

FILED
SUPREME COURT
STATE OF WASHINGTON
11/18/2022 12:24 PM
BY ERIN L. LENNON
CLERK

Section D.2 is stricken pursuant to the Court's 1/5/23 order

No. 100873-2

IN THE SUPREME COURT OF THE STATE OF
WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

MICHAEL REYNOLDS,

Petitioner.

SUPPLEMENTAL BRIEF OF PETITIONER

LILA J. SILVERSTEIN
JAN TRASEN
Attorneys for Petitioner

WASHINGTON APPELLATE PROJECT
1511 Third Avenue, Suite 610
Seattle, Washington 98101
(206) 587-2711
wapofficemail@washapp.org

TABLE OF CONTENTS

A. INTRODUCTION 1

B. ISSUES 2

C. STATEMENT OF THE CASE..... 4

 1. Michael was born with fetal alcohol exposure and grew up without his mother..... 4

 2. Michael and other kids attempted to rob a store with a BB gun. He was a child and no one was hurt, but this offense counted as a “strike.” 5

 3. After charging the current offense, the prosecution offered not to count the childhood offense as a strike if Michael pleaded guilty. 6

 4. Michael exercised his right to trial. Although he had only two adult strike offenses, Michael was condemned to die in prison under the three strikes law. 7

D. ARGUMENT 9

 1. The use of a childhood “strike” to condemn a person to die in prison constitutes cruel punishment in violation of article I, section 14.....10

 a. *This Court has repeatedly held that mandatory sentencing schemes are unconstitutional as applied to childhood conduct.*10

 b. *Bassett held it is categorically unconstitutional to condemn a person to die in prison for childhood conduct.*14

c.	<i>The use of a childhood “strike” to condemn a person to die in prison is categorically unconstitutional under <u>Bassett</u>.</i>	17
d.	<i>The use of a childhood “strike” to condemn a person to die in prison is unconstitutionally disproportionate under <u>Fain</u>.</i>	21
e.	<i>Contrary to the State’s argument, <u>Moretti</u> does not control. This Court’s precedent recognizes the Constitution provides stronger protection for children than for young adults.</i>	26
2.	<i>Contrary to <u>Gregory</u>, the three strikes law is unconstitutionally racially disproportionate in its application.</i>	30
a.	<i><u>Gregory</u> held the death penalty was unconstitutional in its application because it was imposed in an arbitrary and racially biased manner.</i>	31
b.	<i>The three-strikes law is unconstitutional in its application because it is imposed in an extremely racially disproportionate manner.</i>	34
c.	<i>Contrary to the State’s claim, this dire systemic disproportionality cannot be harmless.</i>	41
E.	CONCLUSION	46

TABLE OF AUTHORITIES

Washington Supreme Court Cases

<i>State v. Bassett</i> , 192 Wn.2d 67, 428 P.3d 343 (2018)...	9, 14, 15, 16, 17, 18, 19, 21, 23, 25, 28, 30
<i>State v. Fain</i> , 94 Wn.2d 387, 617 P.2d 720 (1980).....	21, 23, 24, 28, 41
<i>State v. Gilbert</i> , 193 Wn.2d 169, 438 P.3d 133 (2019).	9, 11, 12, 13, 25, 28
<i>State v. Gregory</i> , 192 Wn.2d 1, 427 P.3d 621 (2018).	10, 31, 32, 33, 41, 43, 46
<i>State v. Hawkins</i> , ___ Wn.2d ___, ___ P.3d ___ (No. 100060-0, filed October 27, 2022).....	44
<i>State v. Houston-Sconiers</i> , 188 Wn.2d 1, 391 P.3d 409 (2017)	9, 11, 13, 14, 19, 23, 25, 27, 30
<i>State v. Jenks</i> , 197 Wn.2d 708, 487 P.3d 482 (2021).....	42
<i>State v. Monschke</i> , 197 Wn.2d 305, 482 P.3d 276 (2021)	28
<i>State v. Moretti</i> , 193 Wn.2d 809, 446 P.3d 609 (2019)	6, 10, 18, 24, 25, 26, 27, 28, 29, 33
<i>State v. O’Dell</i> , 183 Wn.2d 680, 358 P.3d 359 (2015)	27
<i>State v. Ramos</i> , 187 Wn.2d 420, 387 P.3d 650 (2017).....	17
<i>State v. Sieyes</i> , 168 Wn.2d 276, 225 P.3d 995 (2010)	14
<i>State v. Witherspoon</i> , 180 Wn.2d 875, 329 P.3d 888 (2014) ..	18, 29

United States Supreme Court Cases

Miller v. Alabama, 567 U.S. 460, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012)12, 17

Constitutional Provisions

Const. art. I, § 1410, 31
U.S. Const. amend. VIII.....14

Statutes

Ill. Comp. Stat. 5/5-4.5-95(a)(4)(E).....18
Ky. Rev. Stat. Ann. § 532.08018
N.M. Stat. Ann. § 31-18-23(C)18
RCW 10.95.03512, 15
RCW 9.94A.030(32) 6
RCW 9.94A.030(34) 6
RCW 9.94A.030(37) 6
RCW 9.94A.55524
RCW 9.94A.570 6

Other Authorities

Columbia Legal Services, *Washington’s Three Strikes Law: Public Safety & Cost Implications of Life Without Parole*, (2009).....35
<https://www.census.gov/quickfacts/fact/table/WA/PST045221>38
<https://www.cfc.wa.gov/Publications.htm>34

Katherine Beckett & Heather D. Evans, <i>About Time: How Long and Life Sentences Fuel Mass Incarceration in Washington State</i> (Feb. 2020)	8, 19
Katherine Beckett & Heather Evans, <i>The Role of Race in Washington State Capital Sentencing, 1981-2014</i> (Oct. 13, 2014)	31
Nina Shapiro, <i>Legislature moves to resentence up to 114 people serving life without parole under Washington’s three-strikes law</i> , Seattle Times (Apr. 8, 2021)	36
State of Washington Sentencing Guidelines Commission, <i>Two-Strikes and Three-Strikes: Persistent Offender Sentencing in Washington State Through June 2008</i> , (February, 2009)	35
Steve Miletich, <i>Two State Supreme Court Justices Stun Some Listeners with Race Comments</i> , Seattle Times (Oct. 21, 2010)	40
Supreme Court Ltr. to the Legal Community, 1 (Jun. 4, 2020)	32
Task Force 2.0: Race and the Criminal Justice Sys., <i>Race and Washington’s Criminal Justice System: 2021 Report to the Washington Supreme Court</i> (2021).....	39, 40
Task Force on Race & Criminal Justice Sys., <i>Preliminary Report on Race and Washington’s Criminal Justice System</i> (2011).....	41
Tomislav V. Kovandzic, John J. Sloan, and Lynne M. Vieraitis, <i>“Striking out” as Crime Reduction Policy: The Impact of “Three Strikes” Laws on Crime Rates in U.S. Cities</i> , Justice Quarterly 21, no. 2 (June 1, 2004)	20

A. INTRODUCTION

Article I, section 14 categorically bars condemning a person to die in prison for childhood conduct. This Court so held in a case involving the worst crime possible—aggravated murder—because no matter the gravity of the crime, children are far less culpable for their conduct than adults. Thus, this Court has also held that otherwise-mandatory sentencing statutes may not be interpreted as mandatory when applied to childhood crimes.

These prior cases dictate the outcome here: article I, section 14 prohibits the use of a childhood offense as a “strike” mandating a death-in-prison sentence under the “Three Strikes and You’re Out” law. Moreover, because 37% of three-strikes inmates are Black in a state where just 4.4% of the population is Black, the three-strikes law is unconstitutionally racially disproportionate as applied to all defendants.

B. ISSUES

1. This Court determines whether a punishment is categorically unconstitutional by (a) considering the national consensus, and (b) applying the Court's independent judgment to evaluate the culpability of the offenders at issue, the severity of the punishment, and the degree to which that punishment serves legitimate penological goals. Under this two-part test, this Court previously held life without parole is categorically unconstitutional for children, even those who commit multiple aggravated murders.

Is it categorically unconstitutional to use a childhood offense as a "strike" condemning a person to die in prison, where only 10 other states impose death-in-prison sentences upon a third strike, children are significantly less culpable for their conduct than adults, and standard-range sentences better serve legitimate penological goals?

2. This Court evaluates whether a punishment is unconstitutionally disproportionate by considering the nature of

the offenses, the legislative purpose, the sentences imposed in other jurisdictions for the same crimes, and the sentences imposed in Washington for other crimes. This Court applied this test as an alternative rationale for striking down life without parole for children who commit aggravated murder.

Is it unconstitutionally disproportionate to use a childhood offense as a strike condemning a person to die in prison, where childhood offenses are far less blameworthy than adult offenses, the legislative purposes of the three-strikes law are served by standard-range sentences, the vast majority of other jurisdictions do not impose life without parole upon a third strike, and even multiple childhood murders may not be punished with sentences of life without parole in Washington?

3. After reviewing data demonstrating Black people were more than four times as likely to be sentenced to death as other defendants, this Court held the death penalty violated article I, section 14 because it was imposed in an arbitrary and racially biased manner. Does the three strikes law violate article I,

section 14 because it is imposed in a racially disproportionate manner, where 37% of those condemned to die in prison under the three-strikes law are Black, but only 4.4% of Washington's population is Black?

C. STATEMENT OF THE CASE

1. Michael was born with fetal alcohol exposure and grew up without his mother.

Michael Reynolds was born to a drug-addicted mother who abandoned the family before Michael's first birthday. CP 206-08. He suffered from fetal alcohol exposure and spent several weeks in the hospital as an infant. CP 207-08. His mother was eventually incarcerated, and Michael saw her only during occasional prison visits. CP 209.

Michael's father also abandoned him. CP 211. Michael and his sister were sent to live with their grandparents, then with an aunt and uncle, then back to the grandparents. CP 212.

Michael's sister ran away to reconnect with their mother when she was released from prison. CP 209. The mother

introduced Michael's sister to crack cocaine and methamphetamine, and involved her in two armed robberies for which she was convicted of her first two felonies. CP 209.

2. Michael and other kids attempted to rob a store with a BB gun. He was a child and no one was hurt, but this offense counted as a "strike."

When he was a teenager, Michael was sent to live with his father. CP 211. During this time, Michael and some friends tried to rob a convenience store using a BB gun. CP 163-64. The clerk shooed the kids out of the store before anything was taken, and one of Michael's friends tossed a "smoke bomb" as the kids ran away. CP 164. They were quickly apprehended nearby and confessed. CP 164. Although he had just turned 17, Michael was charged with attempted robbery in the first degree, and the case was transferred to adult court, where Michael pleaded guilty. CP 164, 354-73.

Attempted first-degree robbery with a BB gun is a "strike" offense ("most serious offense") under Washington's Persistent Offender Accountability Act (POAA), which

mandates a sentence of life without the possibility of parole upon a third strike. RCW 9.94A.030(32); RCW 9.94A.030(37)(a); RCW 9.94A.570. The law is colloquially known as the “three strikes and you’re out” law. *State v. Moretti*, 193 Wn.2d 809, 814, 446 P.3d 609 (2019). If a strike offense is prosecuted in adult court, the statute permits no consideration of the age of the defendant at the time of the crime; the conviction always counts as a “strike.” RCW 9.94A.030(34); RCW 9.94A.570.

3. After charging the current offense, the prosecution offered not to count the childhood offense as a strike if Michael pleaded guilty.

Approximately one year after finishing his sentence for this juvenile strike offense, Mr. Reynolds pleaded guilty to committing first degree robbery and first degree burglary against some acquaintances. CP 164, 314-15. He was just 21 years old. CP 164. This counted as his second strike offense, and he was incarcerated for 144 months. CP 164-65, 319-20. Mr. Reynolds spent two-thirds of this sentence (101 months) in

solitary confinement, at great cost to his physical and mental health. CP 214-20.

In February 2018, when Mr. Reynolds was 33 years old, he was charged with burglary in the first degree and attempted indecent liberties after he attacked a barista at an espresso stand. CP 1-2. In apparent recognition of the harshness of using Michael's childhood offense as a strike, the prosecuting attorney suggested an offer to Mr. Reynolds of "172.5 months indeterminate" to resolve the charges via guilty plea, "if we agree that 1st strike isn't a strike." CP 200 (email from King County Prosecutor's Office referring to juvenile offense).

4. Michael exercised his right to trial. Although he had only two adult strike offenses, Michael was condemned to die in prison under the three strikes law.

Because Mr. Reynolds did not immediately accept a plea offer, the prosecutor filed an amended information charging Mr. Reynolds with second-degree attempted rape. CP 26-27. Mr. Reynolds was convicted after trial, and, apparently as a penalty

for going to trial, the State changed its position as to whether Mr. Reynolds's juvenile strike should be counted as a predicate offense under the POAA. CP 163-64; *see* Katherine Beckett & Heather D. Evans, *About Time: How Long and Life Sentences Fuel Mass Incarceration in Washington State*, 39-45 (Feb. 2020) (discussing "trial penalty" as one driver of life and long sentences).¹ The State asked the court to sentence Mr. Reynolds to die in prison under the three-strikes law even though he had only been convicted of two adult strikes. CP 163-64.

Mr. Reynolds requested an exceptional sentence within the standard range. CP 186. Among other things, he argued that sentencing him to die in prison would be cruel punishment in violation of article I, section 14 of the Washington Constitution because he committed his first strike offense as a child. CP 185-98. The court rejected the argument and sentenced Mr.

¹ Available at: <https://lsj.washington.edu/research/publications/about-time>.

Reynolds to spend the rest of his life in prison with no possibility for parole. CP 250-64.

D. ARGUMENT

When sentencing a person for childhood conduct, courts must account for the fact that children are less culpable for such conduct than adults. This Court has held a life without parole sentence is per se unconstitutional for children—even those who commit multiple aggravated murders. *State v. Bassett*, 192 Wn.2d 67, 73, 428 P.3d 343 (2018). And it has required all mandatory sentencing statutes to be read as discretionary when applied to childhood conduct. *State v. Gilbert*, 193 Wn.2d 169, 173-75, 438 P.3d 133 (2019); *State v. Houston-Sconiers*, 188 Wn.2d 1, 8, 391 P.3d 409 (2017). This precedent dictates a similar result here: article I, section 14 forbids the use of a childhood offense as a “strike” condemning a person to die in prison.

The case the State relies on is inapposite because it involved adult offenses, and even young adult offenses are

constitutionally different from childhood crimes. *See Moretti*, 193 Wn.2d at 821 n.5. Moreover, the three strikes law is imposed in an extremely racially disproportionate manner, rendering a death-in-prison sentence unconstitutional not just for those with childhood strikes, but for all persons condemned to die in prison under this statute. *State v. Gregory*, 192 Wn.2d 1, 5, 427 P.3d 621 (2018). For each of these reasons, this Court should reverse Mr. Reynolds’s death-in-prison sentence.

1. The use of a childhood “strike” to condemn a person to die in prison constitutes cruel punishment in violation of article I, section 14.

- a. *This Court has repeatedly held that mandatory sentencing schemes are unconstitutional as applied to childhood conduct.*

Article I, section 14 of the Washington Constitution prohibits cruel punishment. Const. art. I, § 14. It is more protective than the Eighth Amendment in the contexts presented here: juvenile sentencing and recidivist punishment. *Moretti*, 193 Wn.2d at 814.

Even under the less-protective Eighth Amendment, this Court has repeatedly held that because “children are different,” mandatory sentencing schemes are unconstitutionally cruel as applied to those who committed crimes under the age of eighteen. *E.g. Gilbert*, 193 Wn.2d at 173-75; *Houston-Sconiers*, 188 Wn.2d at 8. In *Houston-Sconiers*, the Court held that the mandatory weapons enhancements provisions of the Sentencing Reform Act (SRA), may not be read as mandatory when applied to children—even where children have been transferred to adult court. 188 Wn.2d at 8-9, 21. The Court recognized the Constitution requires different punishment for childhood crimes because children are not as culpable as adults. *Id.* at 22. Children are less mature, less able to appreciate risks and consequences, and more susceptible to negative influences. *Id.* at 23. A sentencing court must have authority to consider these mitigating aspects of youth, regardless of the otherwise applicable SRA ranges and enhancements. *Houston-Sconiers*, 188 Wn.2d at 23.

