92454-6

IN THE SUPREME COURT

OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

JOEL RAMOS, APPELLANT

APPEAL FROM THE SUPERIOR COURT

OF YAKIMA COUNTY

SUPPLEMENTAL BRIEF OF RESPONDENT

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I. ISSUES PRESENTED

1. Whether Mr. Ramos' second resentencing hearing complied with the decision in *Miller v. Alabama*, where the court fully considered how the defendant's youth bore on his culpability for the murders of a family of four, and exercised its discretion in favor of imposing a standard range sentence, rather than an exceptional sentence downward?

2. Whether the State breached a plea agreement by answering the trial court's direct questions about the exercise of its discretion in imposing Mr. Ramos' sentence, and where, the State suggested multiple ways the trial court could craft an exceptional sentence downward from the standard range?

II. STATEMENT OF THE CASE

On March 24, 1993, 14 year-olds Joel Ramos and Miguel Gaitan unlawfully entered the Skelton family home, armed with knives, intending to "rob" the home.[1] Mr. Skelton, who was disabled, confronted them, and was subsequently beaten to death. Mr. Gaitan attacked Mrs. Skelton in the shower and stabbed her 51 times and beat her with a baseball bat. Jason Skelton, who was twelve years old, attempted to help his mother, but Mr. Gaitan also killed him. After briefly leaving the house, Mr. Ramos returned, and he and Mr. Gaitan discovered six-year-old Bryan Skelton in his bedroom. Mr. Ramos beat the young child over the head with a piece of

[1] The facts of the case have been taken from *State v. Ramos*, 152 Wn. App. 684, 217 P.3d 384 (2009) and *State v. Ramos*, 189 Wn. App. 431, 357 P.3d 680 (2015). The court of appeals also used some facts from the unpublished opinion of *State v. Gaitan*, 80 Wn. App. 1077, 1996 WL 123155 (March 19, 1996).

firewood, fracturing his skull.[2] When he pled guilty to the crimes, Mr. Ramos indicated that he did so to prevent Bryan from identifying them.

After being charged with four counts of first degree murder, Mr. Ramos waived a declination hearing, and entered guilty pleas in adult court. He pled to one count of premeditated first degree murder, for the slaying of Bryan Skelton, and to three counts of felony murder, for the deaths of the other Skelton family members. In exchange for his pleas, the State agreed to recommend 80 years - consecutive 20 year sentences for each count.

After several appeals resulting in an order that the defendant be resentenced, the court of appeals then held that the trial court erred in its 2011 resentencing by failing to exercise its discretion in considering the defendant's request for an exceptional sentence downward. *State v. Ramos*, 174 Wn. App. 1042, 2013 WL 1628255 (April 16, 2013). A second resentencing hearing was then held on October 14-15, 2013, at which time the court heard testimony from numerous individuals. Several members of defendant's family and his friends indicated that the defendant had matured into a well-adjusted adult. A defense expert witness discussed adolescent brain development and its effect on juvenile culpability. Mr. Ramos spoke on his own behalf. RP 80-97, 124-126. The sentencing court was also

[2] Mr. Gaitan also stated that Mr. Ramos then found Bryan's heart and stabbed him. *Ramos* V, 189 Wn. App. at 436.

presented with two 50-page motions (one from 2011 and one from 2013) requesting resentencing below the standard range arguing that defendant's "neglect, immaturity, drug use, follower status, and personal losses," were contributing factors to his crime, 224 pages of appendices relating to his "positive behavior, schooling and other program participation while incarcerated and almost 100 pages of supportive letters," and a report of a psychologist who described adult Mr. Ramos as not violent and "without behavior difficulties." CP 1032; *Ramos* V, 189 Wn. App. at 439-440.

The trial court directed several questions to counsel after the testimony concluded. It expressly asked defense counsel to clarify Mr. Ramos' requested sentence. RP 126-127. It requested counsel to address the effect of *United States v. Pepper*, 562 U.S. 476, 131 S.Ct. 1229, 179 L.Ed.2d 196 (2011), and *State v. Law*, 154 Wn.2d 85, 110 P.3d 717 (2005), regarding its discretion to impose a criminal sentence under the SRA. RP 128-129. The court also asked the State if it was bound by the sentencing recommendation, or if it was "essentially the new sentencing judge to make a decision within the standard sentencing range." RP 144-146. Then, the following day, the parties presented their answers to the court's questions[3] and their arguments on resentencing. Mr. Ramos requested the court

[3] The State's responses to the court's questions are discussed in detail below.

sentence him to the high end of the standard range for first degree premeditated murder - 320 months, and impose twenty years on each of the felony murders to run concurrently to the 320-month sentence. RP 158.

