NO. 103672-8

IN THE SUPREME COURT OF THE
STATE OF WASHINGTON

In re Personal Restraint Petition of

JOHN H. SCHOENHALS,

Petitioner.

SUPPLEMENTAL BRIEF OF RESPONDENT

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A. ISSUES

1. Has Schoenhals failed to demonstrate that *In re Pers. Restraint of Monschke*[1] is a significant and retroactive change in the law that allows for consideration of his untimely collateral attack under RCW 10.73.100(7)?

2. Has Schoenhals failed to establish that any retroactive holding in *Monschke* is material to him?

3. Must Schoenhals establish prejudice from a substantive and retroactive sentencing error? If so, has he failed to demonstrate such prejudice?

B. STATEMENT OF THE CASE

Schoenhals was 20 years old in 1985 when he enlisted a friend to burglarize the Wallace home. Schoenhals knew that Wallace's father, a police officer, kept a gun collection. Rather than leave after breaking into the Wallace home and gathering guns and other items, Schoenhals fatally stabbed 14-year-old

[1] 197 Wn.2d 305, 482 P.3d 276 (2021).

Mark Wallace in the neck, severing his jugular vein. App. B, C to Respondent's Supp. Brf. in the COA. A King County jury determined that Schoenhals killed the boy to conceal Schoenhals' identity as a participant in the crime. App. D to Respondent's Supp. Brf. COA.

At sentencing, the court imposed the statutorily mandated sentence of life without parole (LWOP). App. A to Respondent's Supp. Brf. in COA. The Court of Appeals affirmed Schoenhals' conviction and sentence. App. C to Respondent's Supp. Brf. in COA. The mandate was issued December 7, 1988. *Id.*

In March 2023, Schoenhals filed a CrR 7.8 motion for resentencing in the King County Superior Court, citing to *Monschke, supra*. After briefing and argument, the Hon. Tanya Thorp transferred the motion to the Court of Appeals, finding it untimely. 7/24/23 Transfer Ord. After additional briefing and oral argument in the Court of Appeals, the case was certified to this Court, and review was accepted.

C. ARGUMENT

1. *MONSCHKE* IS NOT A SIGNIFICANT CHANGE IN THE LAW FOR PURPOSES OF RCW 10.73.100(7).

A significant change in law justifying consideration of an untimely collateral attack under RCW 10.73.100(7) requires a petitioner to show: (1) a significant change in the law, (2) that is material to the petitioner's conviction or sentence, and (3) that applies retroactively. *In re Pers. Restraint of Kennedy*, 200 Wn.2d 1, 21, 513 P.3d 769 (2022). These three requirements can be addressed in any order. *In re Pers. Restraint of Light-Roth*, 191 Wn.2d 328, 333, 422 P.3d 444 (2018). Schoenhals has established none of the three requirements of RCW 10.73.100(7).

a. The Fractured Opinion in *Monschke* Does Not State a Constitutional Principle of Law.

A significant change in the law occurs when an intervening appellate decision overturns a decision that was determinative of a material issue. *Light-Roth*, 191 Wn.2d at

333-34. A decision that settles a point of law without overturning prior precedent or that applies settled law to new facts is not a significant change in the law. *Id*.

Monschke was a plurality opinion with only four justices signing the lead opinion. One justice wrote a concurrence. The remaining four justices signed a dissenting opinion. The three opinions disagreed with each other on both procedural and substantive grounds. *See In re Pers. Restraint of Davis*, 200 Wn.2d 75, 81-83, 514 P.3d 653 (2022); *Kennedy*, 200 Wn.2d at 22-23.

When no majority agrees on a rationale for its holding, a plurality opinion is read only on the narrowest ground upon which a majority agreed. *In re Pers. Restraint of Francis*, 170 Wn.2d 517, 532 n.7, 242 P.3d 866 (2010); *State v. Patton*, 167 Wn.2d 379, 391, 219 P.3d 651 (2009). *See also Marks v. United States*, 430 U.S. 188, 193, 97 S. Ct. 990, 51 L. Ed. 2d 260 (1977) (quoting *Gregg v. Georgia*, 428 U.S. 153, 169 n.15, 96 S. Ct. 2909, 49 L. Ed. 2d 859 (1976) (plurality opinion))

("When a fragmented Court decides a case and no single rationale explaining the result enjoys the assent of five Justices, 'the holding of the Court may be viewed as that position taken by those Members who concurred in the judgments on the *narrowest* grounds.'") (emphasis added).[2]

Plurality opinions have limited precedential value and are not binding on the courts. *In re Pers. Restraint of Isadore*, 151 Wn.2d 294, 302, 88 P.3d 390 (2004), *abrogated on other grounds by State v. Buckman*, 190 Wn.2d 51, 409 P.3d 193 (2018). A case lacking majority agreement should not be relied upon for establishing new frameworks for criminal procedure. *Isadore*, 151 Wn.2d at 302.

