No.103672-8

IN THE SUPREME COURT OF WASHINGTON

IN RE PERSONAL RESTRAINT PETITION OF

JOHN H. SCHOENHALS,

PETITIONER.

PETITIONER SCHOENHALS' SUPPLEMENTAL BRIEF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Statutes and Court Rules

Other Authorities

I. INTRODUCTION

In 1985, John Schoenhals was convicted of aggravated murder. At the time of the crime, he was 20 years old. He received the mandatory sentence: life without parole (LWOP).

In 2023, following this Court's decision in *Matter of Monschke*, 197 Wash. 2d 305, 482 P.3d 276 (2021), Schoenhals moved to vacate his judgment and for resentencing. That motion was transferred to the Court of Appeals for consideration as a PRP. The Court of Appeals then certified it to this Court.

This case raises the following issues:

1. Does *Monschke* constitute a retroactive change in the law?

2. If so, is *Monschke* material to Schoenhals?

3. If so, does the fact that he was sentenced pursuant to an unconstitutional statute entitle him to vacation of his LWOP sentence or must Schoenhals make an additional showing of prejudice?

4. If so, has he made that showing?

Past precedent provides the answers.

Monschke changed the law by overruling *State v. Grisby*, 97 Wash. 2d 493, 497, 647 P.2d 6, 8–9 (1982), which rejected the argument that "mandatory imposition of life imprisonment without possibility of parole (and) without consideration of mitigating circumstances" constitutes cruel and unusual punishment under the Eighth Amendment and Const. art. 1, s 14."

Like *Miller*[1] and *Houston-Sconiers*[2], *Monschke* has a substantive component that is retroactive. *Monschke* is a "material" change in the law here because Schoenhals is a member the class *Monschke*

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[1] *Miller v. Alabama,* 567 U.S. 460 (2012)

[2] *State v. Houston-Sconiers*, 188 Wash.2d 1, 391 P.3d 409 (2017)

defined—over 18 and under 21 years old at the time of the crime, convicted of aggravated murder, and sentenced to mandatory LWOP.

Schoenhals need not make any additional showing to obtain relief. Given that *Monschke* declared the statute unconstitutional, Schoenhal's sentence "is not merely erroneous, but is illegal and void." *Montgomery v. Louisiana*, 577 U.S. 190, 203 (2016). See also *Monschke,* 197 Wash. 2d at 309 (convictions under unconstitutional statutes "are as no conviction at all and invalidate the prisoner's sentence.").

Rather than attempt to distinguish these, or for that matter, any of the cruel punishment individualization cases, the State attempts to recast *Monschke* as a disproportionality case akin to *Houston-Sconiers*, *supra.*

The two cases share the same root concern—the constitutional imperative to consider at sentencing the decreased culpability stemming from the mitigating qualities of youth. However, the cases differ in ways critical to determining what showing is necessary to relief.

Monschke declared the mandatory LWOP sentence provision of the aggravated murder statute unconstitutional as applied to a defined class. *Id*. at 307 ("when it comes to mandatory LWOP sentences, *Miller*'s constitutional guaranty of an individualized sentence—one that considers the mitigating qualities of youth—must apply to defendants at least as old as these defendants were at the time of their crimes."). *Houston-Sconiers* vacated a particular sentence but did "not read our state statutes as contrary to" the

constitutional protection against cruel punishment. *Houston-Sconiers*, 188 Wash. 2d at 24.

All sentences imposed pursuant to an unconstitutional statute are void. Only some sentences imposed without consideration of potential mitigating circumstances are disproportionate. Proof of prejudice, *i.e.*, the likelihood of a lesser sentence, is only required for the latter. However, even under the inapplicable standard advanced by the State, Schoenhals prevails because he proffered extensive, uncontested proof that his crime reflected the mitigating qualities of youth.

II. FACTS

The material facts are simple and uncontested. Schoenhals was convicted of aggravated murder. The crime occurred when he was 20 years old. He was sentenced to mandatory LWOP.