At sentencing, the trial court expressly acknowledged that it possessed the discretion to impose concurrent sentences for each of the four murders. RP 167. It took into account the mitigating circumstances that had been presented to it,[4] the science of adolescent brain development, the applicable case and statutory law, and the provisions of the Federal and State Constitutions. RP 169, 172. The court reviewed the facts of the crime, indicating that "by all accounts it was a horrific crime that wiped out an entire family in one night."[5] RP 171. The court stated it did not view the defendant's acts as "impulsive," but rather as planned and systematic. RP 173. The fact that Mr. Ramos killed a young child for the sole purpose of eliminating a witness evidenced to the court that Mr. Ramos made a "clear, cold, calculating decision" with a "mind fully cognizant of future consequences." RP 174. The trial court found that Mr. Ramos' actions were

[4] Mr. Ramos identified ten mitigating factors that should be considered at sentencing, including adolescent brain science; the Supreme Court's statements on juvenile culpability; his environmental, social, developmental troubles; his post-crime rehabilitation; his lack of criminal predisposition and inducement to commit the crime by his co-defendant; and his acceptance of responsibility by pleading guilty. CP 620-21.

[5] At the defendant's original sentencing, the trial court stated that "*the crimes 'have no parallel in Yakima County history for violence'*" and noted that the murder of Bryan Skelton warranted more than 240 months, but ultimately followed the sentencing recommendation. *Ramos* II, 152 Wn. App. at 689 (emphasis added).

"monstrous," and that in balancing those acts with the mitigating factors and brain science, there was not a "substantial and compelling reason" for the court to order the sentences to run concurrently. RP 174. The court then imposed three 20-year sentences for the felony murders and one 25-year sentence for Bryan Skelton's murder, all to run consecutive, stating:

> There was not only an intent to [kill], an admitted getting rid of a witness, there was an actual murder at the hands of Mr. Ramos. This was not a [juvenile] act, Mr. Ramos. It was not a mistake. It was the execution of a six year old boy at your hand in his own bed.

RP 175. The court specifically stated it was rejecting the State's sentencing recommendation of 80 years. RP 176. The defendant again appealed his sentence. The court of appeals affirmed, and this Court granted review.

III. ARGUMENT

A. THE TRIAL COURT PROPERLY EXERCISED ITS DISCRETION IN IMPOSING THE DEFENDANT'S SENTENCE AFTER A FULL HEARING, DURING WHICH THE COURT THOROUGHLY CONSIDERED THE DEFENDANT'S YOUTH; WASHINGTON'S SENTENCING SCHEME IS CONSTITUTIONAL UNDER *MILLER v. ALABAMA*.

1. Standard of Review

Generally, a standard range sentence may not be appealed unless the sentencing court's procedure was incorrect, such as where the court refuses to exercise its sentencing discretion or relies upon an improper basis for declining to consider an exceptional sentence. RCW 9.94A.585; former RCW 9.94A.210 (1993); *State v. Ammons*, 105 Wn.2d 175, 183, 718 P.2d

796 (1986); *State v. Garcia-Martinez*, 88 Wn. App. 322, 330, 944 P.2d 1104 (1997); *see also State v. Ha'mim*, 132 Wn.2d 834, 839, 940 P.2d 633 (1997) (citing former RCW 9.94A.120(1)). However, where a court considers the facts and has concluded that there is no basis for an exceptional sentence, it has exercised its discretion. *Garcia-Martinez*, 88 Wn. App. at 330. The legislature has authorized trial courts to impose exceptional sentences upon a finding of a substantial and compelling reason to do so. RCW 9.94A.535; *see also State v. Mullholland*, 161 Wn.2d 322, 166 P.3d 677 (2007) (trial court possesses discretion to consider the imposition of concurrent sentences as exceptional downward sentences for serious violent offenses.)

