NO. 97890-5

IN THE SUPREME COURT OF THE
STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

TONELLI ANDERSON,

Appellant.

SUPPLEMENTAL BRIEF OF RESPONDENT

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A. ISSUES

1. In light of the difficulties in defining and implementing multiple categorial bar rules, should this Court return to State v. Fain[1] as the measure of cruel punishment under the state constitution, a precedent established over 40-years ago?

2. Although a court conducting resentencing hearings to consider youth must focus on youth in a manner not previously required, should the court also remain free to consider other purposes of sentencing, including deterrence and retribution?

3. Does a sentence of 61 years constitute cruel punishment under the state constitution where the offender committed two premeditated murders and a first degree assault when almost 18 years old, was given almost a year of

[1] 94 Wn.2d 387, 617 P.2d 720 (1980).

rehabilitation, and then committed another first degree assault, a robbery, and other offenses as a 20-year-old?

B. FACTS

On September 24, 1994, when Tonelli Anderson was 17.5 years old and living independently with his girlfriend, he and his friend Porshay Austin decided to rob Jason Bateman of a quarter kilogram of cocaine and to kill any witnesses. CP 1, 177-78, 188, 205-06, 302. They went to Bateman's home, where Austin had previously purchased cocaine, for that purpose. CP 154, 188. Bateman's partner Lynell Ricardos, their two-year-old son James, and Ricardos' friend Kristin McMullen were in a back bedroom while Bateman spoke with Anderson and Austin. CP 178-79. When Austin and Anderson saw the drugs they wanted, Austin shot Bateman multiple times, killing him. CP 178-79. Anderson ran down the short hallway to the bedroom and shot the two unarmed women each twice, killing McMullen and severely wounding Ricardos with

a bullet to her face. Id.; 1RP 12. As his mother bled, the two-year-old clutched at Anderson's legs. Anderson then kicked the toddler, who ran, hid in a closet, and survived the attack. CP 5, 190. The murders went unsolved until Anderson was charged on December 23, 1998, four years later. CP 1.

The Bateman-McMullen double homicide was not the first crime Anderson had committed. From age 14 to 17, Anderson had adjudications of guilt for VUCSA – delivery of cocaine (1994), unlawful possession of a weapon (1994), escape in the second degree (1992), robbery in the second degree (1992), taking a motor vehicle (1992), burglary in the second degree (1991), and a host of misdemeanor offenses. CP 9, 132, 198. In 1995, as a result of juvenile adjudications of guilt that occurred after the murders but before Anderson was implicated in or charged with them, Anderson was committed to the Juvenile Rehabilitation Administration (JRA) for a year, where he received intensive treatment and programming. CP 100, 301.

While at the JRA, Anderson admitted the murders in letters to girlfriends, describing them as "premeditated" and stating that his sentence would be "life in prison or the death penalty" if he was caught. CP 174, 188, 244, 268, 269. He said he "messed up" by allowing Ricardos and her baby to live. CP 176, 268. He bragged that he and Austin "got away with murder." CP 272. He sent his "square" girlfriends photographs of the Bateman-Ricardos family and said they were the people "we did that to," to impress and frighten the young women into writing to him and giving him money. CP 174, 176, 207, 221, 240, 252-53, 261. He reminisced that he loved the feeling of shooting people; it made him feel invincible. CP 8. He also admitted to committing similar robberies on other occasions. CP 264, 267-68.

Anderson did "very well" at JRA and told friends he wanted to change his life. CP 216-17, 237, 264, 302. Instead, when he got out, he returned to crime, rapidly amassing convictions for many serious adult felonies, including assault in

the first degree (1997), robbery in the first degree (1997), unlawful imprisonment (1997), unlawful possession of a firearm in the first degree (later reversed), and VUCSA delivery of cocaine (1997). CP 9, 198-99, 301-02. In the robbery and assault case Anderson accosted a man trying to board a bus, hit him in the eye with a hard object, and kicked him viciously in the head five or six times until the man lost consciousness. See State v. Anderson, 96 Wn. App. 1010 (1999) (unpublished). Anderson was 20 years old.