[2] The weight accorded a plurality opinion has sometimes been articulated by this Court as, "A principle of law reached by *a majority* of the court, even in a fractured opinion, is not considered a plurality but rather binding precedent." *In re Det. of Reyes*, 184 Wn.2d 340, 346, 358 P.3d 394 (2015) (emphasis added). Under either articulation, *a majority* of the court must agree in order to state a precedential principle of law.

Applying the above analysis, *Monschke* did not state any constitutional principle of law at all, so it could not have significantly changed existing law surrounding youthful sentencing.

As to procedure — the timeliness of the claims — the lead opinion in *Monschke* cited RCW 10.73.100(2) to conclude the statute the petitioners were convicted of violating was unconstitutional as applied to them. *Monschke*, 197 Wn.2d at 310. The lead opinion would hold, based on the structure of the aggravated murder statute, that the petitioners' challenge to their sentences was a challenge to the statute the petitioners were "convicted of," and would apply the exception in RCW 10.73.100(2). *Id.*

But the other five justices (counting the concurrence and dissent) disagreed with that, concluding that the exception for unconstitutional *convictions* in RCW 10.73.100(2) was inapplicable to the petitioners' claims about *sentencing*. The dissent noted that allowing sentencing claims to meet this

exception bypasses the retroactivity requirement for new rules — an "important barrier that safeguards the State's resources and the families of victims from having to endure another trial or sentencing hearing." *Monschke*, 197 Wn.2d at 334-35 (Owens, J., dissenting).

The concurring justice agreed with the dissent on this point. *Monschke*, 197 Wn.2d at 329 (González, C.J., concurring). Justice González based his vote for resentencing on a retroactive application of *State v. O'Dell*,[3] not on the constitutional grounds embraced by the lead opinion. *See also Kennedy*, 200 Wn.2d at 22 ("Together, the concurrence and the dissent make a total of five votes for the conclusion that RCW 10.73.100(2) did not provide an exemption for the petitioners in *Monschke*.").

As to the merits of the petitioners' claims, the lead opinion noted its belief that legislative line-drawing about age

[3] 183 Wn.2d 680, 358 P.3d 359 (2015).

is "arbitrary" and that no "meaningful" developmental distinction exists between 17- and 18-year-olds. *Monschke*, 197 Wn.2d at 314-21. Pointing to increasingly protective state and federal constitutional standards for juvenile defendants, the four-justice lead opinion concluded that the 19- and 20-year-old petitioners were entitled to the protections of individualized sentencing and consideration of youth under *Miller v. Alabama*.[4] *Id.* at 321-26. The lead opinion would find the aggravated-murder sentencing statute unconstitutional under article I, section 14 as applied to the 19- and 20-year-old petitioners, because it precludes individualized sentencing. *Id.* at 326, 329.

The concurring justice agreed with the lead opinion in result but diverged on its reasoning. *See In re Pers. Restraint of Davis*, 200 Wn.2d 75, 82, 514 P.3d 653, 82 (2022) (citing *Monschke*, 197 Wn.2d at 329 (González, C.J., concurring)).

[4] 567 U.S. 460, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012).

Justice González believed that *O'Dell*, a case decided solely on statutory grounds, authorized a new sentencing "to determine whether [the petitioners'] ages at the time of their crimes are a mitigating factor justifying a downward departure from the standard sentence." *Monschke*, 197 Wn.2d at 329 (González, C.J., concurring).

In other words, rather than invoking the constitutional analysis of the lead opinion, Justice González believed that a significant change in *statutory* law, authorizing the petitioners to be resentenced, had occurred in 2015 when *O'Dell* was decided. *See In re Pers. Restraint of Light-Roth*, 191 Wn.2d 328, 341, 422 P.3d 444 (2018) (González, C.J., concurring) ("Our decision in *O'Dell* substantially changed how sentencing courts consider a defendant's youthfulness.").