2. The trial court complied with the mandate of *Miller v. Alabama*.

The State agrees with Mr. Ramos that children *are* different when it comes to criminal sentencing. However, not *every* juvenile who commits a homicide (or, as here, multiple concurrent homicides) *necessarily* qualifies for a reduction at sentencing. *Miller v. Alabama* acknowledges that there may be cases where a juvenile is sentenced to life in prison:

> Given all we have said … about children's diminished culpability and heightened capacity for change, we think appropriate occasions for sentencing juveniles to the harshest possible penalty will be uncommon.
>
> . . .
>
> Although *we do not foreclose a sentencer's ability to make that judgment in homicide cases*, we require it to take into account how children are different, and how those differences

> counsel against irrevocably sentencing them to a lifetime in prison.

132 S.Ct. 2455, 2469, 183 L.Ed.2d 407 (2012) (emphasis added).

Miller did not categorically prohibit life sentences without parole (whether actual or "de facto") for juveniles convicted of homicide.[6] *Id*. at 2469. Rather, it required individualized sentencing be provided for juvenile offenders facing the most serious penalty available, life in prison without the possibility of parole, and that sentencing courts have the discretion to consider the attributes of youth and the role those attributes played in the commission of the crime. 132 S.Ct. at 2475.

As discussed at length by Division Three, the sentencing court properly exercised its discretion in accordance with *Miller* when imposing Mr. Ramos' sentence. *Ramos* V, 189 Wn. App. at 457. The trial court expressly took into account that Mr. Ramos was 14 years old at the time of the murders, RP 172, and the science of adolescent brain development presented at the hearing, as discussed in *Miller*. RP 172-173. The sentencing court expressly considered and found that the defendant's actions did not manifest any of the three characteristic "gaps" noticeable

[6] The Court *has* categorially prohibited certain types of sentencing for juveniles. *Roper v. Simmons*, 543 U.S. 551, 125 S. Ct. 1183, 161 L.Ed.2d 1 (2005) (categorical prohibition on the death penalty); *Graham v. Florida*, 560 U.S. 48, 130 S. Ct. 2011, 176 L.Ed.2d 825 (2010) (categorical prohibition on life without the possibility of parole for non-homicide offenses).

between adult and juvenile actions discussed in *Miller*: (1) lack of maturity, impulsivity and heedless risk taking, (2) susceptibility to negative influences and outside pressures and inability to extricate themselves from crime producing settings, and (3) lack of being attributable to irretrievable depravity. RP 173-174; *Miller*, 132 S.Ct. at 2464. The trial court did not err in exercising its discretion and in declining to impose an exceptional sentence after considering all of the evidence and making findings that Mr. Ramos' actions were "monstrous," were not juvenile acts, and were not due to an inability to appreciate the consequences of his actions. RP 173-174.

3. A life sentence, whether "de facto" or not, is not cruel and unusual punishment, where, as here, the defendant was convicted of multiple counts of first degree murder.

The State agrees that Mr. Ramos' sentence is a de facto life sentence. RP 141. However, the defendant received an 85 year term of incarceration not due to a disproportionate sentence for a single count of first degree murder, but rather for his willing participation in the robbery and slaughter of an entire family of four, including a helpless six-year-old who died "at his hand in his own bed" – after the defendant left the house and returned to eliminate the child witness. RP 175; *see Ramos* V, 189 Wn. App. at 458. The defendant's crime, and culpability for that crime, qualify as one of the "uncommon" situations where a life sentence is appropriate.

Miller did not address the situation where a juvenile commits multiple murders. In *Miller*, the defendants were each convicted of a *single* homicide when they were 14 years old. 132 S.Ct. at 2461-2462. Likewise, *State v. Ronquillo* (which defendant argues conflicts with the decision in *Ramos*) also involved a defendant who was convicted of *only* one count of first degree murder (along with two counts of attempted first degree murder and one count of second degree assault with a firearm, all occurring from a single incident of drive-by shooting). 190 Wn. App. 765, 769, 361 P.3d 779 (2015). In fact, *none* of the cases cited in defendant's petition for review involve a crime comparable to the "monstrous" nature of his own. *See Montgomery v. Louisiana*, 136 S.Ct. 718, 193 L.Ed.2d 599 (2016) (17-year-old convicted of killing *single* police officer sentenced to life in prison without parole); *Bear Cloud v. State*, 334 P.3d 132 (Wyo. 2014) (16-year-old sentenced to aggregate sentence of 45 years for *one* count of first degree murder, aggravated burglary and conspiracy to commit aggravated burglary); *Casiano v. Comm'r of Correction*, 115 A.3d 1031 (Conn. 2015) (16-year-old sentenced to 50-year sentence for *one* count of felony murder, attempted first degree robbery and conspiracy to commit first degree robbery); *People v. Mendez*, 188 Cal. App. 4th 47 (2010) (16-year-old sentenced to 84 years to life for carjacking, one count of assault with a firearm and seven counts of second degree robbery with criminal street gang