While Anderson was serving his sentence in prison on the adult felonies, the State received an anonymous tip that he was involved in the Bateman-McMullen murders. CP 185. The State's investigation led them to Anderson's inculpatory letters to his girlfriends. CP 185-86. In 1998, the State charged Anderson and Austin with the first-degree murders of Bateman and McMullen. CP 1-9. Despite grievous injury to Ricardos, who lost her eyesight in one eye and still has a bullet lodged in

her brain, the State did not charge the men for that assault. CP 1; RP (3/30/2018) 12.

As he faced trial between the ages of 21-23 years, Anderson mocked the families of the victim, was disrespectful in court, and showed absolutely no signs of remorse over a period of two years. RP 33-34. Anderson waived his right to a jury trial, apparently believing a judge would be more lenient. 2RP 41. He testified at trial and fully denied any involvement in the shootings and he denied writing the letters that tied him to the crime. The trial court, the Hon. Nicole MacInnes (Ret.), found Anderson guilty of two counts of first-degree murder. CP 171-99. Despite the existence of numerous aggravating circumstances, the State did not seek an exceptional sentence above the standard range. CP 136-38, 184-93. The prosecutor explained, "Our recommendation also takes into account the defendant's age at the time that this offense occurred, and that he was 17 years old, and takes into account his attempts in schooling and education while he was in JRA." CP 138.

Noting that it would have "seriously considered an exceptional sentence up if it had been requested," the trial court imposed an aggregate sentence of 736 months (about 61 years). CP 12. Anderson, who was 23 years old at that point, said the system was slanted against the accused, shrugged his shoulders, and asserted his innocence. CP 153. The trial court responded that it was "very, very certain … that justice was done in this case. And the truth is that you murdered two people … of that I am certain." CP 153-54.

Following changes in the law pertaining to sentencing for crimes committed as a juvenile, Anderson requested resentencing in 2018. CP 30. The State conceded that Anderson was entitled to a hearing to try to show that his culpability in the multiple murders was diminished by his youth. CP 102.

At the resentencing hearing, numerous surviving family members of the victims addressed the court about their loss, their continuing fear, and how difficult it was to have to face

Anderson's sentencing again. RP 12-13. Lynell Ricardos returned from California to tell the court, "I fear for my life if he gets out. It is going to be a never-ending thing. Never ending. I suffer every day. Every day. It was hard for me to come up here today. I am hurt. Everyone in this courtroom is hurt. My son [James] suffers from mental illness because of what happened in that house at the age that he was. … He witnessed it all." RP 12. Ricardos hoped that the resentencing, which unfortunately required them to "stir the pot," would finally give everyone closure. RP 13. Jason Bateman's sister explained how her family had to provide care for Ricardos and her son every day since the murders. RP 30. "And to have to come through this again and to be drug through here because he wants a second chance, because our government decided he gets a second chance – we don't get a second chance." 2RP 30.

One person who had not spoken at the original sentencing was Kristin McMullen's biological brother. McMullen had been adopted at birth, and Tony Finley was her

younger biological brother. CP 141-42. As a teenager, Kristin found her biological family, who had abandoned Tony when he was 12 years old. CP 142; RP 36. Less than a week before Anderson shot her to death, Kristin had become Tony's legal guardian. CP 142; 2RP 38. When Kristin died, Tony lost his only family. 2RP 38. "I was alone. She was the last thing I had on this earth. She was my only hope. She was going to adopt me. And when you took her away, you left me homeless from 13 to 18." 2RP 38. Tony pointed out that he and Anderson had both experienced trauma as young people, but only Anderson responded with such violence. 2RP 40. "You could have not harmed innocent people. You could have made choices like I make …. But you made the decisions you made, and now you have to live with the consequences. But at least you are going to live." 2RP 40.

Anderson proposed a sentence of "320 months or time served"—less than half of the original standard range sentence. CP 38. The State adhered to its original recommendation of

736 months. CP 111. Following a Miller[2] hearing and consideration of juvenile brain development research, the resentencing court, the Hon. Barbara Mack (Ret.), rejected Anderson's claim that his culpability was substantially mitigated by his youth and refused Anderson's request for an exceptional sentence below the range, effectively reimposing the original sentence. CP 299-304.