This Court subsequently held the rule of *Houston-Sconiers* applies not just to the SRA, but to resentencings under RCW Ch. 10.95. *Gilbert*, 193 Wn.2d at 175. When the defendant in *Gilbert* was a teenager, he murdered two people and attempted to murder a third. *Id.* at 171. He was convicted of aggravated murder, first-degree murder, and other crimes, and was sentenced to life in prison without the possibility of parole under a statute that mandated such a sentence for aggravated murder. *Id.* at 172. After *Gilbert* was sentenced, the United States Supreme Court held mandatory life without parole statutes violated the Eighth Amendment, and our legislature responded by enacting a statute facilitating resentencings. *See Miller v. Alabama*, 567 U.S. 460, 479, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012); RCW 10.95.035. A court held a resentencing hearing for *Gilbert* under this new statute, and it imposed a term of 25 years to life for the aggravated murder. *Gilbert*, 193 Wn.2d at 172. However, the resentencing court ruled the statute provided no authority to resentence a defendant

for any other crime, and it reimposed a consecutive sentence of 280 months for the first-degree murder conviction. *Id.*

This Court reversed. *Id.* at 177. The Court held that sentencing judges must have discretion to consider the mitigating qualities of youth for any crime, and that judges “possess this discretion to consider downward sentences for juvenile offenders regardless of any sentencing provision to the contrary.” *Id.* at 175 (citing *Houston-Sconiers*, 188 Wn.2d at 21). The Court emphasized that *Houston-Sconiers* “cannot be read as confined to the firearm enhancement statutes as it went so far as to question *any* statute that acts to limit consideration of the mitigating factors of youth during sentencing.” *Gilbert*, 193 Wn.2d at 175 (emphasis in original).

Thus, *Houston-Sconiers* and *Gilbert* established that courts may not apply mandatory sentencing statutes to punish childhood conduct. Instead, courts have full discretion to consider the mitigating aspects of youth irrespective of mandatory statutory language.

Notably, these cases relied on the Eighth Amendment, not article I, section 14, so their holdings provide the bare minimum protections regarding sentencing for childhood conduct. *See Houston-Sconiers*, 188 Wn.2d at 23 (citing U.S. Const. amend. VIII); *State v. Sieyes*, 168 Wn.2d 276, 292, 225 P.3d 995 (2010) (“the United States Constitution establishes a floor below which state courts cannot go to protect individual rights”). In *Bassett*, this Court went even further than the Eighth Amendment requires by invalidating life without parole sentences for all children under article I, section 14. *State v. Bassett*, 192 Wn.2d 67, 73, 428 P.3d 343 (2018).

b. *Bassett* held it is categorically unconstitutional to condemn a person to die in prison for childhood conduct.

Bassett involved a 16-year-old defendant who was convicted of three counts of aggravated murder after he shot his parents and drowned his brother in the bathtub. *Id.* at 73. He was originally condemned to die in prison with a sentence of life without the possibility of parole under the mandatory

sentencing statute for aggravated murder. *Id.* A court later held a resentencing hearing pursuant to RCW 10.95.035 and reimposed a life-without-parole sentence. *Id.* at 75. Although the Eighth Amendment permits such a sentence following the exercise of discretion, the Court of Appeals held article I, section 14 categorically prohibits a life without parole sentence for childhood conduct—even for three counts of aggravated murder. *Id.* at 76 (citing Court of Appeals opinion).

This Court affirmed the Court of Appeals and held that article I, section 14 categorically bars condemning a person to die in prison for childhood conduct. *Bassett*, 192 Wn.2d at 90. The Court explained that a categorical bar analysis involves two prongs: (1) a determination of whether there is a “national consensus against the sentencing practice at issue,” and (2) the exercise of “the court’s own independent judgment” in light of controlling cases and the constitutional text, history, and purpose. *Id.* at 83 (citations omitted). At this second step, the court must consider the “culpability of the offenders at issue” as

well as the “severity of the punishment” and whether that punishment “serves legitimate penological goals.” *Id.* at 83-84.

Applying the first prong to children who committed aggravated murder, this Court noted 20 states had abolished life without parole for children, four others no longer had anyone serving such a sentence for childhood crimes, and still others had reduced the number of crimes that qualified for juvenile life without parole. *Bassett*, 192 Wn.2d at 86. Thus, although this prong was “not dispositive,” there was a “clear trend of states rapidly abandoning or curtailing juvenile life without parole sentences.” *Id.*

As to the second prong, this Court emphasized that “children are less criminally culpable than adults” and therefore are “less deserving of the most severe punishments.” *Id.* at 87 (citation omitted). “[T]he distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences on juvenile offenders, *even when they commit terrible crimes.*” *Id.* at 88 (quoting *State v. Ramos*, 187 Wn.2d 420,

438, 387 P.3d 650 (2017)) (emphasis in original). The goals of deterrence, rehabilitation and incapacitation are not well-served, and “the case for retribution is weakened” because this rationale for punishment is rooted in “blameworthiness” and “children have diminished culpability.” *Bassett*, 192 Wn.2d at 88 (citing *Miller*, 567 U.S. at 472). Thus, this Court held that article I, section 14 categorically bars death-in-prison sentences for children who commit aggravated murder. *Id.* at 90.

c. The use of a childhood “strike” to condemn a person to die in prison is categorically unconstitutional under Bassett.

The above cases demonstrate that article I, section 14 categorically bars the use of a childhood offense as a “strike” to condemn a person to die in prison.

First, there is a “national consensus against the sentencing practice at issue.” *Bassett*, 192 Wn.2d at 83. While most states have some type of persistent offender law that increases punishment for multiple serious offenses, only 10 other states mandate life without the possibility of parole upon

a third strike—even for adult offenses. *Moretti*, 193 Wn.2d at 833 & n. 11 (citing statutes). Three others categorically bar the use of childhood offenses as strikes even where the sentence is less severe than life without parole, with Illinois adopting such legislation as recently as 2021.² Thus, this factor weighs strongly in favor of finding a life without parole sentence violates the cruel punishment clause, particularly as applied to those with childhood strikes.

Second, “this Court’s own independent judgment” demonstrates the use of a childhood offense as a strike is cruel punishment. *Bassett*, 192 Wn.2d at 83. This Court has recognized that in light of article I, section 14’s text and history, this provision provides stronger protection against cruel punishment than the Eighth Amendment. *Id.* at 82; *State v. Witherspoon*, 180 Wn.2d 875, 887, 329 P.3d 888 (2014). And it

² The three states are Illinois, Kentucky, and New Mexico. Ill. Comp. Stat. 5/5-4.5-95(a)(4)(E); Ky. Rev. Stat. Ann. § 532.080; N.M. Stat. Ann. § 31-18-23(C).

has held that in light of children's reduced culpability, mandatory sentencing statutes must be interpreted as discretionary for children, and life without parole may not be imposed upon them even for the worst crimes. *Bassett*, 192 Wn.2d at 90; *Houston-Sconiers*, 188 Wn.2d at 21.

Sentencing a person to die in prison based in part on childhood conduct does not serve the legitimate penological goals of retribution, deterrence, rehabilitation, and incapacitation. *See Bassett*, 192 Wn.2d at 88. Relative to those with three adult strikes, people with childhood strikes have greatly diminished culpability, so "the case for retribution is weakened." *Id.* Children are also less likely to be deterred by the prospect of severe consequences in the distant future, and the objective of rehabilitation is not served by denying the possibility of release. *See id.* Studies find "no credible statistical evidence that passage of three strikes laws reduces crime by deterring potential criminals or incapacitating repeat offenders." *About Time, supra*, at 17 (citing Tomislav V. Kovandzic, John

J. Sloan, and Lynne M. Vieraitis, “*Striking out*” as *Crime Reduction Policy: The Impact of “Three Strikes” Laws on Crime Rates in U.S. Cities*, *Justice Quarterly* 21, no. 2, 234 (June 1, 2004)). And while a sentence of life without parole certainly results in incapacitation, standard SRA sentences also serve this goal. Mr. Reynolds’s standard-range sentence, for example, would be a life sentence with a possibility of parole after no less than 229.5 months—a sentence that provides a very long period of incapacitation with a possibility of release to community custody only upon rehabilitation. CP 184. On balance, for people with childhood strikes, legitimate penological goals are served much better by SRA sentences than by condemning such defendants to die in prison.

In sum, this Court should hold that the use of a childhood strike to sentence a person to life without parole is categorically unconstitutional under *Bassett*.

d. *The use of a childhood “strike” to condemn a person to die in prison is unconstitutionally disproportionate under Fain.*

In the alternative, this Court should hold that the use of a childhood strike to condemn a person to die in prison is unconstitutional under the proportionality analysis of Washington’s seminal article I, section 14 case, *State v. Fain*, 94 Wn.2d 387, 397, 617 P.2d 720 (1980). *See Bassett*, 192 Wn.2d at 90-91 (holding life without parole for juvenile aggravated murder violated article I, section 14 under a *Fain* analysis as an alternative to the categorical bar analysis).

Under the *Fain* framework, the court considers: “(1) the nature of the offense, (2) the legislative purpose behind the statute, (3) the punishment the defendant would have received in other jurisdictions, and (4) the punishment meted out for other offenses in the same jurisdiction.” *Bassett*, 192 Wn.2d at 83 (citing *Fain*, 94 Wn.2d at 397). If, after an evaluation of these factors, the court concludes the punishment is

disproportionate to the crimes, the sentence must be reversed as cruel under article I, section 14. *Fain*, 94 Wn.2d at 402.

Like this case, *Fain* involved a recidivist punishment statute. The statute mandated that if the defendant committed three felonies of a particular type, the court had to impose an indeterminate life sentence with a possibility of release to parole after 10 years. *Id.* at 388-90 (citing former RCW 9.92.090). But the defendant's crimes were merely three thefts totaling \$470 (approximately \$2,500 in today's dollars), *id.* at 389, which the Court noted were "relatively minor" compared to crimes of violence. *Id.* at 398. Comparing Washington to other jurisdictions, the Court found that at that time, our state was one of only three that imposed similar sentences after three felonies. *Id.* at 399. And in looking at sentences for other crimes in Washington, the Court noted that the only other crime for which our legislature mandated a life sentence was first-degree murder, and that those who had stolen more money during the commission of a single count of theft were subject to

a maximum punishment of ten years. *Id.* at 401. Thus, without even reaching the “legislative purpose” prong, *id.* at 401, n.7, the Court held the defendant’s sentence violated article I, section 14 because it was “entirely disproportionate to the seriousness of his crimes.” *Id.* at 402.

Here, this Court should hold that under the *Fain* framework, a death-in-prison sentence is disproportionate for those with childhood strike offenses. *See Bassett*, 192 Wn.2d at 90-91 (applying *Fain* to bar this punishment for a category of offenders).

The first factor, the nature of the offenses, weighs in favor of a finding of cruel punishment because childhood strike offenses are significantly less blameworthy than adult strike offenses. *See Bassett*, 192 Wn.2d at 87-88; *Houston-Sconiers*, 188 Wn.2d at 21-22.

As to the second factor, the legislative purpose of the POAA was to improve public safety, reduce the number of serious repeat offenders, set simplified sentencing practices,

and restore public trust. RCW 9.94A.555(2). The first two purposes are not better served by a death-in-prison sentence than by an SRA sentence which, as noted, provides for significant incapacitation but also provides an opportunity for rehabilitation. As to the third purpose, determining prior offenses for a standard-range sentence is just as “simple” as determining prior offenses for a POAA sentence. Finally, public trust in our criminal justice system is severely hampered by draconian and unfairly administered sentencing practices like applying the POAA to childhood offenses. *See Moretti*, 193 Wn.2d at 835-36 (Yu, J., concurring) (We must “align this state’s sentencing practices with society’s expectations of a criminal justice system that is both fair and free of bias and imposes punishment that is proportional to the crime.”).

The third *Fain* factor assesses other jurisdictions’ practices. *Fain*, 94 Wn.2d at 397. This factor weighs in favor of a finding of cruel punishment because only 10 other states mandate life without parole upon a third strike; the vast

majority of states do not require such severe sentences for recidivism. *Moretti*, 193 Wn.2d at 833 & n. 11.

Finally, the fourth *Fain* factor, punishment for other crimes in Washington, also weighs strongly in favor of finding that counting childhood offenses as strikes violates article I, section 14. Outside of the POAA, no other law permits life without parole for childhood conduct. As noted, even children who commit multiple aggravated murders may not be condemned to die in prison in Washington. *Bassett*, 192 Wn.2d at 90. All other sentencing statutes that are mandatory when applied to adults must be read as discretionary when applied to childhood conduct. *Gilbert*, 193 Wn.2d at 175; *Houston-Sconiers*, 188 Wn.2d at 21. Thus, under *Fain*, counting a childhood offense as a strike violates article I, section 14.

e. *Contrary to the State's argument, Moretti does not control. This Court's precedent recognizes the Constitution provides stronger protection for children than for young adults.*

The State argues *Moretti* controls this case, but the State is wrong. By its own terms, the *Moretti* opinion does not apply to the issue of whether childhood offenses may serve as strikes condemning defendants to die in prison. *Moretti*, 193 Wn.2d at 821 n.5. Instead, *Bassett*, *Houston-Sconiers*, and *Gilbert* control.

The defendants in *Moretti* committed all three of their strike offenses as adults. *Id.* at 814-18. Their first offenses occurred when they were relatively young adults, and they asked this Court to hold that treating young-adult crimes as strikes was unconstitutional. *Id.* at 818. This Court allowed the petitioners to argue the specific facts of their cases rendered their sentences disproportionate under *Fain*, but it rejected the

categorical argument. *Id.* at 830-34.³ The Court held, “the petitioners have failed to establish a national consensus against the sentencing practice at issue here and our own independent judgment confirms that these sentences are supported by legitimate penological goals.” *Id.* at 830.

But “children are different.” *Houston-Sconiers*, 188 Wn.2d at 9. While brain development continues into young adulthood, this Court’s cases recognize the Constitution provides stronger protection for children than for young adults. For example, this Court held in *O’Dell* that young adult defendants are *permitted* to request exceptional sentences below the standard range based on age, but held in *Houston-Sconiers* that courts are *required* to consider the mitigating aspects of youth when sentencing children. *Compare State v. O’Dell*, 183 Wn.2d 680, 698–99, 358 P.3d 359 (2015) *with Houston-*

³ The Court found each petitioner’s sentence was proportionate on the facts of the individual cases. *Moretti*, 193 Wn.2d at 830-34.

Sconiers, 188 Wn.2d at 21; *see also Gilbert*, 193 Wn.2d at 176. This Court held in *Monschke* that courts *may* impose a sentence other than life without parole when sentencing young adults for aggravated murder, but held in *Bassett* that courts *must* impose a sentence other than life without parole when sentencing children for this crime. *Compare State v. Monschke*, 197 Wn.2d 305, 325-26, 482 P.3d 276 (2021) *with Bassett*, 192 Wn.2d at 90.

Similarly here, while this Court in *Moretti* held that defendants with young-adult strikes *may* argue their individual facts warrant a non-life sentence under *Fain*, the Court here should hold that defendants with childhood strikes *must* be sentenced under the standard SRA provisions and may not be condemned to die in prison.