and firearms enhancements); *State v. Null*, 836 N.W.2d 41 (Iowa 2013) (16-year-old mandatorily required to serve 52 years of 75-year aggregate sentence for *one* count of second degree murder and first degree robbery); *State v. Riley*, 110 A.3d 1205 (Conn. 2015) *reversing State v. Riley*, 598 A.3d 304 (Conn. 2013) (17-year-old sentenced to 100 years without parole for *one* murder, two counts of attempted murder, two counts of assault first degree and one count of conspiracy to commit murder.)

If this Court reviews cases from other jurisdictions in which a defendant was convicted of *multiple* counts of murder, it will note that many other jurisdictions have rejected an Eighth Amendment claim where a a de facto life sentence was imposed, so long as the defendant was afforded a full sentencing hearing, and the sentencing court evaluated the defendant's criminal conduct in light of the defendant's youth. *See, e.g.*, *State v. Ali*, 855 N.W.2d 235 (Minn. 2014) (court would not abuse its discretion or violate *Miller* in sentencing juvenile to life without possibility of release where the defendant was convicted of one count of premeditated first degree murder and two counts of first degree felony murder for killing three men during a robbery: "If on remand the district court here concludes that the circumstances established at [the defendant's] *Miller* hearing do not warrant the possibility of release, the court should impose a sentence of LWOR"); *Sexton v. Perrson*, 341 P.3d 881 (Or. App. 2014) (Under Federal

Constitution and State Constitution, defendant convicted of intentional murder of his parents was not disproportionately sentenced to two life sentences with consecutive mandatory minimum prison terms of 25 years); *U.S. v. Jefferson*, 816 F.3d 1016 (8th Cir. 2016) (600-month sentence did not violate the Eighth Amendment where 16-year-old was convicted of gang offenses including the firebombing murder of five children, and a drive-by shooting).[7]

The rule that may be deduced from these cases is that so long as the defendant is afforded a full *Miller* hearing, and the court possesses discretion to impose less than a mandatory life sentence, and exercises that discretion, courts are hesitant to overturn a de facto life sentence imposed on a juvenile convicted of multiple homicides. Contrary to his assertion on appeal, and, as discussed above, Mr. Ramos *was* afforded a full *Miller* hearing and the sentencing court expressly acknowledged its discretion to sentence the defendant taking into account the mitigating factors of youth as discussed in *Miller*. In exercising its discretion, however, the trial court found that those mitigating factors were not substantial and compelling

[7] Precedent also exists to support the imposition of a life sentence on a juvenile convicted of *only one* murder. *See State v. Houston*, 353 P.3d 55 (Utah 2015) (life without parole was not unconstitutional for a 17-year-old sex offender convicted of a single homicide); *State v. Cardeilhac*, 876 N.W.2d 876 (Neb. 2016) (60-years-to-life sentence for a 15-year-old convicted of one count of second degree murder was not unconstitutional: "We reject [his] argument for several reasons, including the fact that [he] was not sentenced to life imprisonment without parole, and in any event, he received the full benefit of *Miller* juvenile sentencing principles").

enough to warrant a lesser sentence. The trial court did not err in exercising its discretion after affording the defendant a full *Miller* hearing.

4. No Washington law conflicts with the mandate of *Miller.*

The decisions of this Court, the court of appeals, and the SRA, all comply with the mandates of *Miller*. In *State v. O'Dell*, 183 Wn.2d 680, 358 P.3d 359 (2015), this Court required sentencing courts to meaningfully consider a defendant's youth as a possible mitigating factor. This holding, is of course consistent with the holding in *Miller*. However, this Court recognized, as the Supreme Court did in *Miller*, that not every young defendant is entitled to a a reduction based on youth

> It remains true that age is not a per se mitigating factor automatically entitling every youthful defendant to an exceptional sentence. In this respect, we adhere to our holding in *Ha'mim*, 132 Wn.2d at 847, 940 P.2d 633. But, in light of what we know today about adolescents' cognitive and emotional development, we conclude that youth may, in fact, relate to a defendant's crime.