While Schoenhals contends that he need not proffer any mitigating qualities of youth at this stage, did so in his motion to vacate. The State did not present competing facts. Schoenhals discusses those facts in the prejudice section below.

III. ARGUMENT

A. *Monschke* is Retroactive

PRPs are exempt from the one-year time bar under RCW 10.73.100(6) if there has been a change in the law that is material and applies retroactively.

Substantive changes in the law, including constitutional rules prohibiting a certain category of punishment for a class of defendants because of their status, are retroactive. *Matter of Ali*, 196 Wash. 2d 220, 237, 474 P.3d 507, 516 (2020).

In *Miller v Alabama*, 567 U.S. 460 (2012), the United States Supreme Court held that a mandatory

sentence of life without parole for defendants who were under 18 years old at the time of the offense violates the Eighth Amendment's prohibition on cruel and unusual punishment. In *Montgomery v Louisiana*, 577 U.S. 190, 206 (2016), the Court held that *Miller*'s prohibition on mandatory life without parole announced a new substantive rule that, under the Constitution, is retroactive in cases on state collateral review. Because *Miller* held that a category of punishment (mandatory life without parole sentences) cannot be imposed on a category of defendants (juvenile offenders), *Miller* created a substantive rule that must apply retroactively to cases on collateral review. The determination that a particular sentence, at least for a particular class of defendants, is "cruel and unusual" is an inherently substantive determination.

Like *Miller*, this Court in *Monschke* struck mandatory life without parole as applied to late adolescents who were between 18 and 21 at the time of their crime(s). 197 Wash.2d at 328 ("we repeat the *Miller* approach today."). *Monschke* is substantive for the same reason that *Miller* is substantive. On that point, the two cases are indistinguishable.

This Court has found other recent changes in the sentencing laws retroactive and has expressly relied on *Montgomery* in doing so. See *Matter of Hinton,* 152 Wash.2d 853, 525 P.3d 156, 162 (2023) ("Our reasoning in *Ali* and *Domingo-Cornelio* mirrors the United States Supreme Court's reasoning in *Montgomery*, which gave retroactive effect to *Miller*'s substantive rule.").[3]

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[3] *Matter of Domingo-Cornelio*, 196 Wash. 2d 255, 474 P.3d 524 (2020)

There have been multiple *Monschke* resentencing hearings in the four years since this Court announced that decision—two were recently affirmed by this Court. This Court's decision in *State v. Carter*, 3 Wash.3d 198, 548 P.3d 935 (2024), which involved two *Monschke* class defendants, did not question retroactivity—a necessary prerequisite to relief in both cases. See also *State v. Kelly*, No. 102002-3, 2024 WL 5162058, at *3 (Wash. Dec. 19, 2024) (PRP time bar "is not an affirmative defense that may be waived; it is a procedural pathway for obtaining postconviction review.").

Monschke is retroactive.

B. *Monschke* is Material to Schoenhals

Monschke is material to the class it defined. On the other hand, *Monschke* is not material to those who fall outside the class. See *Matter of Davis*, 200 Wash.

2d 75, 83, 514 P.3d 653 (2022) ("*Monschke* concerns only defendants who were sentenced pursuant to RCW 10.95.030(1), and Davis was convicted under different statutes that do not mandate life sentences. *Monschke* concerned a mandatory life sentence provision as applied to 19- and 20-year-old defendants. Davis is 21 years old.").

The cohort defined by *Monschke* is

a. individuals 18- 20 at the time of the crime;

b. convicted of aggravated murder; and

c. sentenced to mandatory LWOP.

This is clear from the language of *Monschke* which framed the question it decided as "whether the constitutional requirement that judges exercise discretion at sentencing, which forbids such mandatory LWOP sentences for those under 18, also forbids those sentences for 18- to 21-year-old defendants." *Id.* at 306.