Further, while *Moretti* stated the defendants were being punished only for their third strike, this statement is contrary to the analysis of *Fain*. *Compare Moretti*, 193 Wn.2d at 826, *with Fain*, 94 Wn.2d at 397-401. In *Fain*, this Court recognized the

recidivist sentencing statute at issue punished the defendant for *all three crimes*, and it evaluated all three offenses in determining the sentence was unconstitutional. *Fain*, 94 Wn.2d at 397-401; *see also Witherspoon*, 180 Wn.2d at 890 (rejecting one of defendant’s arguments on basis that “Witherspoon was an adult when he committed all three of his strike offenses.”).

This Court should clarify that the analysis in *Fain* and *Witherspoon* was correct. This Court should evaluate all three crimes, and should hold that if one or more crimes are childhood offenses, a sentence of life without parole is unconstitutional. Such a holding would not disturb the result in *Moretti*, which is consistent with this Court’s case law applicable to adults.

Finally, even if a first strike only “aggravates the guilt” of the final strike, *Moretti*, 193 Wn.2d at 826, the use of a childhood offense as a strike is unconstitutional. A childhood offense does not aggravate the guilt of later crimes to the degree an adult offense does. As discussed, children are far less

culpable than adults due to their immaturity. *Bassett*, 192

Wn.2d at 87-88; *Houston-Sconiers*, 188 Wn.2d at 22.

Accordingly, a childhood crime simply cannot aggravate a later crime to the degree necessary to impose life without parole.

This Court should hold that under *Houston-Sconiers*, *Gilbert*, and *Bassett*, article I, section 14 prohibits the use of a childhood offense as a strike condemning a person to die in prison.

2. Contrary to *Gregory*, the three strikes law is unconstitutionally racially disproportionate in its application.

The three strikes law is also unconstitutionally racially disproportionate as administered. Accordingly, this Court should not only invalidate the use of childhood offenses as strikes, but should hold that mandatory life without parole under the three-strikes law violates article I, section 14 for all defendants.

- a. *Gregory* held the death penalty was unconstitutional in its application because it was imposed in an arbitrary and racially biased manner.

In *Gregory*, this Court held the death penalty violated article I, section 14 as administered. *Gregory*, 192 Wn.2d at 5 (lead opinion of Fairhurst, C.J.); *id.* at 36 (Johnson, J., concurring); Const. art. I, § 14. The Court cited a statistical study demonstrating that in Washington, Black defendants were more than four times as likely to be sentenced to death as other defendants. *Id.* at 12 (citing Katherine Beckett & Heather Evans, *The Role of Race in Washington State Capital Sentencing*, 1981-2014 (Oct. 13, 2014)). The Court also noted that local, national, and international trends disfavored capital punishment, signaling the death penalty did not comport with evolving standards of decency. *Id.* at 23-24. This Court concluded, “When the death penalty is imposed in an arbitrary and racially biased manner, society’s standards of decency are even more offended. Our capital punishment law lacks

fundamental fairness and thus violates article I, section 14.” *Id.* at 24 (internal quotation omitted).

In reaching this result, the Court noted that while the defendant had presented a regression analysis to support his claims, such mathematical precision was not required to demonstrate constitutionally cognizable racial discrimination. *Gregory*, 192 Wn.2d at 20-23. The Court “decline[d] to require indisputably true social science to prove that our death penalty is impermissibly imposed based on race,” *id.* at 21, and took “judicial notice of implicit and overt racial bias against black defendants in this state.” *Id.* at 22. Two years later, this Court reaffirmed its recognition of systemic racial bias, including “the overrepresentation of black Americans in every stage of our criminal and juvenile justice systems.” Supreme Court Ltr. to the Legal Community, 1 (Jun. 4, 2020).⁴

⁴ Available at:

<http://www.courts.wa.gov/content/publicUpload/Supreme%20Court%20News/Judiciary%20Legal%20Community%20SIGNED%20060420.pdf>.

After *Gregory*, people who committed aggravated murder, including people who committed multiple aggravated murders, now receive the same sentence as those convicted of lesser crimes under the three strikes law. *Gregory*, 192 Wn.2d at 36 (“All death sentences are hereby converted to life imprisonment” without the possibility of parole.). “The principles set forth in *Gregory* compel us to ask the same questions about a life sentence without the possibility of parole. Is it fairly applied? Is there a disproportionate impact on minority populations? Are there state constitutional limitations to such a sentence?” *Moretti*, 193 Wn.2d at 840 (Yu, J., concurring).

The answers to these questions are: (1) No, it is not fairly applied; (2) Yes, there is a disproportionate impact on minority populations; and (3) Yes, there are state constitutional limitations to such a sentence.

b. *The three-strikes law is unconstitutional in its application because it is imposed in an extremely racially disproportionate manner.*

The three strikes law is not fairly applied; instead there is an extraordinarily disproportionate impact on minority populations. The Caseload Forecast Council (CFC) has tracked the race of all defendants sentenced under the POAA since the law went into effect.⁵ The Sentencing Guidelines Commission (SGC) compiled the first fifteen years' worth of data (through June 2008) and found only 52.2% of defendants sentenced under the three-strikes law were White, while 40.4% were Black. State of Washington Sentencing Guidelines Commission, *Two-Strikes and Three-Strikes: Persistent*

⁵ See <https://www.cfc.wa.gov/Publications.htm>. Under the "Criminal Justice" category, the CFC has a link to the Sentencing Guidelines Commission's Report on the POAA for all cases from the Act's inception through June of 2008. Also under the "Criminal Justice" category, the CFC has a link to "Statistical Summaries" of adult felony sentencing. The 2017 summary includes racial data for all POAA cases in between the 2008 report and the 2017 summary. The summaries for 2018 through 2021 each contain racial data for POAA sentences imposed during the periods covered.

Offender Sentencing in Washington State Through June 2008, 10 (February, 2009).⁶ The next year, Columbia Legal Services issued a report similarly concluding that, as of 2009, only 47% of three-strikes defendants were White, while 39.6% were Black. Columbia Legal Services, *Washington's Three Strikes Law: Public Safety & Cost Implications of Life Without Parole*, 8 (2009).⁷ The report emphasized the extraordinary nature of the disparity given that only 3.9% of the state's population was Black. *Id.* at 7.

Despite the dire data these reports highlighted, stark racial disproportionalities continued after 2009. Data from the Caseload Forecast Council and the Sentencing Guidelines Commission show that by 2021, Black people made up 41% of those sentenced to die in prison under the three-strikes law,

⁶ Available at:

https://www.cfc.wa.gov/PublicationSentencing/PersistentOffender/Persistent_Offender_asof20080630.pdf.

⁷ Available at: https://columbialegal.org/wp-content/uploads/2019/03/CLS-Report_Washingtons-Three-Strikes-Law.pdf.

while White people made up only 52%. Appendix (“Appx.”) at 16.⁸

The Legislature recently removed second-degree robbery from the list of strike offenses, and made the amendment retroactive, partly because of concerns about racial disproportionality. Nina Shapiro, *Legislature moves to resentence up to 114 people serving life without parole under Washington’s three-strikes law*, Seattle Times (Apr. 8, 2021).⁹ But even after removing second-degree robbery from the list of most serious offenses, extreme racial disproportionality remains

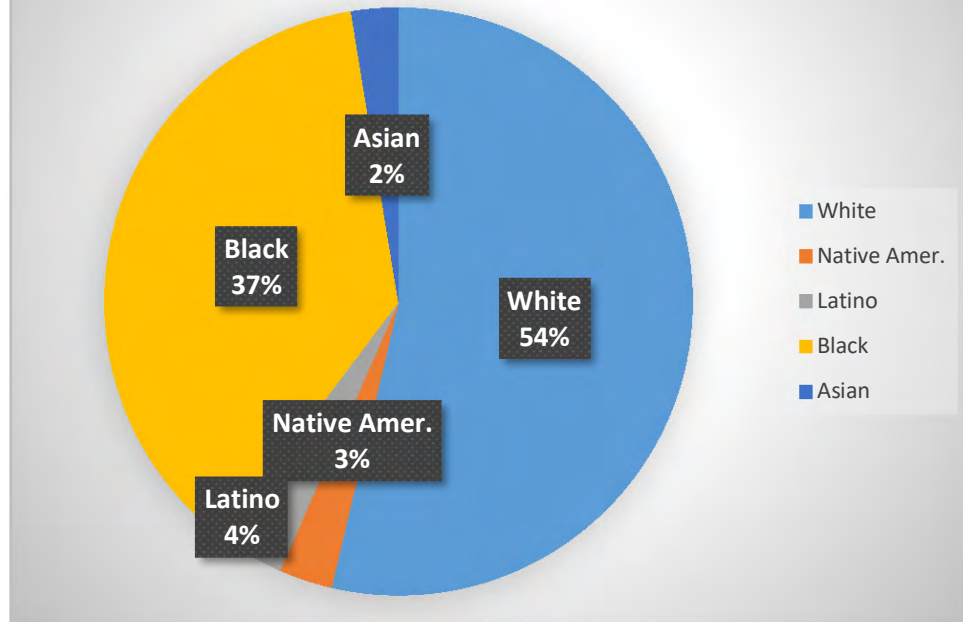
⁸ The Appendix compiles the Caseload Forecast Council data from the inception of the POAA through fiscal 2021. Again, the data are in six separate documents on the CFC website: (1) The SGC Report of all cases through fiscal year 2008, (2) The 2017 CFC Statistical Summary with an appendix listing all cases from fiscal year 2008 through fiscal year 2017, (3) The 2018 CFC Statistical Summary, (4) The 2019 CFC Statistical Summary, (5), the 2020 CFC Statistical Summary, and (6) The 2021 CFC Statistical Summary.

⁹ Available at: <https://www.seattletimes.com/seattle-news/politics/up-to-114-people-serving-life-without-parole-to-get-resentenced-as-washington-legislature-eases-three-strikes-law/>.

in three-strikes sentencing. Appx. at 17. Excluding those who will be or have been resentenced following the removal of second-degree robbery as a strike, 272 defendants remain in prison for life without parole as a result of the three-strikes law. Appx. at 5-15, 17. Of those defendants, only 146 are White, while 101 are Black.¹⁰ *Id.* In other words, 54% are White and 37% are Black. *Id.* at 17.

¹⁰ Ten are Latino, eight are Native American, and seven are Asian. *Id.*

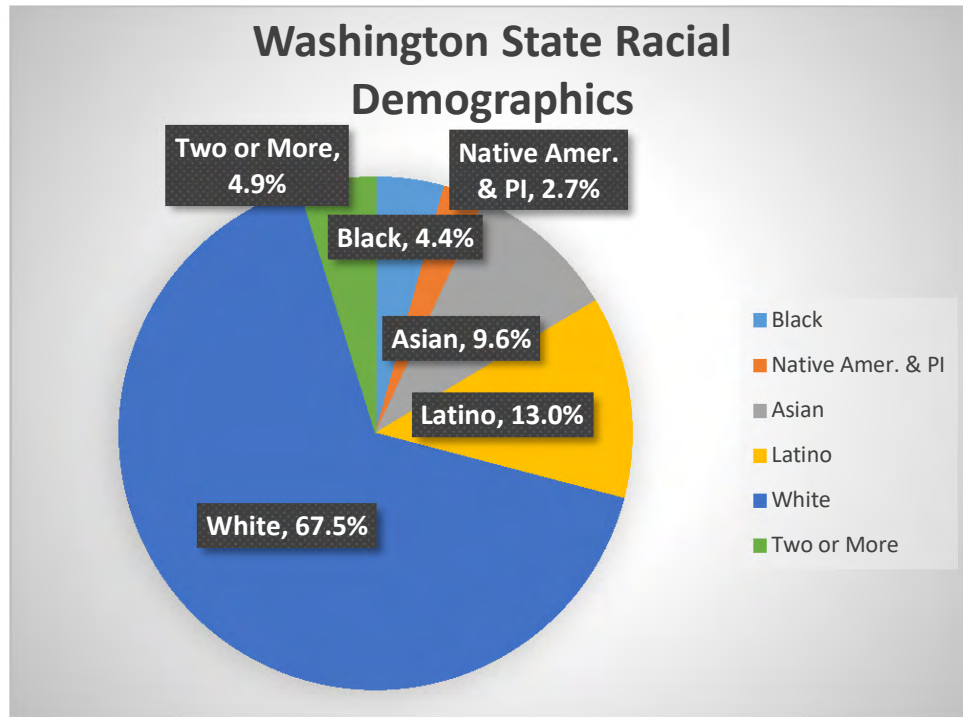
Three Strikes Cases Without Rob 2s Through Fiscal 2021



This is a striking statistic in a state where, currently, only 4.4% of the population is Black.¹¹ Appx. at 18.

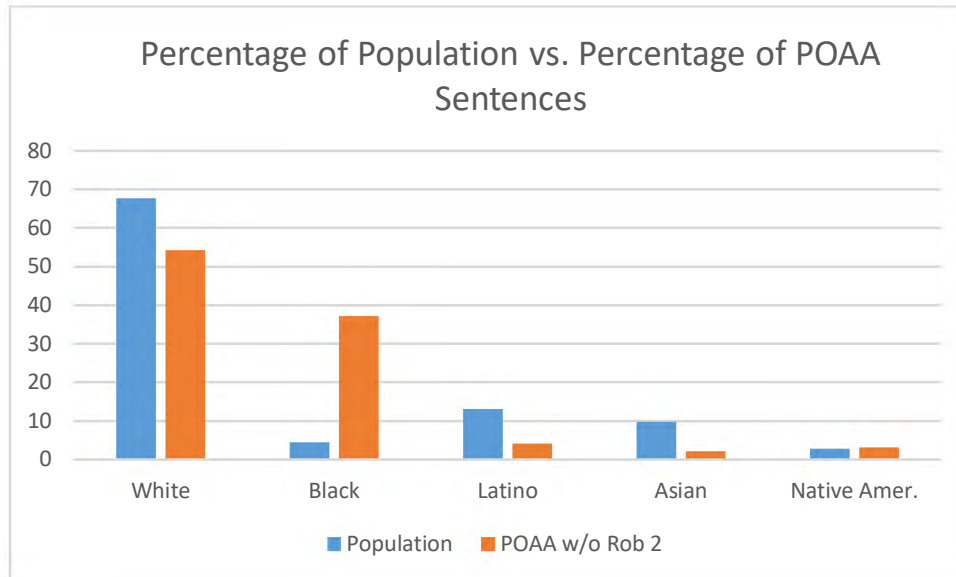
¹¹ See

<https://www.census.gov/quickfacts/fact/table/WA/PST045221>. The Census Bureau notes its total of all races slightly exceeds 100% because the Bureau draws its numbers from different data sources. *Id.*



Indeed, given that only 4.4% of the population is Black, but 37% of remaining three-strikes defendants are Black, Black people are overrepresented relative to their share of the population by a factor of **8.4** ($37 \div 4.4$).¹² Appx. at 19.

¹² For an explanation of relative disproportionality and comparative disproportionality, see Task Force 2.0: Race and the Criminal Justice Sys., *Race and Washington’s Criminal Justice System: 2021 Report to the Washington Supreme Court*, ix (2021) (hereinafter “Task Force 2.0”), available at: https://digitalcommons.law.seattleu.edu/cgi/viewcontent.cgi?article=1116&context=korematsu_center.



These data cannot be dismissed as representing differences in crime commission rates.¹³ Rather, “[r]acial and ethnic bias distorts decision-making at various stages in the criminal justice system, thus contributing to disproportionalities in the criminal justice system.” Task Force 2.0 at 7 (citing Task

¹³ See Steve Miletich, *Two State Supreme Court Justices Stun Some Listeners with Race Comments*, Seattle Times (Oct. 21, 2010) (“State Supreme Court justices Richard Sanders and James Johnson stunned some participants at a recent court meeting when they said African Americans are overrepresented in the prison population because they commit a disproportionate number of crimes and not because of racial discrimination.”). Available at: <https://www.seattletimes.com/seattle-news/two-state-supreme-court-justices-stun-some-listeners-with-race-comments/>.

Force on Race & Criminal Justice Sys., *Preliminary Report on Race and Washington's Criminal Justice System* (2011)).