Id. at 695-96 (internal quotation marks omitted).

Similarly, it was not error for the trial court below to consider this Court's holding in *State v. Law*, 154 Wn.2d 85, 110 P.3d 717 (2005), which held that "factors which are personal and unique to the particular defendant, but unrelated to the crime, are not relevant under the SRA." None of the factors improperly considered by the court in *Law* involved that defendant's age or youthfulness. Furthermore, *Law* was not overturned or abrogated by

this court's decision in *O'Dell,* or by any United States Supreme Court precedent. Even after *O'Dell,* it is still true that a sentencing court must not consider mitigating facts that are unrelated to a crime. But, as this Court recognized in *O'Dell*, even the decision in *Ha'mim* (which preceded *Law*), did not bar "trial courts from considering a defendant's youth at sentencing; it held only that the trial court may not impose an exceptional sentence *automatically on the basis of age, absent any evidence that youth, in fact, diminished a defendant's culpability*." 183 Wn. 2d at 689 (emphasis added). Because *Law* is still valid in light of *O'Dell* and *Miller*, defendant's claim that the sentencing court erred in relying upon it fails.

Defendant claims in his petition for review that *Ronquillo*, *supra,* disagreed with the *Ramos* decision because *Ramos* "dismissed *Miller* as inapplicable to a sentence other than life and did not apply to Mr. Ramos because he [sic] 85-year sentence consists of one 25-year term and three 20-year terms. Slip Op. at 25."[8] Pet. for Rev. at 10-11. Actually, the *Ronquillo* court found that the facts of *Ramos* differed from those of *Ronquillo*:

> Unlike here, the trial court in *Ramos* acknowledged its discretion to: (1) adopt a mitigated sentence in light of *Miller,* and (2) let the separate sentences on each count run concurrently. Because of this difference, *the issues in Ramos are not the same as here*, and we conclude that *Ramos* does

[8] "*Miller* does not apply, by its terms, to [Mr. Ramos'] sentence," because "*Miller* did not involve non-life sentences, it did not involve multiple homicides by an offender, and it did not announce a constitutional command that a sentencing court find 'irreparable corruption' before imposing a sentence." *Ramos* V, 189 Wn. App. at 450, 452.

> not indicate that Ronquillo's sentence should be affirmed. To the extent *Ramos might be interpreted* as reasoning that *Miller* does not apply in cases of nonlife sentences or aggregate sentences, we respectfully disagree.

190 Wn. App. at 785 n.7 (emphasis added).

And, finally, the SRA confers upon a sentencing court the very discretion required by *Miller* to impose an exceptional sentence downward for a juvenile defendant, who, due to transient immaturity or impetuosity, committed a criminal offense. *See* RCW 9.94A.535; former RCW 9.94A.120(2) (1992); former RCW 9.94A.390(1)(g) (1990).

Sentencing discretion is at the very heart of *Miller*. In this case, the trial court acknowledged it possessed discretion to impose concurrent sentences (which would not have amounted to a de facto life sentence), the court of appeals found that the sentencing court knew it possessed this discretion, and even the court in *Ronquillo* agreed that it was aware of its discretion at sentencing. The trial court exercised its discretion, and Mr. Ramos simply does not like the result. But it cannot be said that, under *Miller*, a sentence of 85 years is a disproportionate sentence for a defendant who fully participated in the slaughter of a family of four, including two children - one at his own hand - where the sentencing court considered all of the evidence regarding the defendant's culpability as a juvenile offender,

his maturity in prison, the facts of the case itself, and whether adolescence was the impetus behind the commission of the crime.

5. RCW 9.94A.730 also provides Mr. Ramos with a meaningful opportunity for release, comporting with *Montgomery v. Louisiana*.

RCW 9.94A.730, promulgated in response to *Miller*, provides:

> Notwithstanding any other provision of this chapter, any person convicted of one or more crimes committed prior to the person's eighteenth birthday may petition the indeterminate sentence review board for early release after serving no less than twenty years of total confinement.

RCW 9.94A.730(1).