C. ARGUMENT

When sentencing a juvenile prosecuted as an adult, the Eighth Amendment demands consideration of youth but does not forbid a life sentence. This Court has held that the state constitution forbids a life sentence, but that holding derived from an interpretation of the Eighth Amendment which is plainly not viable. This Court has not yet articulated a truly adequate and independent state constitutional basis for such a

[2] Miller v. Alabama, 567 U.S. 460, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012).

ruling, and Anderson does not offer one in his briefing. This Court has also recently announced with virtually no explanation that a 46-year sentence is a de facto life sentence and forbidden, because it deprives the offender of a "meaningful" life. State v. Haag, 198 Wn.2d 309, 495 P.3d 241 (2021). This Court has neither identified the state constitutional language or authority supporting this rule, nor the duration of post-release freedom that would make a life "meaningful." It is, thus, impossible to know what sentence may be imposed on a juvenile prosecuted in adult court for a serious offense.

Moreover, this Court has said sentencers must "focus" on rehabilitation, but it is unclear what that means where, as here, youth did not play a significant role in the crime, where evidence of accomplishments in prison are vague, where there is an absence of expert testimony on dangerousness, and where the nature of the defendant's crime and criminal history (both as a juvenile and as an adult) suggest a disturbed and dangerous person.

Uncertainty as to these core legal questions is untenable because a sentencer cannot know what sentence will be approved until appellate review is complete and the legislature cannot know the new limits of its ostensibly plenary authority to set sentencing laws. Confusion in the courts causes repeat sentencing hearings in cases involving the most egregious offenders, inflicting unnecessary trauma on victim families long after they have settled into some semblance of acceptance, if not peace. It also makes it very difficult to resolve cases short of trial. Confusion in the legislature stymies legislative action that could better rectify the problems this Court is attempting to address.

For these reasons, the State respectfully asks this Court to respect the 40-year-old constitutional rule established in State v. Fain rather than add yet another test for assessing cruel punishment claims. This will allow the legislature to reform juvenile sentencing within the confines of that straightforward rule.

The State also respectfully asks this Court to affirm the sentence imposed in this case. The prosecutors in this case already took Anderson's youth into consideration in its charging decision (by not charging Anderson for shooting Ricardos in the face) and its sentencing recommendation (by not seeking an exceptional sentence above the range). The trial court carefully considered Anderson's proffered mitigation evidence and his claim that his undeveloped brain influenced his conduct, as well as the nature of his crimes and criminal history. Considering these interests, the court found that his crime did not illustrate the hallmarks of youth and was not the product of his youth. The court found that Anderson's crimes, his criminal history, and aggravating circumstances required a sentence at the top of standard range. This sentence was not an abuse of the court's discretion and should be affirmed.

1. ANDERSON'S PUNISHMENT IS NOT CRUEL UNDER EITHER THE FEDERAL OR STATE CONSTITUTIONS AS A DE FACTO LIFE SENTENCE.

Anderson argues that his 61-year sentence is unconstitutional because it is longer than the 46-year sentence reversed in Haag. Supp. Br. of Appellant, at 8-10. This argument should be rejected. The reasoning in both Bassett[3] and Haag critically depend on a misinterpretation of Eighth Amendment jurisprudence and there is no adequate and independent state constitutional grounds to forbid a 46-year term-of-life sentence. Moreover, "a meaningful opportunity" to live a life of freedom is not a meaningful guide for trial judges.

The State argued in the Court of Appeals that Bassett was incorrect and harmful and should be overruled. Br. of Resp. at 18-30. The State here incorporates those arguments by reference.

[3] State v. Bassett, 192 Wn.2d 67, 428 P.3d 343 (2018).