Carter applied *Monschke* stating:

> In 2021, we held in *Monschke* that the life without release mandate from RCW 10.95.030 is unconstitutional when applied to 18- to 20-year-old offenders…

Carter then explained the rationale:

> ….because it denies discretion to consider the mitigating qualities of youth in imposing sentences, in violation of constitutional cruel and unusual punishment principles.

Carter, 548 P.3d 935, 940.

The State attempts to add narrow the class by adding:

> d. who have shown (either at the time of the original sentencing or by extra-record proof in a collateral attack) sufficient "mitigating qualities of youth" to merit a sentence less than LWOP.

If the State were correct, there would be a section in *Monschke* explaining how the two litigants before the Court established prejudice. Likewise, *Carter* would have a similar discussion explaining why the trial

courts correctly vacated the two judgments at issue there. Neither case includes such language because no such showing is required.

Because Schoenhals is a member of the *Monschke* class, that decision is material to him.

C. Schoenhals is Entitled to Resentencing

Schoenhals is entitled to have his current judgment vacated and to be resentenced because his mandatory LWOP sentence is void. However, even under the inapplicable disproportionality standard, he has made the required showing.

1. The Court Rule

First things first. CrR 7.8 states that a defendant has made a substantial showing entitling him to vacation of his judgment when he is "serving a sentence for a conviction under a statute determined

to be void, invalid, or unconstitutional." Schoenhals has made that showing.

2. The Constitutional Rule

CrR 7.8 adopts the constitutional standard which holds that a sentence imposed pursuant to an unconstitutional law is void. Washington caselaw recognizes,

> " '[a]n unconstitutional law is void, and is as no law' "; accordingly, *a penalty imposed pursuant to an unconstitutional law is void* even if the prisoner's sentence became final before the law was held unconstitutional. *Montgomery v. Louisiana,* 577 U.S. 190, 204, 136 S. Ct. 718, 193 L. Ed. 2d 599 (2016) (quoting *Ex parte Siebold,* 100 U.S. 371, 376, 25 L. Ed. 717 (1879)).

State v. French, 21 Wash. App. 2d 891, 895–96, 508 P.3d 1036, 1039 (2022) (emphasis in original). See also 16 C.J.S. Constitutional Law § 265 (2016) (depicting the general rule that an unconstitutional, non-severable statute is "not a law, has no existence, is a nullity, or has no force or effect or is inoperative").

Simply put, a void sentence is no sentence. *State v. Lotter*, 255 Neb. 456, 519, 586 N.W.2d 591 (1998).

There is a vast difference between a void judgment and one which is merely erroneous, especially when it comes to prejudice. For example, *State v. Blake*, 197 Wash. 2d 170, 481 P.3d 521 (2021), found that the drug possession statute was unconstitutional because it did not require a mens rea rendering all VUCSA-possession convictions void, not just those where a defendant could show that he did not knowingly possess a controlled substance.

In comparison, a sentence challenged as excessive is merely erroneous and voidable, but only upon a showing of constitutional disproportionality.

Schoenhals' sentence is void. Because it is void, a court has no authority to leave in place a sentence

imposed in violation of *Monschke*. He is entitled to be resentenced—full stop.

3. The Individualization Doctrine

Death is "different." So are "children." "Children" includes late adolescents who were 18, 19, or 20 at the time of the crime. *Monschke, supra.*

These constitutionally recognized differences prohibit certain mandatory sentences. This is called the individualized sentencing guarantee. William W. Berry, *Individualized Sentencing*, 76 Wash. & Lee L. Rev. 13 (2019).[4]

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[4] Justice Owen characterized *Monschke* as a categorical exemption case in her dissent. 197 Wash. 2d at 337 (Owen, J., dissenting). If *Monschke* erected a categorical bar against mandatory LWOP, it follows that everyone in the defined cohort is entitled to relief. See *Roper v. Simmons*, 543 U.S. 551 (2005) (prohibiting the death penalty for all juveniles); *Atkins v. Virginia*, 536 U.S. 304 (2002) (prohibiting the death penalty for all individuals who are intellectually disabled).

