett* is not material to Williams's PRP based on the argument that we must consider the first strike offense in deciding whether his life without release sentence under the POAA is unconstitutional.

c. Adoption of Categorical Bar Analysis

Williams also argues that *Bassett* represents a significant change in the law based on the court's adoption of a categorical bar analysis rather than the traditional *Fain* proportionality analysis to determine the constitutionality of a LWOP sentence for a juvenile offense.

However, even if this ruling represented a significant change in the law, Williams has not shown that this change was material to his sentence. He once again ignores that *Bassett* addressed only a LWOP sentence imposed on a juvenile offender. In this case, the life without release sentence was imposed on an adult offender. In fact, in *Moretti* the court expressly held that "article I, section 14 does not categorically prohibit imposing a life without parole sentence on a fully developed adult offender who committed one of their prior strike offenses as a young adult." 193 Wn.2d at 830.

We conclude that *Bassett* is not material to Williams's PRP based on the argument that *Bassett*'s adoption of a categorical bar analysis for sentences of juvenile offenders was a significant change in the law.

4. Summary

Williams has failed to show that he has satisfied either exception provided under RCW 190.73.100(2) and (6). Because he filed his PRP more than one year after his case became final, we hold that Williams's PRP is time barred.

CONCLUSION

We deny Williams's PRP as untimely.

MAXA, J.

We concur:

LEE, C.J.

SUTTON, J.

CERTIFICATE OF COMPLIANCE WITH RAP 18.17

Undersigned counsel certifies that, pursuant to RAP 18.17(b), the document contains 4,739 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 motions for discretionary review of 5,000 words as required by RAP 18.17(c)(11).

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

/s/ Jessica Levin
Jessica Levin
Counsel for Petitioner

DECLARATION OF SERVICE

I declare under penalty of perjury under the laws of the State of Washington, that on September 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 September, 2021.

/s/ Jessica Levin
Jessica Levin
Counsel for Petitioner

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