This substantial racial disparity, combined with the fact that only 10 other states impose mandatory life without parole upon a third strike, shows the three strikes law does not comport with “evolving standards of decency that mark the progress of a maturing society.” *Gregory*, 192 Wn.2d at 23 (quoting *Fain*, 94 Wn.2d at 397). This Court should hold the three strikes law is unconstitutional as administered for all defendants. At a minimum, this stark racial disparity provides further proof that the use of a childhood offense as a strike violates article I, section 14.

c. Contrary to the State's claim, this dire systemic disproportionality cannot be harmless.

The State asks this Court to turn a blind eye to the racial disproportionality problem, and in so doing it appears to make two claims: first, that “[n]either the parties nor this Court are well equipped to sift through raw statistics on an incredibly

short timeline,” and second, that “racial bias against people of color in the application of the POAA” would be harmless as to Mr. Reynolds because he is a White man. Answer at 18-19. Both of these arguments are without merit.

First, the “raw statistics” on which Mr. Reynolds relies are data the Caseload Forecast Council has gathered and posted on its website, <http://www.cfc.wa.gov/>, since the inception of the POAA. The data have always been accessible to all parties and courts. Columbia Legal Services and the Sentencing Guidelines Commission compiled Caseload Forecast Council data for their 2009 reports, and members of this Court have cited those reports—presumably because they know Caseload Forecast Council data are reliable. *E.g. State v. Jenks*, 197 Wn.2d 708, 730, 487 P.3d 482 (2021) (Yu, J., concurring).

Second, Mr. Reynolds’s arguments in this case are categorical and systemic: (1) the three strikes law cannot be constitutionally applied to *anyone* with a childhood strike offense, and (2) the three strikes law is imposed in an

unconstitutionally racially disproportionate manner and must be struck down for *all* defendants. Categorical and systemic holdings apply to a class of defendants, irrespective of their individual characteristics. For instance, when this Court held the death penalty was imposed in an unconstitutionally racially biased manner, it did not order the White defendants to remain on death row while the Black defendants were resentenced. Rather, the Court held, “[a]ll death sentences are hereby converted to life imprisonment.” *Gregory*, 192 Wn.2d at 36. Similarly here, this Court should recognize that even though this particular petitioner is White, the three strikes law is unconstitutionally racially disproportionate as a systemic matter, and all three-strikes defendants should be resentenced.

The State allows that this systemic racism “is a critical issue that deserves this Court’s careful consideration under the right circumstances.” Answer at 19. The right circumstances exist here and now because the Caseload Forecast Council data are available and demonstrate a stark disproportionality. *See*

State v. Hawkins, ___ Wn.2d ___, ___ P.3d ___ (No. 100060-0, filed October 27, 2022) at *11 (Court considers available data regarding racially disproportionate outcomes when deciding cases).

To the extent the State believes a White petitioner’s case cannot present the “right circumstances,” this Court should consider that the State has settled at least one case raising the same argument on behalf of a Black defendant. Undersigned counsel first presented the current CFC data and argued the three-strikes law was unconstitutionally racially disproportionate in *State v. Raymond Brown*, No. 38493-4-III, where a Black man was condemned to die in prison for a third strike of second-degree assault.¹⁴ His first two strikes were class A felonies but resulted in no physical harm to human beings, and his third strike was a second-degree assault based on a

¹⁴ See <https://www.courts.wa.gov/content/Briefs/A03/384934%20Appellant.pdf> (Opening Brief of Appellant in *State v. Raymond Brown*, No. 38493-4-III).

single punch to the mouth. *See id.* In between two of his strikes, he had spent considerable time in the community working as a warehouse supervisor and enjoying his family. *See id.* After undersigned counsel presented the CFC data and argued the life without parole sentence was unconstitutionally disproportionate, the State offered to settle the case rather than file a response brief. Mr. Brown was resentenced to an agreed term of 48 months, and the appeal was dismissed.¹⁵

The prosecution did the right thing in *Brown* by offering to settle the case for a lesser sentence, but such settlements should not be used to shield this Court's eyes from the truth: the three-strikes law is disproportionately administered against Black men who have committed crimes with relatively low

¹⁵ *See* https://washapp.org/wp-content/uploads/2022/09/384934_Motion_20220830093839D3_823826_5898.pdf (State's RAP 7.2(e) motion, order vacating judgment, and amended judgment).

seriousness levels.¹⁶ “The legal community must recognize that we all bear responsibility for this on-going injustice, and that we are capable of taking steps to address it, if only we have the courage and the will.”¹⁷ This Court should hold the three strikes law violates article I, section 14 as administered. *Gregory*, 192 Wn.2d at 5.

E. CONCLUSION

The use of a childhood offense as a “strike” condemning a person to die in prison violates article I, section 14. Moreover, the three strikes statute is administered in an unconstitutionally racially disproportionate manner. Mr. Reynolds asks this Court to reverse his sentence of life without parole and remand for resentencing within the standard range.

¹⁶ *See* <https://www.courts.wa.gov/content/Briefs/A03/384934%20Appellant.pdf> at pages 74-75 and Appx. 16-17.

¹⁷ Supreme Court Open Ltr. at 1.

This brief uses 14-point Times New Roman and contains approximately 6912 words (word count by Microsoft Word).
Mr. Reynolds has filed a motion for leave to file an overlength brief.

Respectfully submitted this 18th day of November, 2022.



LILA J. SILVERSTEIN
(WSBA 38394)



JAN TRASEN
(WSBA 41177)

Washington Appellate Project (91052)
Attorneys for Petitioner

No. 100873-2

IN THE SUPREME COURT OF THE STATE OF
WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

MICHAEL REYNOLDS,

Petitioner.

APPENDIX

LILA J. SILVERSTEIN
JAN TRASEN
Attorneys for Petitioner

WASHINGTON APPELLATE PROJECT
1511 Third Avenue, Suite 610
Seattle, Washington 98101
(206) 587-2711
wapofficemail@washapp.org

TABLE OF CONTENTS

Document	Pages
Declaration of Lila J. Silverstein	2-4
Spreadsheet of cases with race and offense data from Caseload Forecast Council	5-15
Charts and Graphs from Caseload Forecast Council Data	16-19

Three Strikes Cases Through Fiscal 2021

Data from Caseload Forecast Council
cfc.wa.gov/publications

IN THE SUPREME COURT OF WASHINGTON

<p style="text-align: center;">STATE OF WASHINGTON,</p> <p style="text-align: center;">Respondent,</p> <p style="text-align: center;">v.</p> <p style="text-align: center;">MICHAEL REYNOLDS,</p> <p style="text-align: center;">Petitioner.</p>	<p style="text-align: center;">No. 100873-2</p> <p style="text-align: center;">Declaration of Lila J. Silverstein</p>
--	--

I, Lila J. Silverstein, declare as follows under penalty of perjury:

1. The following data are from the Washington State Caseload Forecast Council. *See* <https://www.cfc.wa.gov/Publications.htm>. The CFC has tracked the crimes and race information for all defendants sentenced under the Persistent Offender Accountability Act. The Sentencing Guidelines Commission catalogued all data through May 2008 in a single report, and the CFC catalogued all data from June of 2008 through fiscal 2017 in its 2017 “statistical summary.” The CFC continued cataloguing crime and race data for POAA defendants in each of its annual statistical summaries from 2018 through 2021.

2. I entered data from the above sources into a single Excel spreadsheet. I included only three-strikes cases, not two-strikes cases under the sex offense statute. I omitted the people whom the Sentencing Guidelines Commission indicated were no longer persistent offenders after the Court of Appeals overturned a conviction.

Declaration of Lila J. Silverstein

3. Because the Legislature recently removed second-degree robbery as a strike offense, I tracked cases in which defendants were sentenced under the POAA for a strike of second-degree robbery so I could later remove those cases from the race analysis. Where defendants were subject to a POAA sentence for other reasons, they were kept in the filtered data set. In other words, some defendants had three or more remaining strike offenses after removing second-degree robbery. The CFC listed *all* strike offenses, clearly delineating who remained subject to a POAA sentence following the removal of second-degree robbery from the strike list.
4. There were a handful of very old cases for which the CFC did not state the degree of the crime. I noted this uncertainty with a “?” in the relevant column, and did not count these cases as second-degree robberies for purposes of the filtered lists and charts.
5. After entering the data as described above, I filtered out the second-degree robbery defendants using Excel’s filter feature, then created graphs of defendant race using Excel’s charting feature.
6. In comparing the racial breakdown of the POAA and the racial breakdown of Washington’s population, I used the data from the United States Census Bureau. *See* <https://www.census.gov/quickfacts/fact/table/WA/PST045221>. The Census Bureau notes that its total slightly exceeds 100% because it gathers data from multiple sources.
7. The data I entered below is from the same source used to calculate percentages in the 2009 reports by Columbia Legal Services and the Sentencing Guidelines Commission

which this Court and others have repeatedly cited. Because the CLS and SGC reports are so old, they are both underinclusive and overinclusive. They are underinclusive in that they do not include data from 2009 on, and they are overinclusive in that they include cases where defendants were sentenced to life without parole based on second-degree robbery strikes. The below spreadsheet includes the cases that postdated these reports, and it excludes the cases that relied on second-degree robbery as a strike.

8. When I presented the following data and arguments based thereon in *State v. Brown*, no. 38493-4-III, the State offered to settle the case, and Mr. Brown has been resentenced to 48 months. *See* <https://www.courts.wa.gov/content/Briefs/A03/384934%20Appellant.pdf> (Opening Brief of Appellant in *State v. Raymond Brown*, No. 38493-4-III); https://washapp.org/wp-content/uploads/2022/09/384934_Motion_20220830093839D3823826_5898.pdf (State's RAP 7.2(e) motion, order vacating judgment, and amended judgment).
9. I swear under penalty of perjury that the above statements are true, that I applied the foregoing protocols, and that the following spreadsheet and charts are correct to the best of my belief and knowledge.

Dated this 31st day of October, 2022.



Lila J. Silverstein, WSBA No. 38394

CaseNum	CauseNum	Sent Date	County	Race	Offenses	Rob 2?	Comment
1994030005	94-C-00443-0	3/3/1994	King	Black	Kidnap 1, Rob postal, rob bank	?	
1994061469	94-1-00147-1	6/20/1994	Snohomish	White	Rob 2 x3	Y	
1994061399	93-1-00127-9	6/27/1994	Stevens	White	Rape 1, Assault 2, Rape 2	N	
1994060593	94-1-01601-8	6/30/1994	Pierce	White	rob 2, rob 1, rob 1	Y	
1994091196	93-1-06019-6	9/2/1994	King	Black	rob 2 x2, assault 2	Y	
1994100303	94-1-01558-0	10/7/1994	king	Black	Rob 2 x3	Y	
1994100119	94-1-02799-5	11/4/1994	King	Black	Rob 2 x3	Y	
1994110281	94-1-01095-2	11/10/1994	King	Black	Rob 2-Att, Rob 2, "Robbery"	Y	
1994111195	94-1-00660-1	11/17/1994	Snohomish	Black	Rob 1 Att, Rob 2 x2	Y	
1994120063	94-1-04491-1	12/5/1994	King	Black	Rob 2, Rob 1 x2	Y	
1994120801	94-1-01964-5	12/7/1994	Pierce	White	Assault 2, Rob 2, Rob 1	Y	
1994120124	94-1-00144-9	12/16/1994	King	White	Rob 2 x3	Y	
1994120945	94-1-00385-7	12/16/1994	Snohomish	White	Kidnap 1, Rob 1, Rob 2	Y	
1994121476	94-1-00117-8	12/16/1994	Whatcom	White	Rape 2, Rob Bank, Rob 1	N	
1998111177	94-1-01314-5	1/6/1995	King	White	Murder 1, Att Rape 1, Rape 2	N	
1995011431	94-1-00541-8	1/27/1995	Snohomish	White	Child mol 2, Child mol 1, assault 2	N	
1995031542	94-1-01457-0	3/2/1995	Spokane	White	Burg 1, Murder 2, "Robbery"	?	
1995030213	94-1-05915-3	3/7/1995	King	Black	Burg 1, Rob 2 x2	Y	
1995030572	94-1-04687-1	3/16/1995	Pierce	Black	Rob 1 x2, Rob 2	Y	
1995030528	94-1-01328-1	3/20/1995	Pierce	Native Amer.	Assault 2, Rape 3, "Assault"	N	
1995031278	94-1-05565-4	3/24/1995	King	White	Rob 1, Rob 2 att, Rob 2	Y	
1995041401	94-1-08084-5	4/28/1995	King	Black	Assault 2, Rob 1, Rob 2	Y	
1995051831	94-1-07090-4	5/25/1995	King	Black	Rob 1 x2, assault 2	N	
1995051994	94-1-03441-5	5/31/1995	Pierce	White	Murder 1, assault 1, assault 2	N	
1995060584	94-1-06563-3	6/9/1995	King	White	Rob 1 x3	N	
1995061892	94-1-05101-8	6/28/1995	Pierce	Black	Assault 1, rape 1, rob 2	Y	
1995070477	94-C-07842-5	7/14/1995	King	Black	Rob 2 x3	Y	
1995071016	94-1-00616-3	7/14/1995	Snohomish	White	Kidnap 1, indecent lib x2	N	
1995110037	95-1-00029-0	8/3/1995	Clallam	White	Murder 2 att, Murder 1, assault 2	N	
1995081612	94-1-00496-7	8/7/1995	Whatcom	Latino	assault 2 SM, assault 2, rob 2	Y	
1995080788	95-1-00002-8	8/18/1995	Clallam	White	Childmol 1, assault 2, Indecent Libs	N	
1995081816	95-1-00810-7	8/23/1995	King	White	Assault 2 x3	N	
1995081462	95-1-00080-0	8/31/1995	Clallam	White	Kidnap 1 & 2, agg murder (?)	N	
1995090334	94-C-08086-1	9/8/1995	King	Native Amer.	Murder 1, rob 1x2	N	
1995101546	95-1-00261-9	10/5/1995	Pierce	White	Rob 2, rob bank, "robbery w/ DW"	Y	
1995100321	95-1-01095-4	10/11/1995	Clark	White	Rob 2 x2, Rob 1	Y	
1995100371	94-1-06273-1	10/13/1995	King	Black	Burg 1, "Robbery" x2	?	
1996031887	95-C-07113-5	10/13/1995	King	Black	Rob 1, assault 2, rob 2	Y	
1995101774	95-1-01102-6	10/17/1995	Yakima	White	Rob 1 x3	N	
1995101526	95-1-00160-4	10/30/1995	Pierce	Black	Rape 1 x2, assault 1	N	
1995110862	95-1-00402-8	11/3/1995	Thurston	Black	child mol 1, Burg 1, promoting prost	N	
1995110426	94-1-05017-2	11/9/1995	King	Black	Rob 2 x3	Y	
1995110610	95-1-04105-3	11/14/1995	Pierce	White	Rob 2 x2, Rob 1	Y	
1996050614	94-1-01513-4	11/17/1995	Spokane	Black	Murder 1, rob 2, rob 1	Y	