The narrowest ground upon which a majority of the *Monschke* court agreed to grant resentencing was just that — that those petitioners were entitled to resentencing. *Monschke*, 197 Wn.2d at 329, 482 P.3d 276 (lead opinion and

concurrence). That, along with the conclusion that RCW 10.73.100(2) does *not* apply to sentencing claims, are the only holdings that can be derived from the case. *Francis*, 170 Wn.2d at 532 n.7. A majority of this Court did not agree on any other principle of law. *Reyes*, 184 Wn.2d at 346. *See State v. Carter*, 3 Wn.3d 198, 238-39, 548 P.3d 935 (2024) (Madsen, J., dissenting) ("The lead opinion [in *Monschke*] anchored its analysis in the Eighth Amendment and neuroscientific studies; the concurrence, to the extent it expressed an opinion on the merits, appears to have relied on *O'Dell*."). Because *Monschke* does not state any constitutional principle of law supported by a majority of this Court, it cannot constitute a significant *change* in the law relating to youthful sentencing.

Schoenhals argues that *Monschke* is a significant change in the law because it overruled *State v. Grisby*, 97 Wn. App. 493, 647 P.2d 6 (1982), a case that rejected a state constitutional right to individualized sentencing for offenders convicted of aggravated murder. But even the lead opinion in

Monschke expressly disagreed: "[c]ontrary to the dissent's accusation, we do not overrule *Grisby*." 197 Wn.2d at 326 n.17. The lead opinion, citing to *Miller* and *State v. Houston-Sconiers*,[5] said that for years "youthful defendants have been an exception" to *Grisby*'s general rule. *Id.* According to the lead opinion, it was "only expand[ing] the class of defendants who qualify for that existing exception."[6] *Id.* Thus, even if the lead opinion in *Monschke* stated a rule of law, it did not overrule *Grisby*, even by its own analysis.

b. Even if *Monschke* States a Constitutional Principle of Law, a Violation of its Procedural Rule Alone Would Not Entitle Schoenhals to Retroactive Resentencing.

Washington applies the retroactivity test of *Teague v. Lane*, 489 U.S. 288, 100 S. Ct. 1060, 103 L. Ed. 2d 334 (1989), to constitutional changes to the law. *In re Pers. Restraint of Hinton*, 1 Wn.3d 317, 329, 525 P.3d 156 (2023). Under

[5] 188 Wn.2d 1, 391 P.3d 409 (2017).

[6] *Miller* and *Houston-Sconiers* apply only to *juveniles* under 18.

Teague, new substantive constitutional rules apply retroactively on collateral review, but new procedural rules — even those that give effect to a new substantive rule — are not retroactive. *Hinton*, 1 Wn.3d at 329.

> Substantive rules "'set forth categorical constitutional guarantees that place certain criminal laws and punishments altogether beyond the State's power to impose'" and include "'rules prohibiting a certain category of punishment for a class of defendants because of their status or offense.'" *In re Pers. Restraint of Ali*, 196 Wn.2d 220, 237, 474 P.3d 507 (2020) (internal quotation marks omitted) (quoting *Montgomery v. Louisiana*, 577 U.S. 190, 201, 136 S. Ct. 718, 193 L. Ed. 2d 599 (2016)), *cert. denied*, 141 S. Ct. 1754 (2021).

In re Pers. Restraint of Williams, 200 Wn.2d 622, 520 P.3d 933 (2022). *State v. Bassett* is an example of a substantive, and therefore retroactive, rule under *Teague* because it entirely prohibits a category of punishment (LWOP) for a class of defendants (juveniles). 192 Wn.2d 67, 91, 428 P.3d 343 (2018).

The lead opinion in *Monschke* relied on both the *Miller* line of cases and *Houston-Sconiers* to require individualized

sentencing for aggravated murderers aged 18 to 20. *Monschke*, 197 Wn.2d at 327-28, 328 n.20.

In *Houston-Sconiers*, this Court relied on *Miller* to require individualized sentencing of juvenile offenders under the Sentencing Reform Act (SRA). 188 Wn.2d at 21. In *Ali*, this Court characterized *Houston-Sconiers* as announcing a *substantive* and thereby retroactive Eighth Amendment rule prohibiting adult standard-range sentences and enhancements for juveniles who possess such diminished culpability that the adult sentences would be disproportionate punishment. 196 Wn.2d at 237. Additionally, *Houston-Sconiers* announced new *procedural* rules (discretion and consideration of youth) to effectuate its substantive rule. *Hinton*, 1 Wn.3d at 328.