Past precedent establishes that relief is required when a defendant is a member of the "different" class for which a mandatory sentence is unconstitutional. *Woodson v. North Carolina*, 428 U.S. 280 (1976), struck North Carolina's mandatory death penalty statute. *Id.* at 305 ("For the reasons stated, we conclude that the death sentences imposed upon the petitioners under North Carolina's mandatory death sentence statute violated the Eighth and Fourteenth Amendments and therefore must be set aside.").

The vacation of all death sentences in North Carolina (as well as other states with similar capital punishment statutes), followed without any additional showing required. *Id.* at 305 ("For the reasons stated, we conclude that the death sentences imposed upon the petitioners under North Carolina's mandatory death sentence statute violated the Eighth and

Fourteenth Amendments and therefore must be set aside."). See also *Sumner v. Shuman*, 483 U.S. 66, 72 n. 2 (1987) (finding that only three individuals in the country were still serving mandatory death sentences, all based on statutes at issue in *Shuman*, in which individuals were convicted of murder while serving life sentences).

While *Woodson* specified that "consideration of the character and record of the individual offender and the circumstances of the particular offense" are "a constitutionally indispensable part of the process of inflicting the penalty of death," that consideration follows vacation of the death sentence—at a new penalty phase proceeding. Put another way, no case applying *Woodson* required a showing of sufficient mitigation to merit a sentence less than death in order

to vacate the unconstitutional death sentence, as the State posits in its pleadings herein.

Because children are also "different," they are likewise entitled to individualized consideration when facing mandatory LWOP. When the United States Supreme Court struck mandatory LWOP for juveniles and when this Court later struck mandatory LWOP for a potion of the late adolescent class, both courts invalidated the applicable statutes, rather than overturning the individual sentences as too harsh. *Monschke*, 197 Wash. 2d at 327 ("our decision today, like the *Miller* decision, draws from the line of cases that *Miller* cited for its 'individualized sentencing' principle."). Just as courts must exercise discretion before sentencing a 17-year-old to die in prison, so must they exercise the same discretion when sentencing an 18-, 19-, or 20-year-old.

Recognizing that *Monschke* held the statute unconstitutional in part, this Court in *Carter* severed the statute in order to cure the constitutional defect—so that it operates as a discretionary sentencing scheme providing for the consideration of factors that enable the sentencer to impose a sentence that is proportionate to the circumstances of the crime and the characteristics of the offender. *Carter* stated:

> When we granted relief in *Monschke*, we remanded "for a new sentencing hearing at which the trial court must consider whether each defendant was subject to the mitigating qualities of youth." *Id.* The judges at Carter's and Reite's resentencing hearings appropriately considered just that to reach their determinate sentences.

Carter, 548 P.3d at 948. The State misleadingly collapses these two steps into one—or, if two, where a defendant must first prove that the mitigating factors of youth reduce his culpability in order to obtain a

resentencing where he will need to make that showing again.

4. The State Mischaracterizes *Monschke*

In its search for a stiffer test of prejudice, the State contends that *Monschke* was a disproportionality ruling in disguise and urges this Court to adopt the prejudice analysis that flows from that case and its progeny. See Berry III, William W., *The Evolving Standards, As Applied*, 74 Fla. L. Rev. 775 (2022) (arguing for a heightened standards of review for "differentness" cases). This Court should not do so because the two cases are different.[5]

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[5] In addition, prejudice should not be conflated with remedy. When a court strikes a mandatory sentence, *Montgomery* explained that other adequate remedies may exist in addition to resentencing, such as making a juvenile eligible for parole. However, a defendant is absolutely entitled to some remedy their illegal sentence. *Graham v. Florida*, 560 U.S. 48, 75, (2010) (striking mandatory LWOP statutes for non-homicides

Monschke struck a statute. *Houston-Sconiers* did not. *Monschke* is a "children are different" individualization case. *Houston-Sconiers* and its progeny are individual sentence disproportionality decisions.