In *Montgomery v. Louisiana*, *supra*, the Supreme Court approved of a similar "*Miller* fix" enacted by the Wyoming Legislature:

> Giving *Miller* retroactive effect, moreover, does not require States to relitigate sentences … in every case where a juvenile offender received mandatory life without parole. A State may remedy a *Miller* violation by permitting juvenile homicide offenders to be considered for parole, rather than by resentencing them. *See, e.g.* Wyo. Stat. Ann. § 6-10-301(c) (2013) (juvenile homicide offenders eligible for parole after 25 years). Allowing those offenders to be considered for parole ensures that juveniles whose crimes reflected only transient immaturity – and who have since matured – will not be forced to serve a disproportionate sentence in violation of the Eighth Amendment.

136 S. Ct. at 736.

Defendant has already petitioned the indeterminate sentence review board (ISRB) for early release, pursuant to RCW 9.94A.730. *See Ramos* V, 189 Wn. App. at 448-449. Contrary to the conclusion reached in *Ronquillo*,

190 Wn. App. at 779 (the "*Miller* fix" of RCW 9.94A.730 does not correct an error in a defendant's sentence, and "must be corrected in the trial court"), the Supreme Court has declared that a "fix" such as Washington's *is* sufficient to correct any Eighth Amendment error in a juvenile defendant's sentence. Although the State does not concede error in Mr. Ramos' sentence, *Montgomery* would counsel against remand for resentencing as the defendant's eligibility for early release based on his maturity may be considered by the ISRB. *See People v. Franklin*, __ P.3d __, 63 Cal.4th 261 (2016) (Defendant's claim that his sentence was an unconstitutional life sentence was rendered moot by California's juvenile parole laws allowing his youth and maturity to be considered after 25 years).

B. THE STATE DID NOT BREACH THE PLEA AGREEMENT WHEN IT ANSWERED THE COURT'S QUESTIONS AT THE 2013 RESENTENCING, AND ADVOCATED THE COURT'S USE OF SENTENCING DISCRETION.

A defendant's due process rights require a prosecutor to act in good faith in plea agreements and to adhere to the terms of such an agreement. *State v. Sledge*, 133 Wn.2d 828, 839, 947 P.2d 1199 (1997). A prosecutor is obligated to fulfill the State's duty to make the promised sentencing recommendation, but also must, in accordance with RPC 3.3, candidly answer the court's questions. *Id.*; *see also*, RCW 9.94A.460 ("State may not agree to withhold information from the court regarding the plea

agreement"); *U.S. v. Allen*, 434 F.3d 1166, 1175 (9th Cir. 2006) ("A plea agreement does not bar the government from honestly answering the district court's questions. To the contrary, honest response of the government to direct judicial inquiry is a prosecutor's professional obligation that cannot be barred, eroded or impaired by a plea agreement"); *U.S. v. Ahn*, 231 F. 3d 26 (D.C. Cir. 2000) (Government does not breach plea agreement by questioning a witness as instructed by the court, therefore merely facilitating the witness' testimony to the court on whether a sentencing enhancement existed). However, the State must not undercut the terms of the plea agreement by words or conduct that evidence an intent to circumvent the terms of the plea agreement. *Sledge*, 133 Wn.2d at 839.

Defendant claims that the State's remarks at his resentencing breached the 1993 plea agreement for 80 years when the prosecutor remarked that the court could impose an exceptional sentence and that there could have been an aggravating factor present in that Bryan Skelton was a particularly vulnerable victim. Pet. for Rev. at 19. Defendant neglects to point out that the State did so *only* in response to the defendant's request for an exceptional downward sentence:

> And I would like to point out that [Bryan Skelton's] death, you know, would have been a basis for an aggravating sentence. *And it is the State's position that, you know, that's something you have to look at in terms of, well, okay, there's these mitigating factors. Well, there's also an aggravating factor.*

> Although, *we're not advocating that you give him an aggravated sentence based upon that*, I think it's something as part of the crime that the Court can look at.

RP 141 (emphasis added).