This Court's more recent holding in Haag suffers from the same analytical flaws and causes the same harm as did the decision in Bassett. In Haag, this Court again made clear its belief that, while express findings are not required to impose a life sentence, under the Eighth Amendment a juvenile may be sentenced to life without parole only in the rare case where the offender's crime reflects "irreparable corruption" or "unfortunate yet transient immaturity." Haag, at 318 (italics and citations omitted). That holding cannot be reconciled with the recent decision by the United States Supreme Court in Jones v. Mississippi, 593 U.S. ---, 141 S. Ct. 1307, 209 L. Ed. 2d 390 (2021). All justices of the Supreme Court in Jones believed that under the Court's holding a state could impose a life sentence on a juvenile even if the juvenile was not permanently corrupt. See Haag, at 332-37 (Stephens, J. concurring and dissenting). Moreover, decisions in other states establish only that Miller requires a hearing to consider youth, not that life sentences are banned as to any category of offender. Id. at 337-

41. If the Eighth Amendment does not foreclose a life sentence, then it necessarily does not foreclose a term-of-years sentence, no matter how long. Id. at 337. For these reasons, the Eighth Amendment does not compel the results in either Haag or Bassett.

To compound the difficulties, with no clear constitutional rationale for a limit on term-of-years sentences, there can be no basis on which to choose what is a de facto life sentence. In Haag, this Court said it was 46 years as to an offender who committed a single homicide. Does an offender who killed two or more people deserve no worse? Is a term of 45 years sufficiently low to guarantee a "meaningful" life outside of prison? Or is the number more in the range of 20 years? The citizens of this state currently cannot know the answer to such questions.

Legislation duly enacted by the representatives of the people of this state would permit sentences like the one imposed in this case. Experienced judges in multiple serious

cases have repeatedly imposed such sentences after exercising their discretion to balance the nature of the defendant's crime against his purported mitigation. If this Court is to override the legislative scheme, deprive judges of discretion (while purporting to preserve it), and dictate sentences more lenient than many citizens and crime victims believe are appropriate, then this Court has a duty to explain the independent state constitutional imperative. So far, this Court has not done so, and Anderson offers absolutely no framework for such a rule.

By claiming these policy choices for itself while failing to articulate clear rules for litigants to follow, this court has caused paralysis in lower courts and in the legislature. If lower courts are not told what constitutes a de facto life sentence, and if lower courts cannot infer from this Court's reasoning what constitutes a de facto life sentence, then many more cases will be doomed to resentencing. This subjects survivors and their families to repeated and seemingly endless trauma. That is patently unfair to survivors and victim families.

Similarly, the legislature cannot act in this environment of uncertainty. For example, the legislature might want to create a system of parole for juvenile offenders, but it cannot set ranges or minimum and mandatory-maximum sentences if it cannot predict where this Court will set the constitutional limits. The legislature needs to know if there is a ceiling, or whether it will be left to them to set one. There is no sense drafting and debating a limit of 40 years if this court ultimately announces a limit of 20 years. The legislature currently does not know where its authority ends and this Court's authority begins.

Worse, it is nearly impossible for this Court to set a term of years that will address the multiple circumstances that might arise. For instance, what is a de facto life sentence in a "cold case" committed by an offender at the age of 17 but not discovered, prosecuted, and sentenced until the offender is aged 40? Must that person receive a sentence as low as 20 years simply because otherwise he might die in prison? Or, does

subsequent criminal history matter in the de facto life analysis? These concerns highlight to the difficulty of dictating these matters by judicial decision.

There is an additional, less visible, but pernicious effect of this uncertainty—the inability to resolve serious cases. Plea agreements are reached when parties can estimate the risk of conviction and the likely sentence. Presently, parties cannot estimate sentencing exposure because nobody knows the rules. This has the effect of greatly slowing resolutions of serious cases involving juvenile offenders at a time when the superior courts are seriously backlogged by the pandemic and by resentencings hearings.

These legal, prudential, and practical problems could be avoided if this Court were to simply adhere to the 40-year-old precedent established in Fain, informed by Miller. Bassett, 92-101 (Stephens, J. dissenting). The legislature is well-equipped to enact reform in these areas as needed.