Monschke did not find any sentence as excessive. It invalidated a statute that makes LWOP mandatory. For a 20-year-old like Schoenhals, LWOP must be discretionary. However, *Monschke* does not conclude that LWOP cannot be imposed once discretion is permitted.

Of course, no discretion existed when Schoenhals was sentenced. Consistent with the statute, the original sentencing the judge stated, "[t]he law as written gives the Court no alternative, and I hereby

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and noting that it is for the State, in the first instance, to explore the means and mechanisms for compliance).

sentence the defendant Mr. John Schoenhals to life imprisonment without possibility of parole." RP 39.

The retroactive portion of the rule announced by *Houston-Sconiers* is that courts may not impose "certain adult sentences ... on juveniles who possess such diminished culpability that the adult standard SRA ranges and enhancements would be disproportionate punishment." *Ali*, 196 Wn.2d at 239; *Hinton*, 525 P.3d at 162. Consequently, the prejudice inquiry focuses on whether the record contains proof of mitigating facts that reduce culpability sufficient to invalidate the sentence. No such showing was required by *Monschke.*[6]

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[6] United States Supreme Court Chief Justice Roberts acknowledged that reversal was automatic for the identified class in *Graham v. Florida*, where the Court barred LWOP for non-homicide crimes committed by juveniles, contrasted with the higher standard required for an individualized proportionality claim. 560 U.S. 48, 91 (2010) (Roberts, C.J., concurring).

To be clear, those types of facts, along with a potential array of others, are relevant at a new sentencing. However, a reviewing court cannot determine whether a sentencing court abused the discretion it never possessed. *State v. Vasquez*, __ Wn.3d ___, 560 P.3d 853, 858 (2024) (where the sentencing court "seemingly" misunderstood its discretion, a resentencing is appropriate).

5. Schoenhals has Shown Prejudice

While Schoenhals need not show prejudice, he has done so. In his motion to vacate, Schoenhals presented substantial and unrebutted proof that the crime of conviction reflected transient immaturity. In fact, Schoenhals presented evidence that all of the *Miller* factors applied. The State offered nothing in response.

Schoenhals presented an extensive psychological evaluation from Dr. Ronald Roesch, whose findings included that Schoenhals was immature and "likely had developmental delays," with regard to cognitive and emotional control. One possible contributing environmental factor was that Schoenhals had experiences "severe maltreatment" and household dysfunction during childhood. *Evaluation,* 11-13. As a result, Schoenhals "did not weigh the costs and benefits before acting or considering the long-range consequence of his behavior, nor did he put much thought into his decisions." *Id.*

With regard to rehabilitation, Schoenhals has served over 35 years in prison. Rehabilitation is not a possibility; it is a demonstrable fact. Over time, Schoenhals learned to accept help, identified, and overcame a learning disability that had held him back

all of his life, and became a man fortified by his faith. He then used those experiences to become a mentor and a leader, preparing other incarcerated men for a life outside of prison, despite having no hope of experiencing it himself.

The report from Dr. Roesch incorporated school records, DOC records, collateral sources, and psychological testing to conclude youthfulness impacted Mr. Schoenhal's offense conduct. Further, it included nineteen letters of support from family, other formerly incarcerated individuals, teachers, and other community members outlined the person. Schoenhals has become, distinguishing him from the young person who committed the crime. The multiple certificates of completion of positive programming, and degrees received from colleges. Like the litigants before this Court in *Carter*, Schoenhals also " demonstrated an

ability to transform through deep reflection, accountability, and a commitment to change during their decades in prison." *Carter*, 548 P.3d at 939. If that evidence was sufficient to merit less than life sentences there, it is clearly sufficient to merit a new sentencing hearing here.

IV. CONCLUSION

This Court should grant relief.

CERTIFICATE OF WORD COUNT

This Supplemental Brief has 3246 words.

DATED this 28th day of January 2025

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