Additionally, Defendant neglects to discuss the numerous comments the State made in *favor* of the recommended sentence, and supporting the trial court's ability to exercise its discretion and impose a lesser sentence. RP 143-144. In response to the court's questions regarding its sentencing discretion, see RP 126-129, 144-146, the State indicated:

> The court is not bound by any recommendation … the court can't go up now under *Blakely v. Washington…but the court can go below the standard range regardless of what the recommendations are, whether it was agreed – a plea agreement or whatever. You have somewhat broad discretion.*
>
> . . .
>
> The only limitation that you have is … *that you may impose a sentence outside the standard range only below the standard range ... if [you] find ... that there are substantial and compelling reasons justifying an exceptional sentence. That's the only limitation.*

RP 144 - 146 (emphasis added).

After the Defendant's attorney made her recommendation for the court to impose an exceptional downward sentence based on the mitigating factors pertaining to Mr. Ramos' youthfulness at the time of the murders, and subsequent maturity in prison, the prosecutor added:

> You can fashion [the sentence] different ways. You can go to an *exceptional sentence of ten years or fifteen years on each one of the felony murders and run them concurrent or run them*

> *consecutive.* So you have the ability to go at the bottom of the range and then all three concurrent and – and – but consecutive to one of them. *So you have the full gamut from – from 20 to 80 years.*[9]

RP 161 (emphasis added).

Defendant also claims the State breached the agreement by stating that the offenses were all "serious, violent offenses"[10] and that the standard sentencing range could be higher if it had been calculated differently. *Id*. He misreads what the State meant in making these comments. The State was *actually* suggesting a middle-ground sentence between the Defendant's requested 30 years and the State's requested 80 years. The State suggested that if the court hypothetically viewed the three felony murder charges as if they were "prior offenses" and calculated the defendant's standard range sentence for *only* the premeditated murder based upon an offender score of "9," the court would arrive at a standard range of 411 to 548 months (34.25 to 45.66 years), RP 161, a sentence that would give the defendant a "discount" of between 42 and 57 percent off the original 80-year sentence.

The prosecutor did not breach its agreement to recommend 80 years by forthrightly answering the trial court's questions about the extent of its

[9] Had the State intended to recommend anything other than 80 years, this discussion presented an opportunity for it to suggest that the court could impose high end sentences on all counts, for a total of 106 years. It did not do so.

[10] First degree murder is defined as a "serious violent offense." RCW 9.94A.030(46)(a)(i).

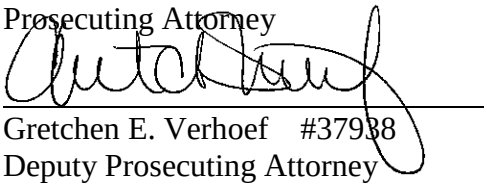
discretion in resentencing Mr. Ramos. If anything, the statements made by the State supported a reduced sentence.[11] The defendant is not entitled to a new sentencing hearing based on the State exercising its duty of candor to the court and by urging the court to follow the original 80-year sentence.[12]

IV. CONCLUSION

The State respectfully requests that this Court affirm the court of appeals and the defendant's sentence, and find that Mr. Ramos' sentence is not unconstitutional because the trial court complied with the mandate of *Miller*, and exercised its discretion in imposing a standard range sentence.

Dated this 30 day of June, 2016.

JOSEPH BRUSIC
Prosecuting Attorney



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[11] The State also presented testimony from a former Deputy Sheriff who testified that he had seen the defendant a couple of years before the 2013 resentencing, and "he was polite, cooperative, and … even exhibited a sense of humor," and "appears to have grown up a bit.") This testimony was helpful testimony to the defendant's claim that he was not irretrievably corrupt, and should be afforded an opportunity for release. *See* RP 75-76.

[12] In Division III's unpublished decision in *Ramos* IV, the majority opined that if the State had clearly ascertainable evidence that the defendant had agreed to the 80-year recommendation, and therefore breached the agreement by requesting a lesser sentence, it would have been presented to the court. *Ramos* IV, 2013 WL 1628255 at *6. Judge Korsmo disagreed, stating the record reflected that it was "*quite obvious"* that the parties had reached an agreement." *Id*. at *17 (emphasis added). He observed, "most certainly counsel would have made a pitch for an exceptional sentence if it was within the realm of the agreement." *Id*. at *18.

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, v. JOEL RODRIGUEZ RAMOS, Petitioner,	NO. 92454-6 COA No. 32027-8-III CERTIFICATE OF MAILING

I certify under penalty of perjury under the laws of the State of Washington, that on June 30, 2016, I e-mailed a copy of the Supplemental Brief of Respondent in this matter, pursuant to the parties' agreement, to:

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