No. 92454-6

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

JOEL RAMOS,

Petitioner.

BRIEF OF AMICI CURIAE WASHINGTON DEFENDER ASSOCIATION AND WASHINGTON ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Rules

Constitutional Provisions

I. INTEREST OF AMICI CURIAE

The *Washington Defender Association* ("WDA") is a statewide non-profit organization whose membership comprises public defender agencies, indigent defenders and those who seek improvements in indigent defense.

The *Washington Association of Criminal Defense Lawyers* ("WACDL") was formed to improve the quality and administration of justice. A professional bar association founded in 1987, WACDL has over 800 members – private criminal defense lawyers, public defenders, and related professionals committed to preserving fairness and promoting a rational and humane criminal justice system.

Ms. Elsberry and Ms. Elliott prepared this brief on behalf of WDA and WACDL. They are experienced criminal defense attorneys who have had numerous briefs accepted by this and other courts in the past.

II. SUMMARY OF ISSUE TO BE ADDRESSED BY AMICI

Amici urge this Court to grant review in this case under RAP 13.4(b). The issues raised will arise in increasing numbers in cases across the state. In those cases, as here, lower courts need guidance on the proper application of *Miller v. Alabama*, 132 S.Ct 2455, 183 L.Ed.2d 407 (2012).

Amici contend a growing urgency for resolution of the questions arise. A cursory review of the briefs filed in the appellate courts reveals that some form of this issue is pending in *State v. Solis-Diaz*, 46002-5-II, *State v. C. M.* 47821-8-II, *State v. Thompson*, 47229-5-II, *State v. N.N.* 47157-4-II, *State v. Ho*, 72497-5-I and *State v. Kayser*, 71518-6-I. This case provides a good vehicle to address these issues, as the claims were presented to the sentencing court and the arguments fully developed.

III. ARGUMENT

A. Because a prompt determination of the application of *Miller* in Washington is needed, and the Court of Appeals has issued differing opinions, this Court should grant review.

Miller recognized

> [Y]outh is more than a chronological fact. It is a time of immaturity, irresponsibility, impetuousness, and recklessness. It is a moment and condition of life when a person may be most susceptible to influence and to psychological damage. And its signature qualities are all transient.

Miller, 132 S. Ct. at 2467 (internal quotations, citations and brackets omitted). Based on this recognition that juveniles are both categorically less culpable and more amenable to rehabilitation than adults, they must be treated differently by the justice system. *Id.*

(barring mandatory sentence of life without possibility of parole for homicide for juveniles); *J.D.B. v. North Carolina*, 131 S.Ct. 2394, 2406, 180 L.Ed.2d 310 (2011) (age must be considered in determining whether child in custody for *Miranda*); *Graham v. Florida*, 560 U.S. 48, 74, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010) (barring sentence of life without possibility of parole for juveniles convicted of non-homicide offense); *Roper v. Simmons*, 543 U.S. 551, 578, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005) (death penalty unconstitutional as applied to juveniles); U.S. Const. amends. 8, 14; Const. art. I, § 14.

While these cases mandate consideration of youth and its attendant circumstances when imposing severe sentences for crimes committed by juveniles, prior Washington case law precludes courts from imposing a reduced sentence based upon such individual circumstances. *State v. Law*, 154 Wn.2d 85, 110 P.3d 717 (2005); *State v. Ha'mim*, 132 Wn.2d 834, 940 P.2d 633 (1997). In *State v. O'Dell*, 183 Wn.2d 680, 358 P.3d 359, 364-66 (2015), this Court recognized that a young person's transitory immaturity, impulsivity and capacity for change may be a meaningful sentencing consideration even for a young adult, extending the reasoning of *Miller* to people older than 18 at the time of the offense. But *O'Dell* did not address the

considerations for a person, like Ramos who commits a crime at 14 years old.[1]

O'Dell "disavowed" the reasoning of cases that construed *Ha'mim* to prohibit courts from reducing a person's sentence based on youth alone. 358 P.3d at 366. But lower courts remain bound by prior decisions from this Court and the Court of Appeals. At sentencing, the trial court struggled to balance the plain directive of *Law* – prohibiting consideration of individualized circumstances that were not evident in the crime itself – and the dictates of *Miller*, *J.D.B.*, *Graham*, and *Roper*, that emphasize the importance of considering a person's capacity for rehabilitation and the aberrational nature of the conduct that occurred during the crime. Trial courts need guidance on how to structure sentencing decisions and incorporate these Supreme Court cases into a fair sentencing proceeding.

In *State v. Ronquillo*, -- P.3d --, 2015 WL 6447740, at *4 (2015), the trial court believed that case law precluded it from imposing a reduced sentence based on the youthful attributes of a defendant who had not received a sentence of life without the

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[1] Division Three decided *State v. Ramos*, 189 Wn. App. 431, 357 P.3d 680 (2015)the same day as *O'Dell* was decided.

possibility of parole. The Court of Appeals reversed and ordered a new sentencing hearing. *Id.* at *8-9. Rather than wait and allow a piecemeal process of sentencing remands by the appellate courts as trial courts grapple with applying *Miller* to youth sentenced in adult court, this Court should grant review and inform courts of the bounds of their discretion.