1995111507	95-1-00882-0	11/20/1995	Pierce	Black	Assault 1, Rob 2, Rob 1	Y
1995110496	95-1-02922-8	11/21/1995	King	White	Rob 1-Att, Assault 2 Att, Assault 2	N
1995120237	95-1-00375-5	12/5/1995	Pierce	Black	Rob 1 x2, Rob 2	Y
1995120383	95-1-01103-4	12/8/1995	Yakima	White	Rob 1 x2, Fed Rob	?
1996010315	94-1-02336-6	12/11/1995	Spokane	White	Rob 2, Rob 1 x2	Y
1996011355	95-1-00098-6	1/22/1996	Grant	Black	Rape 1, Rape 2, murder 2	N
1996011570	95-1-01997-0	1/22/1996	Pierce	White	Burg 1, assault 2, rob 2	Y
1996050412	95-1-06668-9	2/22/1996	King	White	rob 2, rob 1, rob	Y
1996030744	95-1-00787-7	3/1/1996	Snohomish	White	assault 2 x2, Att Assault 1	N
1996030058	95-1-00297-5	3/4/1996	Walla Walla	Black	Childmol 1, Assault 2, Assault SM	N
1996031863	95-1-04812-1	4/11/1996	Pierce	White	Assault 1, Rob 1 x2	N
1996050615	95-1-02181-7	4/16/1996	Spokane	White	Rob 1 x2, assault 2	N
1996041401	95-1-04641-1	4/29/1996	Pierce	White	Assault 1 x2, assault 2	N
1996050615	95-1-02181-7	5/15/1996	Spokane	White	Rob 1 x2, assault 2	N
1996060335	96-1-00126-5	6/4/1996	Snohomish	White	Rob 2, assault 2 x2	Y
1996031888	95-1-04144-9	6/9/1996	King	White	Rape 2 x2, assault 2	N
1996060661	95-1-01817-5	6/11/1996	Pierce	Black	Rob 1 x2, Rob 2	Y
1996060939	96-1-00040-8	6/21/1996	Pacific	Asian	Murder 1, assault 2, burg 2	N
1996060944	96-1-00059-9	6/28/1996	Pacific	White	child mol 1, child mol 2, ROC 1	N
1996071530	96-1-00379-9	7/14/1996	Snohomish	White	Rob 2 x3	Y
1996071114	95-1-04149-5	7/30/1996	Pierce	White	Rob 1 x2, burg 1	N
1996081718	96-1-00449-5	8/21/1996	King	Black	Rob 2 x2, Rob 1	Y
1996080841	95-1-04872-4	8/22/1996	Pierce	Black	Kidnap 1, rob 1, rape 1	N
1996091653	95-1-02141-2	9/5/1996	Yakima	White	Rape 1, 3, rob 2	Y
1996090319	95-1-01839-4	9/18/1996	Clark	White	Child mol 1, extortion 1, "robbery"	?
1996101504	95-1-01611-6	10/4/1996	Snohomish	Black	Rob 1 x3	N
1996101525	96-1-00372-1	10/16/1996	Snohomish	White	rob 2 x2, assault 2	Y
1996101837	96-1-00802-2	10/16/1996	Snohomish	White	Rob 2, Rob 1 x2	Y
1996101513	95-1-01355-9	10/21/1996	Snohomish	White	Att murder 1, assault2, "robbery"	?
1996091299	95-1-00536-0	10/25/2006	Snohomish	White	ROC 1, child mol 1, indecent lib	N
1996101850	96-1-00792-1	10/28/1996	Snohomish	Native Amer.	Assault 2, arson 1, rob 1	N
1996101544	96-1-00633-9	10/29/1996	Thurston	White	Rob 1, rob 2, "robbery"	Y
1996110323	96-1-01661-2	11/8/1996	King	Black	Att rape 1, rob 2, assault 2	Y
1996111578	96-1-00064-6	11/20/1996	Skagit	White	Arson1, rob 2, rob1	Y
1996110958	96-1-03464-5	11/27/1996	King	Black	Rob 2, rob bank, rob 1	Y
1996110957	95-1-02425-1	12/2/1996	King	White	Att rape 1, rob 2, "robbery"	Y
1996120960	96-1-00452-7	12/2/1996	Kitsap	White	murder 1, burg1 x2	N
1996120174	96-1-01371-1	12/6/1996	King	Black	Indecent lib, rape, "assault w/ DW"	N
1996120146	92-1-02233-7	12/15/1996	King	White	Rob 1 x3	N
1997010215	96-1-02814-4	1/15/1997	Pierce	White	agg murder 1 (?), rob 1, assault 2	N
1997010898	95-1-00539-7	1/15/1997	Cowlitz	White	Burg 1, assault 2, rob 2	Y
1997011085	96-1-00687-2	1/15/1997	Kitsap	White	Rape 3 x3	N
1997010278	95-1-01342-7	1/17/1997	Snohomish	White	Att murder 1, rob 1, murder 2	N
1997020121	96-1-04550-0	2/7/1997	King	Black	Rob 1, "robbery," assault 1	?
1997020054	94-1-08323-2	2/18/1997	King	White	Veh assault, agg assault, assault 2	N

1997030116	96-1-05912-5	3/13/1997	King	Black	Assault 2, 2x promoting Prost.	N
1997030223	96-1-03101-3	3/18/1997	Pierce	Black	rob 1, rob 2 x2	Y
1997030927	96-1-01035-3	3/26/1997	Snohomish	Black	Kidnap 1, rob 2, rob 1	Y
1997040054	97-1-00657-7	4/22/1997	King	White	Rob 2 x3	Y
1997041862	96-1-00960-4	4/22/1997	Whatcom	White	Rob 2, Rob 1 x2	Y
1997051653	95-1-02242-2	5/9/1997	Spokane	White	Rape 1 x2, assault 2	N
1997050495	96-1-02166-2	5/22/1997	Pierce	Black	Murder 2, assault 2, rape 3	N
1997070007	97-1-00428-4	6/2/1997	Clark	White	Assault 2 x2, meth poss. w/ FA	N
1997060454	96-1-06524-9	6/13/1997	King	Black	ROC 2, indecent lib x2	N
1997070133	97-1-00172-7	7/7/1997	Snohomish	White	Rob 2, Rob 1, att rob 2	Y
1997070700	96-1-00754-8	7/8/1997	Thurston	White	Rob2, 2x "robbery"	Y
1997070716	97-1-00720-0	7/9/1997	Pierce	White	ROC 1 x2, "Robbery - att"	?
1997071119	96-1-00785-5	7/9/1997	Spokane	Black	Rob 1 x2, Rob 2	Y
1997071122	96-1-01143-7	7/15/1997	Spokane	Black	murder 1, assault 2 x2	N
1997071169	96-1-00449-7	7/16/1997	Kitsap	White	Murder 1, veh assault, "robbery"	?
1997081592	97-1-02152-1	8/19/1997	Pierce	White	ROC 1, Indecent lib, kidnap 2	N
1997080655	97-1-00441-9	8/26/1997	Cowlitz	White	Assault 2 x3	N
1997090162	96-1-00519-2	9/11/1997	Skagit	Latino	Arson 1, att assault 2, assault 2	N
1997091621	96-1-01680-8	9/11/1997	Yakima	Latino	Assault 2 x3	N
1997091509	96-1-01904-7	9/18/1997	Spokane	White	ROC 1, child mol 2, child mol 1	N
1997100375	97-1-00011-6	10/6/1997	Asotin	White	veh hom, child mol 2, burg 1	N
1997100935	97-1-00325-3	10/6/1997	Clark	Black	Rob 1, "robbery"x2	?
1997100764	96-1-00468-9	10/24/1997	Benton	White	Murder 1, rob 2 x2	Y
1997110795	96-1-00102-2	11/18/1997	Clallam	White	ROC 1 x2, Assault2	N
1997110493	96-1-08165-1	11/21/1997	King	White	Rob 1, burg 1, "Assault w/DW"	N
1997121245	96-1-08365-4	12/29/1997	King	Black	murder 1, rob 2, assault 1	Y
1998030783	97-1-07087-9	3/6/1998	King	Latino	Att. Rape 2, assault 2, rob 2	Y
1998041548	97-1-06904-8	4/17/1998	King	White	Rob 2 x3	Y
1998051423	97-1-07001-1	5/8/1998	King	Black	Rob 1, att rob 2, assault 2	Y
1998051841	97-1-01272-9	5/15/1998	Snohomish	Black	Rob 1, att rob 2, assault 2	Y
1998051105	98-1-00129-4	5/28/1998	Whatcom	White	Rob 2 x2, rape 3	Y
1998060183	97-1-01039-0	6/23/1998	Clark	White	Arson1, "robbery," kidnapping,	?
1998072184	97-1-00852-9	7/20/1998	King	White	rob 2 x3	Y
1998090265	98-1-06347-1	9/4/1998	King	White	Rob 1 x3	N
1998090673	97-1-04547-1	9/23/1998	Pierce	Black	Rob 1, att murder, "assault w/FA"	N
1998101641	97-1-01936-3	10/5/1998	Spokane	White	Burg 1, rob 1 x2	N
1998102007	97-1-02412-1	10/8/1998	Pierce	Black	Murder 1, rob 1, rob 2	Y
1998101185	98-1-01076-6	10/30/1998	Thurston	Native Amer.	Rob 2, robbery, drug del w/ FA	Y
1998110309	97-1-04824-5	11/20/1998	King	Black	Murder 2, rob 2, assault 2	Y
1998111042	97-1-05832-1	11/20/1998	King	Black	Att rob 1, man 1, assault 2	N
1998121140	98-1-00643-4	12/18/1998	Yakima	White	Rape 2, rape 1, "robbery"	?
1998120362	98-1-00140-5	12/22/1998	Grant	Latino	Assault 1 x2, assault 2	N
1999021749	98-1-00532-0	2/9/1999	Grant	Black	Murder 2, burg 1, "robbery"	?

1999020483	97-1-07256-1	2/15/1999	King	Black	Rob 2, murder 2, rob 1	Y	
1999020982	94-1-08085-3	2/15/1999	King	White	murder 1, assault 2, rob 2	Y	
1999021060	98-1-01425-8	2/18/1999	Snohomish	White	Att rob 1, assault 2 x2	N	
1999020517	98-1-03956-8	2/25/1999	Pierce	White	Att ROC 2, att Child mol 2, stat rape 2	N	
1999032100	98-1-01823-6	3/15/1999	Thurston	White	Child mol 1, rob 2 x2	Y	
1999030579	98-1-05028-6	3/22/1999	Pierce	Black	Assault 2 x2, rape 2	N	
1999041292	98-1-02369-6	4/8/1999	Pierce	Black	Murder 2, assault 1 x2	N	
1999051096	98-1-00829-3	5/13/1999	Cowlitz	White	Att assault 1, assault 2, burg 1	N	
1999050069	94-1-06445-9	5/15/1999	King	Black	Burg 1, assault 1, rape 2	N	
1999050927	98-1-00322-8	5/15/1999	Spokane	White	Burg 1, Rob 2 x2	Y	
1998101641	97-1-01936-3	5/18/1999	Spokane	White	Burg 1, rob 2, att rob 2	Y	
1999061650	97-1-03308-1	6/14/1999	Pierce	Native Amer.	Child Mol 1, vol. man., "sodomy"	N	
1999061704	98-1-05398-6	6/16/1999	Pierce	Latino	Rob 1, assault 2, rob 2	Y	
1999072091	99-1-00821-9	7/1/1999	Clark	White	Rob 2, Rob 1 x2	Y	
1999070350	98-1-00782-2	7/7/1999	King	Black	Rob 2, "assault w/ DW," "robbery"	Y	
1999070351	98-1-01231-1	7/9/1999	King	Black	Rob 2 x3	Y	
1999071215	98-1-00481-1	7/29/1999	Pierce	White	Murder 1, "robbery armed," "assault /battery w/ DW"	N	
1999080808	98-1-00473-2	8/20/1999	Snohomish	Black	Rob 1, Assault 2, Rob 1	N	
1999091723	98-1-06914-3	9/1/1999	King	White	Rob 2, "robbery," rob 1	Y	
1999091664	98-1-00899-3	9/10/1999	King	Black	Murder 2, rob 1, att rob 2	Y	
1999090698	99-1-00634-3	9/16/1999	Yakima	Latino	Rob 2 x2, att rob 1	Y	
1999100526	98-1-04136-2	10/22/1999	King	White	Burg 1, rob 2, att rob 1	Y	
1999101170	99-1-00011-1	10/28/1999	Mason	White	Rob 2, assault 2, burg 1	Y	
1999100069	98-1-06431-1	10/29/1999	King	White	Rape 1, 2, rob 1	N	
1999110337	99-1-04885-3	11/5/1999	King	White	Rob 1 x2, att rob 2	Y	
1999110338	99-1-03487-9	11/5/1999	King	White	rob 2, rob 1x2	Y	Same person as above?
1999110726	98-1-08643-9	11/19/1999	King	Black	Murder 1, 2x att rob 1	N	
2000011496	99-1-02529-8	1/7/2000	Pierce	Black	Murder 1, assault 1, veh hom	N	
2000010678	99-1-04828-6	1/28/2000	King	White	Rape 1, rob 1, rob 2	Y	
2000032367	00-1-00604-3	3/2/2000	King	White	rape 1, assault 2, rob 1	N	
2000031277	99-1-02333-3	3/10/2000	Pierce	Black	Rob 1 x2, murder 1	N	
2000031055	99-1-00873-6	3/22/2000	Lewis	White	Rob 2, assault 2, burg 1	Y	
2000031721	99-1-01182-6	3/27/2000	Snohomish	Black	Rob 2 x2, att rob 2	Y	
2000041309	99-1-02419-4	4/14/2000	Pierce	Black	Rob 1 x2, assault 2 w/ SM	N	
2000041074	99-1-02064-4	4/17/2000	Pierce	Black	Rob 1 x3	N	
2000041773	99-1-00929-4	4/18/2000	Thurston	Black	Assault 2 x 2, att manslaughter (?)	N	
2000041326	99-1-02410-1	4/26/2000	Pierce	White	Rob 2 x3	Y	
2000051985	00-1-00013-5	5/11/2000	Walla Walla	White	Assault 1, assault 2, burg 1	N	
2000050438	99-1-00924-6	5/12/2000	King	Black	Assault2, murder1, "Robbery armed"	N	One prior strike 1979. other unknown.
2000051505	99-1-09431-6	5/19/2000	King	White	rob 2 x2, assault 2	Y	
2000050221	98-1-02219-1	5/30/2000	Clark	White	Rob 2 x3	Y	
2000061406	99-1-04391-1	6/2/2000	Pierce	White	Assault 1, rob 1, rob 2	Y	
2000062296	99-1-00344-9	6/8/2000	Whatcom	White	Att Rob 2, assault 2, rob 1	Y	
2000060863	99-1-02129-7	6/9/2000	King	Black	Rob 1 x2, assault 2 SM	N	
2000061728	98-1-03607-1	6/9/2000	Pierce	Black	rob 1, rob 2 x2	Y	