2. NEITHER THE CONSTITUTION NOR OUR STATUTES ELIMINATE RETRIBUTION OR DETERRENCE FROM SENTENCING DECISIONS.

This Court has said that courts conducting resentencing hearings under RCW 10.95.030 and .035 must "focus" on the mitigating qualities of youth over other sentencing rationales, like retribution, which must play a "minor role." Haag, at 322. While it is true that Miller made it mandatory to *consider* youth-based mitigation when imposing a mandatory life sentence, Miller did not require courts to displace other considerations like retribution. Moreover, sentencing in this case is governed by long-standing principles of the Sentencing Reform Act, not Chapter 10.95 RCW. See RCW 9.94A.010. Finally, sentencings under RCW 10.95.030 and RCW 9.94A.730 did not elevate rehabilitation over other sentencing purposes, much less relegate retribution to a "minor role."

In considering whether mandatory life sentences could be imposed without considering the mitigating qualities of youth,

the Supreme Court observed that "the case for retribution is not as strong with a minor as with an adult." Miller, at 472. Because a minor *might* be less blameworthy due to his or her youth, the statement is correct, and the assertion makes clear that youth must be considered. But the Supreme Court established no rule that in juvenile sentencing cases rehabilitation must be *elevated* above any other sentencing rationale, including retribution. Thus, there is no constitutional imperative to devalue retribution or deterrence as legitimate goals in sentencing youth.

Nor did the Washington legislature establish any new hierarchy when it enacted the Miller-fix statutes. RCW 10.95.030(3) spelled out Miller-related sentencing factors because the statute mandated new sentencing hearings, and there was a need to ensure that courts would apply the new Miller-related factors. RCW 10.95.030 says only that courts "must take into account mitigating factors" related to youth. But the plain language of the statute does not say that

rehabilitation is of greater importance than other sentencing purposes in any given case. This would be a stark departure from traditional sentencing and a significant limit on judicial discretion. The words "focus" or "minor role" appear nowhere in the statute. Such a dramatic change should not be implied absent specific language authorizing the change. See Rest. Dev., Inc. v. Canawill, Inc., 150 Wn.2d 674, 682, 80 P.3d 598 (2003) ("[A] court must not add words where the legislature has chosen not to include them.").

Indeed, the statutes direct that the Indeterminate Sentencing Review Board "shall give public safety considerations the highest priority when making all discretionary decisions regarding the ability for release and conditions of release" and "shall provide opportunities for victims and survivors of victims of any crimes for which the offender has been convicted to present statements as set forth in

RCW 7.69.032." RCW 10.95.030(3)(f).[4] Public safety and victim input are key concepts in sentencing theory but are often in tension with rehabilitation. This language would not appear in this statute if the legislature meant to devalue retribution and deterrence.

Moreover, rehabilitation cannot be judged in the abstract, it must be assessed in context, with reference to what the offender did, because the nature of the crime establishes the baseline from which an offender must return. Criminality falls on a continuum of seriousness and gravity – gradations matter. The level of violence, callousness, premeditation establishes the

[4] RCW 7.69.010 ensures that "witnesses of crime are honored and protected by law enforcement agencies, prosecutors, and judges in a manner no less vigorous than the protections afforded criminal defendants." RCW 7.69.032 "recognizes the significant concerns that many victims, survivors of victims, and witnesses of crimes have when offenders are considered for postsentence release from confinement" and provides that that "the rights extended in this chapter to victims, survivors of victims, and witnesses of crimes, to present a statement to the [ISRB] …prior to the granting of parole…" See also CONST. art. I, sec. 35 (amend. 84) (granting victims "basic and fundamental rights" to "accord them due dignity and respect").

relative point at which offender started down the road to "rehabilitation." Someone who commits a single, non-premeditated murder, perhaps in a moment of passion, is presumably more easily rehabilitated than one who plotted a robbery, planned to murder witnesses to avoid capture, and then committed repeated serious crimes after being offered a full year of rehabilitation. The more serious the crime and the offender's pattern of violence, the stronger the evidence of rehabilitation that should be required.

For these reasons, although it is correct that courts must meaningfully consider youth in a way they may not have done before, it is simply incorrect to say that either the Eighth Amendment or statutory law has elevated rehabilitation above other sentencing concerns.

3. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION BY DENYING ANDERSON A MITIGATED SENTENCE.

Brain development and youth do not alone justify an exceptional sentence. "[S]ome under 18 have already attained a level of maturity some adults will never reach." Roper v. Simmons, 543 U.S. 551, 574, 125 S. Ct. 1183, 161 L. Ed. 2d 1 (2005). There must be some causal connection between the defendant's youth and his crimes, and the defendant has the burden to show substantial and compelling reasons to depart from the standard range. State v. Gregg, 196 Wn.2d 473, 474 P.3d 539 (2020); State v. Ramos, 187 Wn.2d 420, 445-46, 387 P.3d 650 (2017). Factual findings are reviewed for substantial evidence, which is evidence sufficient to persuade a fair-minded person of the truth of the asserted premise. State v. Homan, 181 Wn.2d 102, 105-06, 330 P.3d 182 (2014). There are at least two components to evaluating mitigation evidence in a Miller resentencing case: a) whether youth was a factor in the crime; and b) whether evidence of rehabilitation justifies an

exceptional sentence below the usual range? The trial court did not abuse its discretion in finding that Anderson's crimes did not evince the hallmarks of youth.

As detailed in the record and in the State's brief below, the trial court did not ignore Anderson's mitigation evidence, it simply concluded that the facts did not establish that his crime was caused by youth. Br. of Resp. at 32-37.

Anderson was living independently at the time. The crime was planned days before and he was not coerced. He went armed with his own gun, he shot two women at close range simply to ensure they could not identify him, and he did so in the presence of one woman's small child. He wasn't caught immediately and had ample opportunities to change after release from a juvenile rehabilitation facility. But Anderson's only regret – as he sat in juvenile rehabilitation and was told he was doing wonderfully – was that he didn't kill the surviving woman and her child. He fully understood the consequences of his actions.

Upon release at the age of 20, he robbed a man who was simply boarding a public bus, hit that man in the head so hard it shattered his eye socket, and then proceeded to stomp repeatedly on the victim's head. He also committed other felony offenses. Even while he awaited trial in this case, he was callous and disrespectful towards the court and the victims' families; he was 21 to 23-years old during this period. The court also had aggravating evidence to consider, such as the fact that a child was present during the killings and that Anderson's standard range did not reflect the shooting of one victim and a firearm enhancement.

The court carefully considered the certificates and other evidence presented by Anderson but concluded that evidence was insufficient to establish meaningful reform.

Anderson's evidence pales in comparison to the mitigation evidence in Haag, where this Court ordered new sentencing hearing because substantial evidence of rehabilitation was not sufficiently credited. Haag had

committed a single infraction in decades of imprisonment. He earned a high school diploma almost immediately after arriving in prison. He worked the entire time. He became a Jehovah's Witness in order to help others. Two expert witnesses performed detailed analyses and testified on his behalf and concluded that he was a low risk to reoffend. A prison chaplain and others testified to his maturity. In short, the record established that he had shown "tremendous growth and maturity." Haag, at 314.

Anderson, by contrast, submitted no expert reports and did not present detailed prison records showing his true infraction history. The certificates skew more heavily toward achievements close in time to when he sought release. Some certificates document relatively banal acts, like participation on sports teams. Others include more substantive achievements but are woefully lacking in detail and do not shed light on whether they have truly made an impact on his earlier pronounced tendencies towards violence. Nobody testified in

support of Anderson during his resentencing hearing except his family members. Appendix A.

After considering this insignificant evidence of rehabilitation in light of Anderson's crime and his criminal history, the court rightfully concluded that an exceptional sentence was not warranted. This decision properly balances the totality of the evidence.

Leone McMullen was the mother of Kristin McMullen who was shot in the neck and killed by Anderson. She eloquently summarized to the sentencing court the balancing process that most people believe appropriate in cases like this one.