Ronquillo shows why review should be granted in *Ramos*. *Ronquillo* conflicts with Division Three's reasoning in *Ramos* even though it acknowledges this disagreement politely. 2015 WL 6447740 at *5 & *11 n.7. Both *Ronquillo* and *Ramos* involve young men convicted of multiple serious offenses against different victims stemming from a single incident. *Ronquillo*, 2015 WL 6447740 at *1; *Ramos*, 357 P.3d at 682. In *Ronquillo*, Division One held that the severity of the sentence must be judged by its overall length, not by separately considering each sentence imposed for each offense. *Ronquillo*, *supra* at *5. Contrary to *Ronquillo*, Division Three held that Mr. Ramos' sentence must be assessed by examining the four discrete terms for the four offenses. *Ramos*, 357 P.3d at 693.

The *Ronquillo* Court downplayed its difference of opinion with *Ramos*, saying that *Ramos* "might" be interpreted as holding that

Miller does not apply to "nonlife or aggregate sentences." 2015 WL 6447740 at *11 n.7. But Division Three's *Ramos* decision is not tentative. It explicitly rejected *Miller's* application to any sentence premised on multiple concurrent offenses stemming from a single incident. 357 P.3d at 693. *Ramos* dictates that the overall sentence of 85 years is viewed as simply four sentences of 20 or 25 years each. In contrast, *Ronquillo* is premised on the total sentence of 51.3 years imposed, which it held to be a de facto life sentence that is too severe unless a sentencing court gives full consideration to the youthfulness of Mr. Ronquillo and his capacity for change.

The prosecution filed no petition for review in *Ronquillo* and the mandate has issued. The prosecution's decision not to file a petition for review in *Ronquillo* means the conflict will not be resolved unless this Court accepts review in *Ramos*. It also indicates a difference of opinion among prosecutors about the proper scope and application of *Miller*. Until it is further addressed by this Court, *Miller*'s application to severe aggregate sentences will remain confusing for sentencing courts.

The State's answer asserts that Mr. Ramos had "the opportunity to put forward" his youth and personal experiences. Although Mr.

Ramos could file documents and present testimony, the "opportunity to put forward" mitigating information differs from having it meaningfully considered. The sentencing judge believed he was constrained by case law from imposing a sentence based on circumstances of the child's life and could not consider Ramos' potential for change and rehabilitation.

And the *Ramos* Court's contention that juveniles have always been treated more leniently within the criminal justice system is simply incorrect. Prior case law said it "borders on the absurd" to consider a child's youthfulness as grounds for a reduced sentence. *State v. Scott*, 72 Wn.App. 207, 218, 866 P.2d 1258 (1993), *review granted*, 124 Wn.2d 1001, 877 P.2d 1287 (1994), *aff'd sub nom. State v. Ritchie*, 126 Wn.2d 388, 894 P.2d 1308 (1995) (cited favorably in *Ha'mim*). This prior case law constrained the sentencing judges in *Ronquillo* and *Ramos*. The fact that Division I found those restraints unlawful in *Ronquillo,* but Division III found them permissible in *Ramos*, will continue to confuse the proper application of *Miller* in all of the lower courts. This Court can and should resolve this confusion.

More fundamentally, this Court should consider whether the mechanism for imposing an exceptional mitigated sentence, which

requires a young person to overcome the presumption that the standard range sentence is the appropriate term for any offender sentenced in adult court, places too onerous a burden on a young person. The rules of criminal procedure must be altered to accommodate the realities of children. *J.D.B.*, 131 S.Ct. at 2403. It is a broadly applicable and objective principle that "children are not adults." *Id.* at 2404. In evaluating whether a sentencing judge meaningfully exercised its discretion consistently with the teachings from the United States Supreme Court, this Court should also consider whether the child must bear the burden of proving there are substantial and compelling reasons to impose a sentence less than the standard range.

This Court has not determined the proper application of the mandate in *Miller* under the Sentencing Reform Act for people who commit crimes as children and are sentenced to serve most if not all of their lives in prison. This is a significant constitutional issue of statewide importance. This Court should address this issue now by granting review.

IV. CONCLUSION

Amici urge this Court to grant the petition for review.

Respectfully submitted this 18th day of December 2015.

Approved via email 12/18/15
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CERTIFICATE OF SERVICE

I hereby certify that on the date listed below, I served by email and First Class United States Mail, postage prepaid, one copy of this brief on the following:

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Dear Sir/Madame:

Enclosed for filing in the Washington State Supreme Court in *State of Washington v. Joel Ramos*, Supreme Court No. 92454-6, is the **Brief of Amici Curiae Washington Defender Association and Washington Association of Criminal Defense Lawyers**.

Feel free to contact me with any questions or concerns.

Thank you for your kind attention to this matter.

Best,

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