2000060978	97-1-05897-6	6/30/2000	King	Black	Rape 3, Rob 1, stat rape 2	N
2000081235	98-1-08431-2	8/14/2000	King	White	Assault 1 SM, Burg 1, Indecent Lib	N
2000081425	00-1-02907-8	8/25/2000	King	Black	Rob 1, Rob 2, Burg 1	Y
2000101303	99-1-50929-0	10/2/2000	King	Black	Rob 2 x3	Y
2000121379	00-1-01184-3	12/15/2000	Snohomish	Black	Rape 2 x2, rob 1	N
2001010851	99-1-05616-3	1/5/2001	King	Black	Rob 1, rob 2 x2	Y
2001010666	98-1-02618-5	1/23/2001	King	Black	Rape 1, burg 1, rob 1	N
2001020258	00-1-00828-9	2/2/2001	Pierce	Black	Rob 1, Rob 2, Kidnap	Y
2001040561	00-1-01381-3	4/13/2001	King	White	Rob 2, rob 1, assault 1	Y
2001041159	99-1-03828-4	4/13/2001	Pierce	Black	Assault 1, Rob 1 x2	N
2001050484	00-1-08720-5	5/11/2001	King	White	Assault 1, burg 1, man 2	N
2001050104	96-1-00102-2	5/16/2001	Clallam	White	ROC 1, stat rape, assault 2	N
2001061313	00-1-03051-3	6/14/2001	King	Black	Rape 1, att rape, burg 1	N
2001070589	99-1-05162-5	7/20/2001	King	Black	Burg 1, Assault of Child 2, Rob Bank	N
2001070440	01-1-00941-0	7/24/2001	Spokane	White	Rob 1, "robbery," murder	?
2001080274	00-1-04773-0	8/13/2001	Pierce	Black	rob 1, rob 2 x2	Y
2001081497	00-1-10284-1	8/31/2001	King	White	Rob 1 x2, Rob 2	Y
2001091169	00-1-08739-6	9/21/2001	King	White	Rob 2, Kidnap 1, Rob 1	Y
2001090479	01-1-00091-8	9/27/2001	Mason	White	Murder 2, assault 2, rape 3	N
2001091915	00-1-05161-3	9/28/2001	Pierce	Black	Rape 1, att manslaughter (?), att rob 1	N
2001111835	00-1-05771-3	11/9/2001	King	Black	Att murder 2, assault 2, rob 2	Y
2001111510	00-1-03534-1	11/26/2001	Pierce	Latino	Kidnap 1, att rape 2 x2	N
2001121707	01-1-00986-0	12/10/2001	Spokane	White	Rob 1, rob 2x2	Y
2002011546	01-1-09988-1	1/25/2002	King	Black	Murder 1, assault 1, neg homicide	N
2002012284	98-1-05398-6	1/25/2002	Pierce	White	Rob 1, assault 2, rob 2	Y
2002021766	01-1-00686-2	2/6/2002	Whatcom	Native Amer.	Burg 1, veh hom, rob 2	Y
2002022166	01-1-01954-7	2/6/2002	Spokane	Black	Assault 2 SM, rob 1, assault 2	N
2002030809	00-1-08891-1	3/4/2002	King	White	Kidnap 1, burg 1, rob 1	N
2002050137	01-1-04547-6	5/3/2002	Pierce	White	Assault 3 DW, rob 2, rob 1	Y
2002050321	01-1-05003-8	5/17/2002	Pierce	Native Amer.	Assault 2, burg 1, rape 1	N
2002050185	02-1-00208-2	5/24/2002	Pierce	Black	Murder 1, att rape 2, assault 2 FA	N
2002060081	94-1-02669-2	6/14/2002	Pierce	White	Agg murder 1 (?), "assault w/ intent to murder" x2	N
2002060917	01-1-01175-5	6/18/2002	Cowlitz	White	ROC 2, burg 1, assault 2	N
2002070107	00-1-02097-0	7/5/2002	Clark	Black	rob 1, rob 2 x2	Y
2002072314	02-1-00051-2	7/12/2002	Jefferson	Native Amer.	Assault 1, assault 2, rob 1	N
2002070358	01-1-05013-5	7/19/2002	Pierce	Black	Murder 1, rob 1, rob 2	Y
2002081254	01-1-00679-8	8/16/2002	Spokane	White	Rob 2 x2, rob 1	Y
2002091804	00-1-08533-4	9/20/2002	King	Black	Rob 2 x2, assault 1	Y
2002090261	00-1-01934-3	9/26/2002	Clark	White	rob 1, rob 2 x2	Y
2003011799	00-1-04416-6	1/17/2003	King	Black	agg murder 1 (?), assault 2, rape 1	N
2003011801	00-1-05915-5	1/17/2003	King	Black	rape 1, rob 2, assault 2	Y

2003021801	02-1-00264-2	2/24/2003	Chelan	White	Agg murder 1 (?), rob 2 x2	Y
2003020071	02-1-04662-4	2/25/2003	Pierce	White	rob 1 x3	N
2003030930	02-1-00090-9	3/3/2003	Chelan	White	Assault 1, rob 2 x2	Y
2003032073	02-1-01963-4	3/31/2003	Spokane	Black	Man 1, arson 2, rob 2	Y
2003052299	01-1-05099-7	5/16/2003	King	Black	murder 1, rape 3, assault 2	N
2003050486	01-1-01230-0	5/23/2003	Yakima	Black	rob 1 x2, rob 2	Y
2003060095	03-1-01363-5	6/13/2003	Pierce	Black	kidnap 1, rob 1, rob 2	Y
2003071739	03-1-00119-1	7/1/2003	Thurston	White	Murder 2, rape 2, rob 1	N
2003070357	02-1-01012-9	7/16/2003	Cowlitz	Black	ROC 2, assault 2 x2	N
2003072294	02-1-06037-6	7/18/2003	Pierce	Black	rob 1, rob 2, rape 3	Y
2003102418	01-1-00167-6	10/1/2003	Snohomish	White	Att rape 2, Rob DW, rape	N
2003121504	02-1-02121-7	12/1/2003	Snohomish	Black	murder 2, assault 2, assault 3	N
2003121002	03-1-01756-8	12/19/2003	Pierce	Asian	Assault 1 X2, burg2	N
2003122028	03-1-00515-3	12/22/2003	Grays Hbr	White	rob 1 x3	N
2004011338	02-1-00394-6	1/12/2004	King	Black	Rob 2 x2, rape 2	Y
2004041374	03-1-01422-4	4/2/2004	Pierce	Black	assault 2, ROC 2, "robbery"	?
2004041530	03-1-03428-4	4/23/2004	Pierce	White	Assault 1 x2, assault 2	N
2004041368	01-1-09546-0	4/25/2004	King	Black	murder 2, rob 2, assault 2	Y
2004051316	03-1-03797-6	5/28/2004	Pierce	White	assault 2, rob 1 x2	N
2004060315	03-1-06165-1	6/2/2004	King	White	rob 1, rob 2 x2	Y
2004071703	04-1-00004-9	7/19/2004	Walla Walla	White	Arson 1 (sol), assault 2, murder1	N
2004072333	01-1-00895-5	7/23/2004	Benton	Black	assault 2 DW, assault 2, burg 1	N
2004081179	03-1-03040-7	8/20/2004	Spokane	White	Assault 2, rob2 x2	Y
2004122105	03-1-02080-6	12/10/2004	King	White	ROC 1, assault 2, rob 1	N
2004120674	04-1-00819-8	12/16/2004	Cowlitz	White	Assault 2 x2, burg 2	N
2004120315	03-1-05971-6	12/17/2004	Pierce	White	Kidnap1, rape2, rob1	N
2004120884	04-1-01332-5	12/20/2004	Thurston	Black	Rob 1, rob 2x2	Y
2005021384	04-1-00477-0	1/19/2005	Cowlitz	White	Att assault 2, burg 2 x2	N
2005021557	04-1-00283-2	2/3/2005	Okanogan	White	murder 2, rob 2, assault 2	Y
2005021911	03-1-02220-5	2/18/2005	King	Black	ROC 1, rob 1, assault 2	N
2005040380	04-1-00534-2	4/15/2005	Walla Walla	White	Assault 2 x2, att murder 1	N
2005051247	04-1-00246-1	5/27/2005	Pierce	Asian	Assault 2 x2, burg 1	N
2005071453	04-1-03642-0	7/13/2005	Spokane	Black	Murder 2, burg 1, child mol 2	N
2005072294	03-1-02751-7	7/29/2005	King	Black	Rob 2 x2, rob 1	Y
2005081179	05-1-00159-1	8/4/2005	Cowlitz	White	Assault 2 x2, rob 2	Y
2005101476	05-1-02388-5	10/12/2005	Snohomish	White	rob 1, rob 2 x2	Y
2005101901	05-1-00643-0	10/25/2005	Spokane	Black	Att assault 2, assault 2, rob 2	Y
2005101036	03-1-05918-0	10/28/2005	Pierce	Asian	Murder 2, assault 2, kidnap 2	N
2005110293	03-1-02581-1	11/18/2005	Pierce	Black	Rob 1 x2, assault 2	N
2005110310	05-1-00152-8	11/18/2005	Pierce	Black	Rob 2 x3	Y
2005121433	04-1-01862-1	12/9/2005	King	Black	Rob 1 x3	N
2005121478	04-1-09756-4	12/23/2005	King	White	Rob 2, assault 2, rob 1	Y
2006011528	04-1-00216-9	1/25/2006	Spokane	White	Assault 2 x3	N
2006020454	05-1-02485-2	2/3/2006	Clark	White	Murder 2, rob 2, arson 1	Y
2006021421	05-1-05499-5	2/17/2006	King	Black	Assault 1, rob 2 x2	Y
2006021825	04-1-02437-0	2/21/2006	Yakima	White	Murder 1, rob 1, burg 1	N
2006022016	05-1-00239-2	2/28/2006	Walla Walla	White	Assault 1, rob 1 x2	N

2006031053	05-1-02141-1	3/8/2006	Clark	Native Amer.	Assault 1, assault 2, rob 2	Y
2006031434	05-1-10528-0	3/21/2006	King	Black	Assault 2 x3	N
2006031705	05-1-00438-7	3/28/2006	Walla Walla	White	Burg 1, assault 1, assault 2	N
2006041113	04-1-01712-1	4/14/2006	Kitsap	White	Child mol 1, child mol 2, rob 2	Y
2006041464	05-1-00882-1	4/21/2006	King	White	Sex exploit, rob 2, rape 2	Y
2006050436	05-1-00652-3	5/12/2006	Yakima	White	Assault 1, burg 1, assault 2	N
2006078014	05-1-01958-1	7/10/2006	Clark	White	Murder 1, assault 2 x2	N
2006080248	06-1-00609-1	8/3/2006	Thurston	White	Assault 2, child mol 1, rob 1	N
2006080966	05-1-06802-3	8/11/2006	King	Black	murder 2, rob 1, assault 2	N
2006098066	06-1-00814-6	9/21/2006	Clark	Black	Kidnap 1, rob 2 x2	Y
2006100850	06-1-00814-8	10/23/2006	Pierce	Black	att murder 1, rob 1, assault 2	N
2006111296	06-1-00468-4	11/14/2006	Snohomish	White	rob 1 x2, rob 2	Y
2006110507	06-1-00822-9	11/17/2006	Pierce	White	rob 1, rob 2, rape 1	Y
2006120341	03-1-00563-7	12/8/2006	King	Black	Kidnap 1, rob 2, assault 2	Y
2006128117	05-1-00201-0	12/8/2006	Pierce	Black	murder 2, rob 2, murder 1	Y
2007010244	04-1-05575-1	1/12/2007	Pierce	Asian	Murder 2, rob 2 x2	Y
2007020214	05-1-02650-8	2/5/2007	Yakima	White	rob 1, rob 2, assault 2	Y
2007028295	06-1-02520-4	2/9/2007	Pierce	White	Assault 1, rob 2, rob 1	Y
2007030298	05-1-00276-9	3/6/2007	Skagit	White	Agg murder 1 (?), assault 2, rape 2	N
2007031397	04-1-05697-3	3/9/2007	King	White	Rob 1 x2, burg 1	N
2007031452	06-1-03999-4	3/16/2007	King	Black	Burg 1, rape 1 x2	N
2007040064	06-1-02822-2	4/5/2007	Snohomish	White	assault 2 x2, burg 1	N
2007040591	07-1-00037-0	4/16/2007	Walla Walla	White	Assault2 x2, arson1	N
2007051589	04-1-10392-1	5/18/2007	King	White	Rob 1 x2, kidnap1	N
2007060448	04-1-07408-4	6/1/2007	King	Black	Rob 1 x3	N
2007060481	06-1-03228-1	6/22/2007	King	Black	Burg 1, murder 2, stat rape 2	N
2007061123	06-1-01148-7	6/29/2007	Yakima	Latino	Murder 2, rob 1 x2	N
2007091495	07-1-00194-8	9/17/2007	Mason	White	Assault 1, murder 1, rob 2	Y
2007101946	05-1-13605-3	10/5/2007	King	Black	Assault 1 x2, burg1	N
2007108255	06-1-00824-1	10/25/2007	Cowlitz	White	Assault 2 DW, rob 2, att assault 2	Y
2007118447	05-1-04626-1	11/15/2007	Spokane	White	Rob 1 x2, assault 2	N
2007120571	06-1-06142-1	12/7/2007	Pierce	White	rob 1 x2, rob 2	Y
2007128377	07-1-01845-1	12/14/2007	Pierce	Black	Assault 2 x2, rob 2	Y
2008011280	07-1-00053-8	1/10/2008	Benton	White	Assault 1, assault 2 att assault 2	N
2008028399	07-1-00368-6	2/25/2008	Lewis	Black	Assault 2 x2, burg1	N
2008030191	07-1-05900-0	3/14/2008	Pierce	Black	Rob 1 x2, rape 3	N
2008038290	07-1-00090-9	3/19/2008	Clark	White	Poss. Meth w/ FA, Rob 2, rob 1	Y
2008048366	07-1-00942-6	4/24/2008	Clark	Black	Assault 2, att. Murder, stat rape1	N
2008058460	08-1-00257-5	5/8/2008	Cowlitz	White	Rob 1 x3	N
2008051763	06-1-07497-8	5/19/2008	King	Black	Assault 2 DW, rob 1 x2	N
2009050613	07-1-01875-1	5/15/2009	Clark	White	Killing police dog, assault 2, murder 2	N
2008100547	08-1-00941-3	10/9/2008	Cowlitz	White	Rob 1 x2, assault 2 x2	N
2008100548	08-1-00945-6	10/9/2008	Cowlitz	White	Rob 1 x2, assault 2 x2	N
2008100553	08-1-00860-3	10/9/2008	Cowlitz	White	Rob 1 x2, assault 2 x2	N

Same person as above? If so, two POAAs?

Same person as two above??? If so, three POAA sentences?

2008100566	08-1-00735-6	10/15/2008	Cowlitz	White	Assault 2, burg 1 x2	N	
2009032188	07-1-06919-1	3/26/2009	King	Black	Assault 2 x2, assault 1	N	
2008071101	08-1-00002-8	7/14/2008	Mason	White	Child mol 1 x2, rape 3	N	
2008120470	96-1-02166-2	12/5/2008	Pierce	Black	man 1, rape 3, assault 2	N	
2009060565	08-1-05886-9	6/5/2009	Pierce	White	Rob 1 x7, rob 2 x2	N	Said "no" to rob 2 b/c rob 1s independently justify POAA sentence.
2009040328	06-1-03300-5	4/7/2009	Snohomish	White	Rob 1 x3, rob 2 x2	N	Said "no" to rob 2 b/c rob 1s independently justify POAA sentence.
2009031706	07-1-02025-1	3/6/2009	Spokane	Black	Rape 1, att. assault 2, rob 2, rape 2	Y	
2009031719	07-1-02261-0	3/6/2009	Spokane	Black	Rape 1, att. assault 2, rob 2, rape 2	Y	same person as above? But can't be more than one POAA sentence here.
2009051499	08-1-00164-5	5/5/2009	Spokane	Black	Burg 1, assault 2 DW, Rob 2	Y	
2008071639	07-1-00312-0	7/23/2008	Thurston	White	murder 1, rob 2 x3	Y	
2008081338	07-1-02207-0	8/13/2008	Yakima	White	Assault 1, rob 2, rob 2 DW, Rape 3	N	Said "no" to rob 2 b/c DWE independently justifies POAA sentence.
2010050995	09-1-00496-9	5/24/2010	Clallam	White	Rob 2, res burg, burg1	Y	
2009071836	08-1-05501-5	7/31/2009	King	White	Rob 2, rape 2, rape 1	Y	
2009081605	08-1-05652-6	8/18/2009	King	Black	Kidnap 1, Rob 1 x2	N	
2009091697	08-1-05055-2	9/18/2009	King	Black	Rob 1, rob 2 x5	Y	
2010061615	07-1-10896-0	6/25/2010	King	Black	Rob 2, rob 2 DW, Rob 1, murder 2	Y	Even though one of the rob 2's has a DWE, the current offense is plain rob 2
2010051867	10-1-00055-5	5/27/2010	Lewis	White	Kidnap 1, rob 1 x4	N	
2009081106	08-1-03497-8	8/27/2009	Pierce	Black	Assault 1, assault 2 x2	N	
2009121643	05-1-04496-1	12/4/2009	Pierce	White	Assault 2, rape 1, assault 1	N	
2009121644	08-1-04006-4	12/4/2009	Pierce	White	Assault 2 x2, burg 1 x2	N	
2010051064	07-1-04704-3	5/20/2010	Spokane	Black	Rob 1 x4, rob 2	N	said "no" to rob 2 b/c rob 1's independently justify sentence.
2010061206	08-1-03595-7	6/2/2010	Spokane	White	Agg murder 1 (?), burg 1 x2	N	
2010061501	09-1-01946-1	6/10/2010	Spokane	Black	Assault 1, Assault 2 x2, Rob 1 x3, Rob 2	N	said "no" to rob2 b/c other crimes independently justify sentence.
2009110602	09-1-00693-1	11/19/2009	Thurston	Black	Rape 1, rob 2, assault1	Y	
2010060337	08-1-00877-3	6/8/2010	Whatcom	White	Rape 1, rob1, assault 2	N	
2010040166	08-1-00233-6	4/2/2010	Yakima	White	Assault 1, assault 2 x2	N	
2010100833	08-1-01255-4	10/27/2010	Cowlitz	White	Murder 1 (solicit.), att. Assault 2, assault 2	N	
2010101947	08-1-12186-7	10/29/2010	King	Black	Rape 2 x2, assault 2	N	
2011011226	09-1-04159-4	1/26/2011	King	Black	assault 2 x3	N	
2011041777	09-1-05942-6	4/1/2011	King	Black	Rob 1, rob 2 x4	Y	
2011031844	10-1-01499-5	3/18/2011	Pierce	White	Rob 1, indecent lib, child mol 2	N	
2011031862	10-1-01842-7	3/30/2011	Pierce	Black	Murder 2, rape 2, assault 2	N	
2011031193	10-1-02131-5	3/23/2011	Snohomish	White	Assault 2 x3	N	
2011060533	10-1-01110-7	6/29/2011	Snohomish	White	Rob 2, veh hom, rob1	Y	
2010120968	09-1-02931-9	12/2/2010	Spokane	Black	Assault 2x2, riot DW	N	
2011020202	09-1-01772-1	2/8/2011	Thurston	White	Murder 1, assault 2 x2, drug w/ FA, Burg 1	N	
2011060032	09-1-00982-7	6/2/2011	Yakima	White	Rape 1 x3, burg 1	N	
2012031592	10-1-00043-9	3/27/2012	Asotin	White	Rape 2, rob 1 x2, rob 2	N	Said "no" to rob 2 b/c other offenses authorize POAA sentence.