> Someone that I admire greatly once said[, "I]f someone shows you who they are, believe them.["]. … And when that man ran down that hall with a gun in his hand and threw open that door and blasted those girls, he showed us who he was. And he told us who he was when he wrote those letters to Jill King threatening her and saying how much fun it was to kill people. So he has shown us who he was and he has told us who he was. And we must believe him, and the State of Washington must believe him. … We can't put this man back on the street now for sure, because we know who he is and we know

> what he will do again. We don't … have to guess any more. He has told us who he is. And we have lived the results – our family has lived the results.

RP 36. Tonelli Anderson has showed us who he is and it was not an abuse of discretion for the trial court to conclude that youth did not contribute to his crimes or that his "mitigation" failed to establish the need for a lesser sentence.

D. CONCLUSION

For the foregoing reasons, Anderson's sentence should be affirmed.

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DATED this 7th day of December, 2021.

Respectfully submitted,

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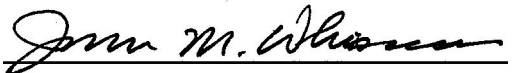
King County Prosecuting Attorney

By: 
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APPENDIX A

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON, Plaintiff, vs. TONELLI JAWANN ANDERSON, Defendant.	No. 98-C-09988-3 KNT FINDINGS OF FACT AND CONCLUSIONS OF LAW DENYING DEFENDANT'S REQUEST FOR EXCEPTIONAL SENTENCE

Pursuant to Miller v. Alabama, 567 U.S. 460 (2012), the parties agreed, and the court found, that the defendant was entitled to a hearing for the court to consider, for purposes of sentencing, whether transient immaturity at the time of the crimes diminished his culpability. Having reviewed all the evidence, records and other information in this matter, including: the briefing and all attachments presented by both parties; the verbal and written statements from the defendant's family; verbal statements from the families of James Bateman, Kristin McMullen and Lynell Ricardos; and the court being familiar with adolescent brain development studies; and having considered the arguments of counsel, the court hereby denies the defendant's request to impose an exceptional sentence below the standard range. This denial is based on the following facts and law, and incorporates by reference the court's oral ruling:

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A. FINDINGS OF FACT

1. On June 16, 2000, the defendant was convicted of two counts of murder in the first-degree. At the conclusion of the bench trial, Judge Nicole MacInnes made detailed findings of fact regarding the charged crimes in this case. Those findings were memorialized in written form and were filed in August 2000. This court relied on those findings and hereby incorporates them by reference.

2. The defendant faced a standard range of 552 to 736 months. The trial court imposed a sentence of 736 months.

3. In 2017, the defendant moved for re-sentencing pursuant to the Supreme Court's decision in Miller v. Alabama, 567 U.S. 460, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012) .

4. The defendant was entitled to a hearing to present evidence to the court that his transient immaturity was a mitigating factor in the commission of the murders under, because he was sentenced to 61 years in prison when he was 23, a *de facto* life sentence.

5. The defendant asked this court to impose concurrent sentences on both counts for a total of 320 months. The sentence the defendant requested is an exceptional sentence below the standard range, as serious violent offenses are presumed to be consecutive under RCW 9.94A.589.

6. The defendant bears the burden of proving that an exceptional sentence below the standard range is justified.

7. The defendant cites to Miller v. Alabama, 567 U.S. 460, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012), but his case is distinguishable in several significant ways. The defendant in Miller was 14 years old at the time of the murder. This defendant was 17.5 years old at the time of the murders in this case. The crime in Miller was reactive and unplanned. The crime here was

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planned and premeditated. The defendant in Miller had a long, horrific history of being subjected to abuse from a young age. The court is not aware that this defendant had any such history.

8. In contrast, the facts of this case are more similar to State v. Ramos, 187 Wn.2d 420, 387 P.3d 650 (2017). In Ramos, the defendant was 14 years old. The defendant and his accomplices in Ramos committed several murders during the course of a planned burglary. The Ramos trial court held a Miller hearing and re-imposed an 85-year sentence, even though the murders were committed after the disabled man confronted the burglars. On appeal, the Ramos court upheld the trial court's re-imposition of an 85-year sentence, finding that the Miller hearing by the court below satisfied the requirement that the court meaningfully consider the youth's transient immaturity, rejecting it as a mitigating factor.