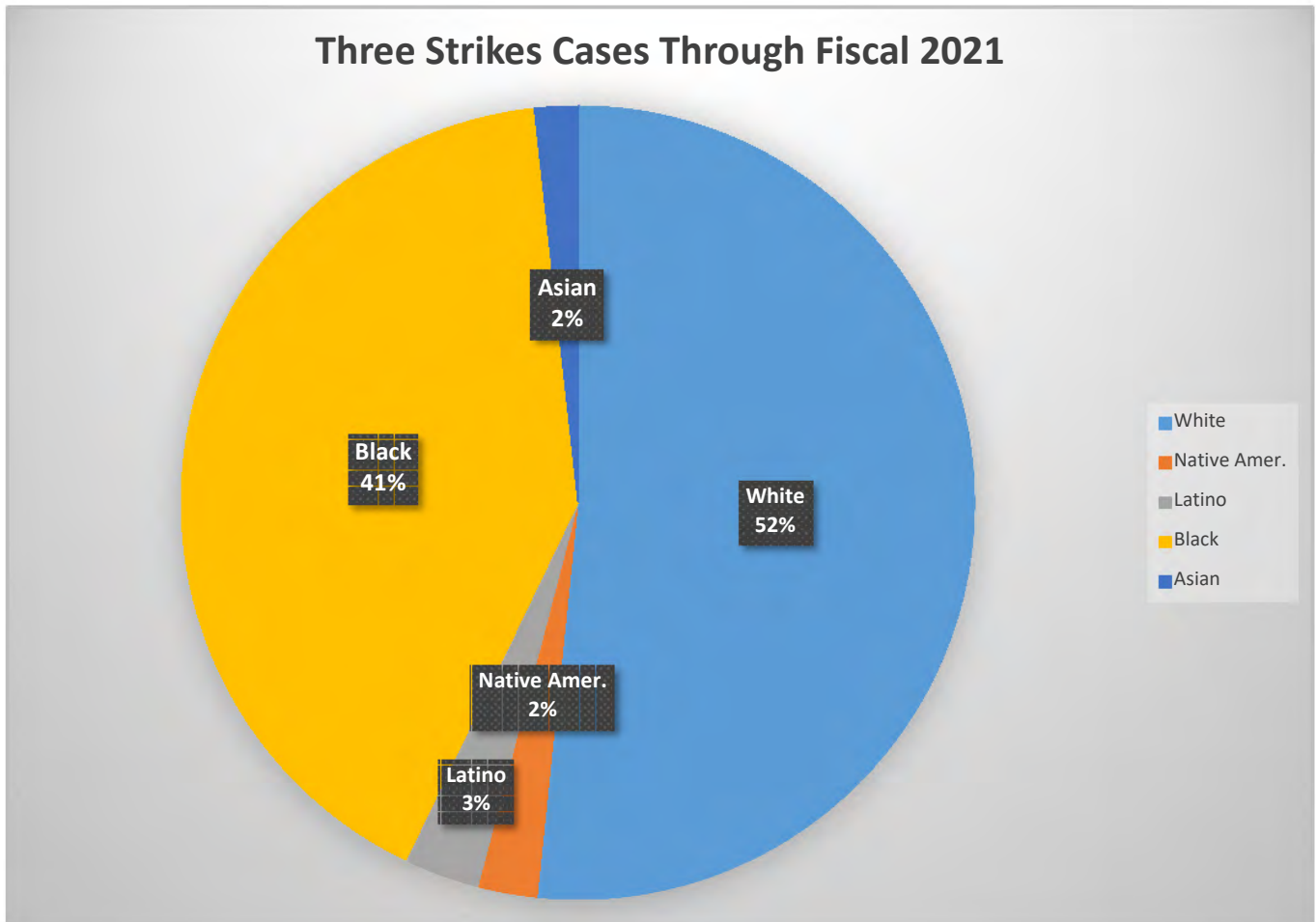
2012020713	11-1-00557-4	2/27/2012	Cowlitz	White	Assault 2 x2, assault 1	N	
2012040352	11-1-00172-2	4/13/2012	Cowlitz	White	Assault 1 x2, assault 2 x2	N	same person as above?
2011120323	10-1-50293-8	12/13/2011	Franklin	White	Rob 1 x2, att. Rob 1, rob 2, assault 2	N	Said "no" to rob 2 b/c other offenses authorize sentence.
2011070902	11-1-00085-3	7/25/2011	Grays Hbr	White	Assault 1, rob 1 x2	N	
2011081347	10-1-01028-5	8/19/2011	King	White	Veh assault, rob 1, ROC 1	N	
2011081414	11-1-00406-2	8/19/2011	King	White	Rob 2 x3, att. Rob 2	Y	
2011101590	09-1-07421-2	10/28/2011	King	Black	ROC 1, Rob 1 att., Assault 2	N	
2012011548	10-1-10200-7	1/13/2012	King	Black	Rob 1 x3, burg 1, assault 2	N	
2012051193	10-1-00198-7	5/11/2012	King	Black	assault 2, rob 2 x3	Y	
2011121092	10-1-00485-2	12/16/2011	Lewis	White	murder 1, assault 2 x3, burg 1	N	
2011091975	10-1-03382-5	9/23/2011	Pierce	Black	Burg 1, assault 2, rob 1	N	
2012021908	09-1-04643-5	2/24/2012	Pierce	White	Rob 1 x4, rob 2	N	
2012031644	10-1-02833-3	3/2/2012	Pierce	Black	Assault 2 x3	N	
2012031821	11-1-01404-7	3/23/2012	Pierce	Black	Murder 2, assault 2, rob 1	N	
2012051776	09-1-03627-8	5/11/2012	Pierce	Black	murder 1 x3, Rape 3, rob 1	N	
2011070792	10-1-00159-9	7/20/2011	Skagit	White	Child Mol 1, indecent lib, ROC 1 x2	N	
2011071686	07-1-04236-0	7/21/2011	Spokane	White	Rob 1, rob 2 x12, att rob 2 x3	Y	
2011081289	10-1-03146-5	8/19/2011	Spokane	White	Rob 1, assault 2, assault 1	N	
2012051574	11-1-02747-4	5/10/2012	Spokane	White	assault 2 w/ FA, assault 2 x2, rob 1	N	same person as above?
2012061617	11-1-03625-2	6/27/2012	Spokane	White	Rob 1 x2, rob 2	Y	
2012070843	11-1-01087-0	7/24/2012	Cowlitz	Black	Assault 2 x2, man 2	N	
2012081008	11-1-00015-3	8/22/2012	Garfield	White	Rape 2, kidnap 2, kidnap 1, assault 2 DW, assault 2	N	
2012071294	10-1-02308-5	7/20/2012	King	Black	Rob 2, rob 1 x4	N	Said "no" to rob 2 b/c other offenses independently authorize LWOP.
2012081229	11-1-03021-7	8/31/2012	King	Black	Rob 1 x2, Assault 1, rob 2 x3	N	Said "no" to rob 2 b/c other offenses independently authorize LWOP.
2013012006	12-1-02435-1	1/11/2013	Pierce	White	ROC 1, rob 1 att., Rape 1 x2, Rape 2	N	
2013041845	12-1-00172-5	4/19/2013	Pierce	Black	assault 1, assault 2, rob 1	N	
2013051815	11-1-01768-2	5/31/2013	Pierce	Black	Rape 2, rob 2, rob 1	Y	
2013061369	12-1-00068-1	6/27/2013	Pierce	Asian	VUFA 1, assault 2, rob 1	N	
2013040698	05-1-00276-9	4/18/2013	Skagit	White	Agg murder 1 (?), assault 2, rape 2	N	
2012120378	12-1-00342-9	12/12/2012	Snohomish	White	Rob 1, assault 2 x2	N	
2013010951	12-1-00210-4	1/24/2013	Snohomish	White	Rob 1 x2, assault 2, rob 2, promoting prost.	Y	
2013031355	11-1-03648-1	3/28/2013	Spokane	White	Rob 1 x2, att rob 1	N	
2013051005	11-1-03853-1	5/8/2013	Spokane	White	Assault 1, assault 2, rob 1	N	
2013051744	11-1-03698-8	5/23/2013	Spokane	Black	Murder 2, rob 2, assault 2 x2	Y	
2012100077	11-1-00359-6	10/1/2012	Yakima	Latino	Assault 1, assault 2 x2	N	
2013080701	13-1-00226-4	8/20/2013	clark	White	Assault 2 x2, assault 1	N	
2014020138	13-1-01135-0	2/10/2014	Cowlitz	Black	kidnap 1, rob 2 x2, att. Assault 2	Y	

2014010467	12-1-50117-2	1/14/2014	Franklin	White	Murder 2, assault 2, rob 1 att.	N	
2013120712	13-1-00155-2	12/13/2013	Island	White	Assault 2 x2, burg 1 x2, rob 1	N	
2013111299	12-1-01861-4	11/1/2013	King	White	Child mol 2, man 1, assault 2	N	
2013111739	10-1-04933-1	11/12/2013	Pierce	White	Murder 1, assault 2 DW, rob 1	N	
2014052016	13-1-03881-3	5/2/2014	Pierce	Black	Rob 1, rob 2 x3	Y	
2013111254	11-1-01397-0	11/1/2013	Spokane	White	ROC 1 x2, Burg 1 x 2	N	
2013120990	13-1-00170-6	12/12/2013	Spokane	Black	Assault 1, rob 1 x6	N	
2015030192	14-1-00056-3	3/5/2015	Asotin	White	Assault 1, assault 2, rob 2	Y	
2014101633	13-1-01405-6	10/23/2014	King	Black	Assault 1, rob 1 x6	N	
2015011388	12-1-01885-1	1/21/2015	King	Black	Rape 1 x2, rob 1 x5, rob 2 x4	N	said "no" to rob 2 b/c other offenses independently authorize sentence.
2015031435	08-1-12186-7	3/20/2015	King	Black	Rape 2 x2, assault 2	N	
2015041440	09-1-05942-6	4/1/2015	King	Black	rob 1, rob 2 x4	Y	
2015020027	13-1-00973-9	2/2/2015	Kitsap	White	Assault 2 x2, rob 2	Y	
2014102286	13-1-02515-1	10/31/2014	Pierce	White	MFG./Del. w/ FA, assault 2, burg 1, assault 2 DW x2	N	
2014111666	12-1-00068-1	11/21/2014	Pierce	Asian	Burg 1, assault 2, rob 1	N	
2014111670	14-1-00724-0	11/21/2014	Pierce	White	assault 3 DW, assault 2 x2, man 2	N	
2014100239	12-1-01937-6	10/2/2014	Snohomish	Black	Assault 2, rob 2, rob 1	Y	
2014070897	13-1-03443-4	7/22/2014	Spokane	Black	Assault 1, rob 1 x2, burg 1	N	
2015071061	15-1-00005-8	7/24/2015	Grays Hbr	White	Rob 1, arson 1, veh assault	N	
2015090628	14-1-00059-9	9/16/2015	Grays Hbr	White	Burg 1, rob 1, rob 2	Y	
2015071410	09-1-07421-2	7/31/2015	King	Black	Child mol 1, rob 1, assault 2	N	
2015121325	12-1-01374-4	12/3/2015	King	White	murder 1, rob 1, rob 2	Y	
2016031633	14-1-06738-7	3/4/2016	King	Asian	Assault 1, burg 1, assault 2	N	
2016041738	15-1-03007-4	4/25/2016	King	Black	rape 2, assault 2 x3	N	
2016061561	15-1-02082-6	6/29/2016	King	Black	commercial sex abuse of a minor, rob 1, rob 2	Y	
2016040620	08-1-00600-4	4/13/2016	Lewis	White	Rob 1 x4, assault 2 x3, burg 1, theft 1 DW	N	
2016041204	15-1-00429-8	4/28/2016	Mason	Latino	assault 1, assault 2 x2	N	
2015081848	13-1-04905-0	8/21/2015	Pierce	White	murder 2, assault 2, att. Assault 2	N	
2015121728	13-1-01440-0	12/18/2015	Pierce	Black	murder 1, rob 1, rob 2 x2	Y	
2016041460	13-1-03881-3	4/22/2016	Pierce	Black	assault 2, rob 2 x3	Y	
2015070920	14-1-00704-4	7/16/2015	Spokane	White	Assault 1, assault 2 FA att., rob 1	N	
2016021077	13-1-01926-8	2/24/2016	Thurston	White	Rob 1 x6, rob 2 att.	N	said "no" to rob 2 b/c other offenses independently authorize sentence.
2016010778	14-1-01197-6	1/22/2016	Yakima	Black	rob 1, att. Rob 1 x2, promoting prost, kidnap 2	N	
2016091148	15-1-00031-7	9/28/2016	Grant	Latino	VUCSA del w/ SM, assault 2, rob 1	N	
2016121382	15-1-05809-2	12/9/2016	King	Black	veh hom, rob 2 x2, att. Rob 2, assault 2	Y	
2017011763	15-1-04203-0	1/27/2017	King	Black	murder 2, att. Rob 1, assault 2 DW, rob 2	N	said "no" to rob 2 b/c other offenses independently authorize sentence.

2017041537	15-1-03379-1	4/28/2017	King	Black	assault 2 x3	N
2017051389	15-1-06293-6	5/19/2017	King	Black	assault 2, rob 1, burg 1	N
2016091582	13-1-02554-1	9/15/2016	Pierce	Black	murder 1, rob 2, man 1	Y
2016090375	16-1-01366-1	9/1/2016	Spokane	White	Burg 1, rob 1, rob 2	Y
2016100855	14-1-03384-3	10/17/2016	Spokane	Black	Burg 1, assault 2 att., rob 2	Y
2017060704	14-1-04486-1	6/22/2017	Spokane	White	Rob 1 x2, rob 2	Y
2017090561	17-1-00032-1	9/15/2017	Grays Hbr	White	Child mol 1 x4	N
2017081694	16-1-04833-8	8/18/2017	King	Black	Assault 2 x4, rob 2	Y
2017101650	15-1-02193-8	10/13/2017	King	Black	Rob 1 x 11, assault 2 SM	N
2017121390	16-1-04911-3	12/1/2017	King	White	Murder 2, assault 2, assault 1	N
2018011781	16-1-03560-6	1/5/2018	Pierce	Black	murder 2, man 1, rob 2	Y
2017121156	17-1-00830-8	12/28/2017	Snohomish	White	res burg, assault 2 x2	N
2018120523	18-1-00017-3	12/17/2018	Ferry	Black	assault 2, rob 1, burg 1, rob 2	Y
2018071543	17-1-02754-1	7/13/2018	King	Black	rob 2 x 7	Y
2018081279	15-1-03905-5	8/30/2018	King	White	murder 1, assault 2 x2	N
2018110184	16-1-01563-6	11/2/2018	Kitsap	Black	rob 1, rob 2, assault 2	Y
2018070916	15-1-02459-1	7/12/2018	Spokane	Black	Murder 1, rob 1 conspir., rob 1, burg 1, assault 2	N
2018070925	14-1-00873-3	7/12/2018	Spokane	Native Amer.	murder 1, rob 1, assault 2 att.	N
2019050444	17-1-00553-4	5/2/2019	Spokane	White	Burg 1 x2, assault 2	N
2018080083	14-1-01397-9	8/3/2018	Yakima	Latino	Assault 1, rob 1, assault 2	N
2020040085	19-1-00741-1	4/3/2020	Grays Hbr	Native Amer.	ROC 1, att. Rob 1, assault 2	N
2019102061	17-1-07239-3	10/7/2019	King	Black	murder 1, rob 1 x2	N
2020011882	18-1-01747-1	1/17/2020	King	White	Rape 2, att. Rob 1, rob 1, burg 1	N
2020031363	18-1-00859-6	3/6/2020	King	Black	assault 2 x2, rob 2 x2, att. Rob 2	Y
2019081500	17-1-02461-1	8/9/2019	Pierce	Black	VUCSA mfg/del w/ FA, child mol 2 x3, assault 2	N
2019100965	16-1-01284-1	10/16/2019	Skagit	Latino	murder 1, att. Assault 2, assault 2	N
2019080572	18-1-01415-2	8/14/2019	Snohomish	White	murder 2, assault 2, arson 1	N
2019120296	19-1-00961-1	12/6/2019	Snohomish	White	assault 2, rob 2, rob 1	Y
2019100201	17-1-04571-4	10/1/2019	Spokane	White	assault 1, rob 2, man 1	Y
2020030931	17-1-04081-0	3/16/2020	Spokane	White	Burg 1, assault 2 x2, veh assault, indecent lib	N
2020110816	17-1-04714-3	11/20/2020	King	Black	murder 1, rape 2, rob 1, att. Rape 2	N
2021010804	17-1-04489-6	1/29/2021	King	Black	murder 2, att. Rob 1, rob 2 x5	Y
2020120965	18-1-03583-1	12/8/2020	Pierce	Black	Kidnap 1, rob 1 x2, rob 2 DW	N
2021061339	20-1-01331-7	6/11/2021	Pierce	Black	Assault 1, assault 2 x3	N
2021050595	19-1-10065-7	5/20/2021	Spokane	Black	murder 2, assault 2 x2	N

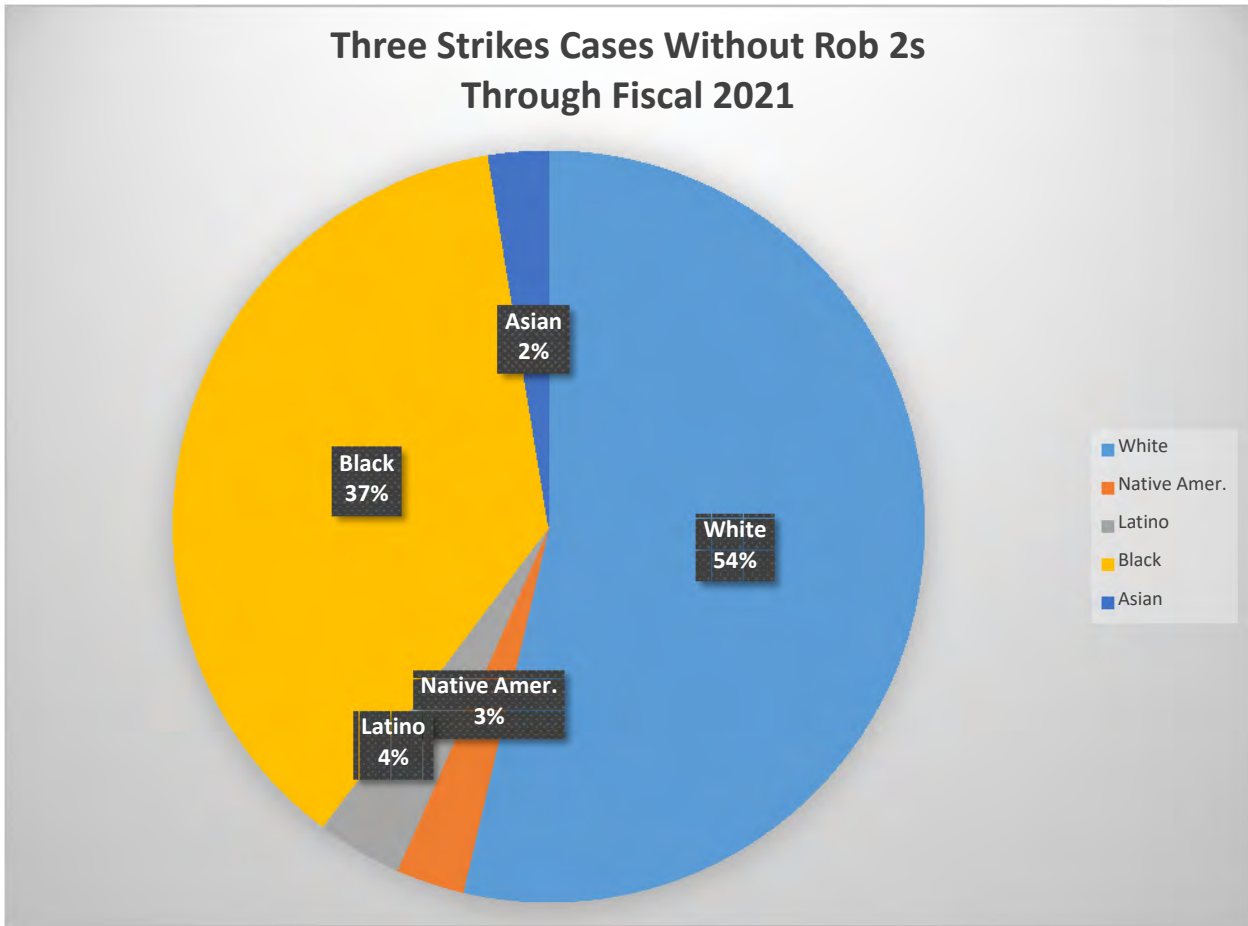
All Three Strikes Cases through fiscal 2021:

Race:	White	235
	Native Amer.	11
	Latino	14
	Black	187
	Asian	8
	All:	455



272 cases (out of original 455) after removing those who should be resentenced based on rob 2 strikes.

Race:	White	146
	Native Amer.	8
	Latino	10
	Black	101
	Asian	7
	All	272

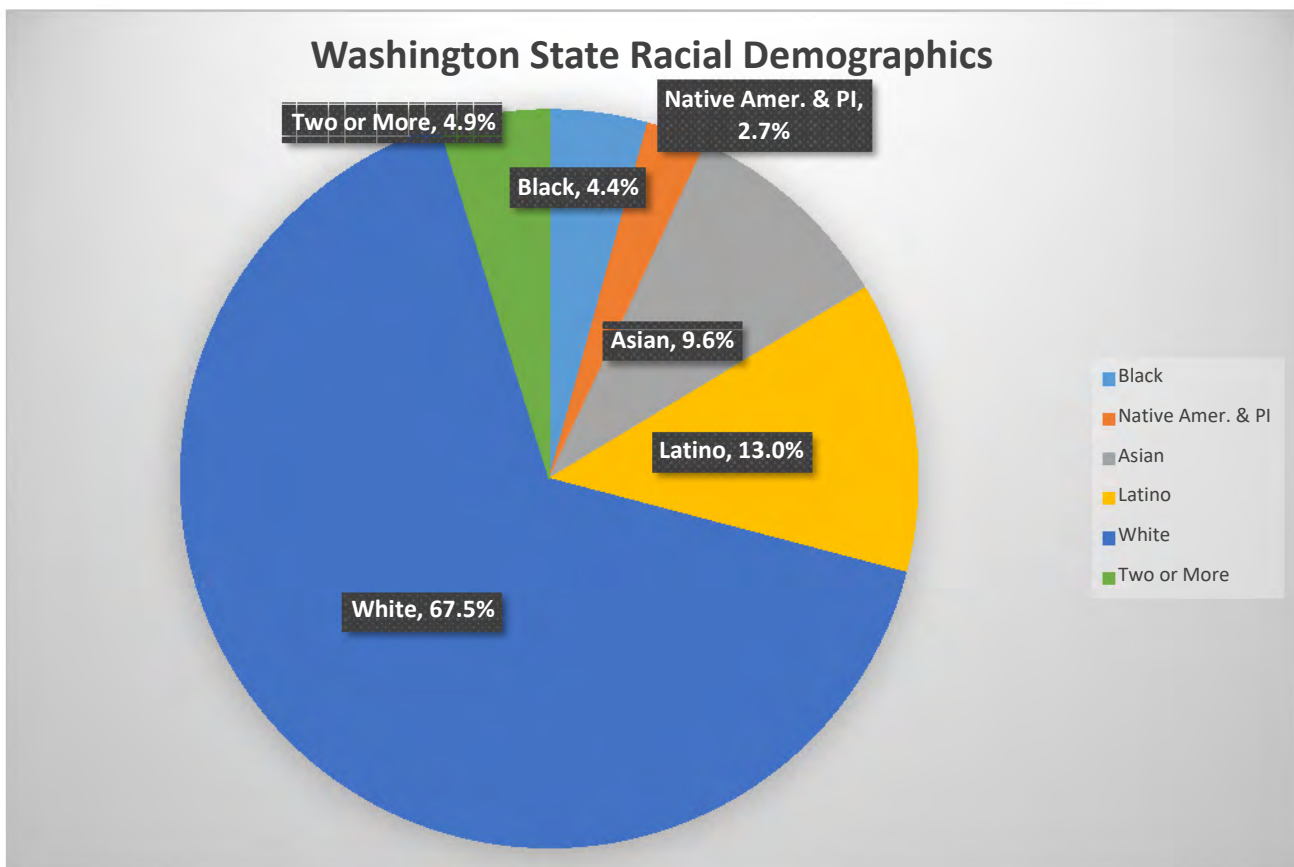


Washington State Racial Demographics

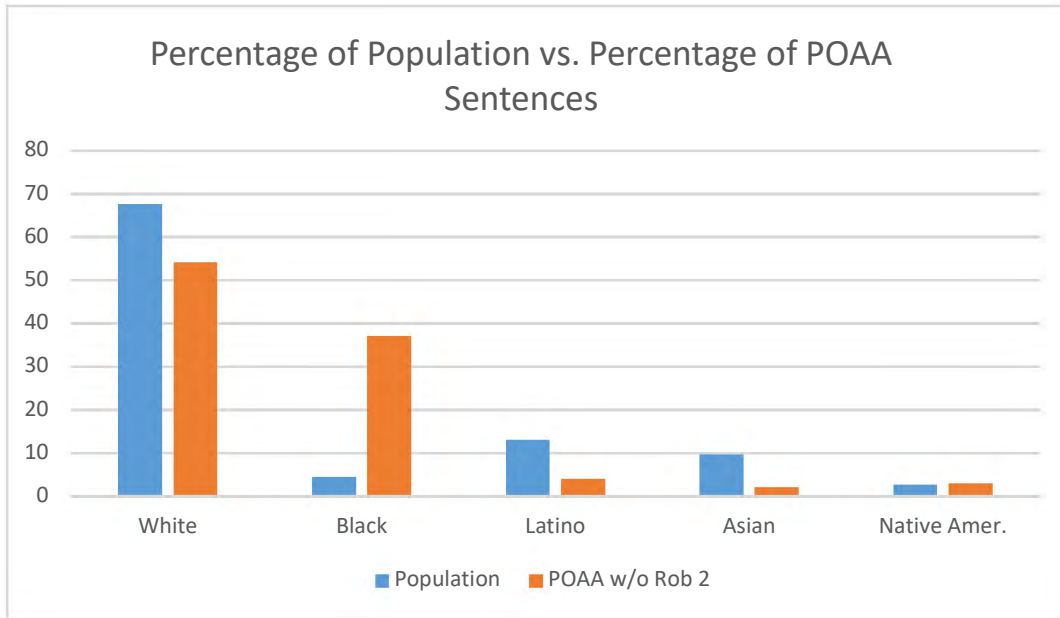
From <https://www.census.gov/quickfacts/fact/table/WA/PST045221>

Black	4.4%
Native Amer. & PI	2.7%
Asian	9.6%
Latino	13.0%
White	67.5%
Two or More	4.9%
Total:	102.1%

Note: The total slightly exceeds 100% because the Census Bureau draws its numbers from different data sources.



	Population	POAA w/o Rob 2
White	67.5	54
Black	4.4	37
Latino	13	4
Asian	9.6	2
Native Amer.	2.7	3



DECLARATION OF FILING AND MAILING OR DELIVERY

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original of the document to which this declaration is affixed/attached, was filed in the **Washington State Supreme Court** under **Case No. 100873-2**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to the following attorney(s) or party/parties of record at their regular office or residence address as listed on ACORDS:

- respondent Stephanie Guthrie, DPA
[stephanie.guthrie@kingcounty.gov]
[paoappellateunitmail@kingcounty.gov]
King County Prosecutor's Office – Appellate Unit
- attorneys for amici



TREVOR O'HARA, Legal Assistant
Washington Appellate Project

Date: November 18, 2022

WASHINGTON APPELLATE PROJECT

November 18, 2022 - 12:24 PM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 100,873-2
Appellate Court Case Title: State of Washington v. Michael Scott Reynolds Jr.

The following documents have been uploaded:

- 1008732_Briefs_20221118122003SC209508_6895.pdf
This File Contains:
Briefs - Petitioners Supplemental
The Original File Name was washapp_111822-06.pdf
- 1008732_Motion_20221118122003SC209508_4780.pdf
This File Contains:
Motion 1 - Overlength Brief
The Original File Name was washapp_111822-05.pdf

A copy of the uploaded files will be sent to:

- ali@defensenet.org
- baker@aclu-wa.org
- brian.flaherty@kingcounty.gov
- calburas@kingcounty.gov
- changro@seattleu.edu
- cindy@defensenet.org
- jan@washapp.org
- jclark@aclu-wa.org
- katherine.hurley@kingcounty.gov
- laurwilson@kingcounty.gov
- leeme@seattleu.edu
- levinje@seattleu.edu
- mark@middaughlaw.com
- paoappellateunitmail@kingcounty.gov
- stephanie.guthrie@kingcounty.gov

Comments:

Sender Name: MARIA RILEY - Email: maria@washapp.org

Filing on Behalf of: Lila Jane Silverstein - Email: lila@washapp.org (Alternate Email: wapofficemail@washapp.org)

Address:
1511 3RD AVE STE 610
SEATTLE, WA, 98101
Phone: (206) 587-2711

Note: The Filing Id is 20221118122003SC209508