9. The court is familiar with studies on and the science of adolescent brain development, having served as a judge in juvenile court for several years. The court finds that consideration of adolescent brain development studies is important, and has done so in the context of the facts of this case.

10. The defendant was not subjected to any coercive circumstances in this case.

11. The defendant had continuing assaultive behavior as an adult, after committing these murders, and after serving a year, including treatment, in a juvenile rehabilitation facility, as evidenced by his subsequent adult convictions for robbery and assault in the first degree.

12. All evidence presented to the court contradicts the defendant's claim of impetuosity in this case.

13. The defendant entered the victim's home by invitation and sat in the living room and chatted with James Bateman. After Lynell Ricardos brought the cocaine from the back bedroom, co-defendant Austin shot Bateman and the defendant went into the bedroom and shot

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both Ricardos and McMullen, twice, killing McMullen and wounding Ricardos. There was no confrontation beforehand, and they fled after.

14. The defendant had an opportunity to deliberate before killing Kristin McMullen. The robbery and murders were planned in advance. There was nothing impetuous about his actions.

15. There is no evidence that defendant lacked maturity, or that any lack of maturity mitigated his culpability for these crimes.

16. The defendant was 17.5 years of age at the time of the murders. He was living on his own, with control over his own environment.

17. The defendant was the instigator of the situation in this case. He set up the situation, he was not victimized by it.

18. After the murders were committed, the defendant spent a year incarcerated at the Juvenile Rehabilitation Administration (JRA) and received intensive treatment and programming. The defendant did well at JRA and could have chosen a different path upon release. The defendant instead amassed five adult felony charges after release, including violent and serious violent offenses.

19. As he wrote in letters during his time of incarceration, the defendant knew the ramifications of his actions. He knew that the punishment for his crimes was life in prison or the death penalty because his actions were "premeditated." Despite knowing the repercussions, he went on to commit subsequent violent felonies.

20. The defendant sent a photo of the Bateman family in a letter to a friend after the murders, demonstrating his knowledge of consequences and complete lack of remorse. The letter said "The people in the picture are the people I told you we did that too!"

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21. There is no evidence, aside from the bare assertions by the defendant and his family, that he was impetuous, immature or failed to understand the consequences of his actions at the time he committed these offenses.

22. The facts of this case demonstrate his actions were calculated and premeditated, and that he fully understood the consequences of his actions.

23. None of the other statutory bases for an exceptional sentence below the standard range are applicable: the victim was not an instigator or initiator; the defendant made no efforts to compensate the victims after the fact; the defendant was not under duress; the defendant was not induced, lacking predisposition, to commit this crime; there is no evidence the defendant's capacity was significantly impaired; the murders were not principally accomplished by another; and the multiple offense policy was not clearly excessive in this case.

24. The defendant's standard range was not fully reflective of his actions on the day of the murders. He avoided another conviction for assault or attempted murder. The trial court found he also shot Lynell Ricardos, but he was not charged for her attempted murder, only for the murders of Kristin McMullen and James Bateman.

25. There were multiple possible grounds for an exceptional sentence above the standard range available to the State at the time of sentencing. The defendant committed the murder of Kristin McMullen in the presence of a young child. The defendant committed the murder of Kristin McMullen to hinder law enforcement in the investigation into the killing of James Bateman. Nonetheless, the State recommended a standard range sentence based on the defendant's age at the time of the murders.

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26. The court finds that an exceptional sentence would not be consistent with and would not be in furtherance of the interests of justice and the purposes of the Sentencing Reform Act.

B. CONCLUSIONS OF LAW

1. Mr. Anderson has not proved by a preponderance of the evidence transient immaturity at the time of these offenses to justify an exceptional sentence below the standard range.

2. Considering the purposes of the Sentencing Reform Act, the recent cases implicating the sentencing of juvenile defendants, including Miller v. Alabama, the circumstances specified in these Findings of Fact, this court concludes that there are not substantial and compelling reasons to justify an exceptional sentence below the standard range.

3. The defendant's motion for an amended sentence is denied.

Dated this 30 day of April, 2018

Judge Barbara A. Mack

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