But this Court has clarified that *Houston-Sconiers*' procedural rules requiring discretion and consideration of youth are not independently reviewable in an untimely collateral attack. *Hinton*, 1 Wn.3d at 330-31. *See also In re Pers. Restraint of Forcha-Williams*, 200 Wn.2d 581, 597, 520 P.3d

939 (2022) (unless a juvenile with diminished culpability is mandatorily sentenced to an adult standard range or enhancement, "no procedural mechanism — discretion to impose a lesser sentence — is required.").

In other words, newly announced procedural rights (consideration of youth and discretion) are not retroactive absent a substantive error (i.e., the imposition of a constitutionally disproportionate adult sentence). Youthful offenders who have not demonstrated a *substantive* error (a disproportionate sentence) have no independent *procedural* right to retroactive resentencing merely because the court did not originally consider youth or exercise discretion. *Hinton*, 1 Wn.3d at 330-31. *See also Forcha-Williams*, 200 Wn.2d at 597 ("Again, we stress that the Eighth Amendment is violated only when a juvenile *who possesses diminished culpability* is mandatorily sentenced to an adult standard range or enhancement.") (emphasis added).

Even if the *Monschke* lead opinion announced a new constitutional rule of law, Schoenhals has no retroactive right to resentencing merely because the judge did not follow proper procedural requirements (consideration of youth and discretion) at his original sentencing hearing. Just like the rule of *Houston-Sconiers*, retroactive resentencing is precluded unless Schoenhals can show a substantive error (constitutionally disproportionate punishment). Any new procedural sentencing requirements announced in the lead opinion of *Monschke* do not apply retroactively independent of a substantive, retroactive sentencing error.

Schoenhals cites to *Montgomery v. Louisiana*, *supra*, to support his retroactivity argument. *Montgomery*'s apparent holding was that LWOP is an impermissible sentence for juvenile murderers whose crimes reflect transient immaturity. 577 U.S. at 208. Consistent with *Teague*, *Montgomery* seemed to characterize *Miller* as a substantive rule prohibiting a certain category of punishment (LWOP) for a class of defendants

(juvenile homicide offenders whose crimes reflect transient immaturity). *Montgomery*, 577 U.S. at 208. *See also Ali*, 196 Wn.2d at 239 n.5 (citing *Montgomery* to declare that *Miller* categorically banned LWOP for juveniles whose crimes reflect the transient immaturity of youth).

But the Court later retreated from *Montgomery*'s interpretation of *Miller* in *Jones v. Mississippi*, holding that the Eighth Amendment requires consideration of youth when deciding whether to impose LWOP on a juvenile, but it does not require a finding that the juvenile is permanently incorrigible in order to impose such a sentence. 593 U.S. 98, 110-11, 141 S. Ct. 1307, 209 L. Ed. 2d 390 (2021). The Court was clear that discretionary sentencing "is both constitutionally necessary and constitutionally *sufficient*" to permit the imposition of LWOP sentences on juvenile murderers. *Id.* at 105 (emphasis added).

Justice Thomas' concurrence in *Jones* explained that the majority

> candidly admits both that *Miller*'s rule was "procedural" and that *Montgomery* "ma[de] the rule retroactive." The only way to reconcile these statements with the bottom-line judgment in this case — that Jones is not entitled to a determination whether he falls within a constitutionally protected category of offenders — is to reject *Montgomery*. And sure enough, the majority does just that, albeit in a footnote.

Id. at 127 (Thomas, J., concurring) (citations omitted). And indeed, the majority in *Jones* strictly limited *Montgomery*'s retroactivity holding to the rule in *Miller*. *See Id.* at n.4 ("to the extent that *Montgomery*'s application of the *Teague* standard is in tension with the Court's retroactivity precedents that both pre-date and post-date *Montgomery*, those retroactivity precedents — and not *Montgomery* — must guide the determination of whether rules other than *Miller* are substantive").

The Supreme Court has never extended its Eighth Amendment rule in *Miller* to adults over eighteen, and the lead opinion in *Monschke* purported to base its decision on state constitutional grounds. *Monschke*, 197 Wn.2d at 326. As

noted in *Jones*, *Montgomery* is inconsistent with *Teague*. Therefore, it does not support Schoenhals' argument for retroactivity.

Schoenhals further claims that his sentence is "void" after *Monschke*. He argues that *Monschke* declared the aggravated-murder statute unconstitutional, and cites to *State v. French*, 21 Wn. App. 2d, 891, 895-96, 508 P.3d 1036 (2022), for his argument that sentences imposed pursuant to an unconstitutional statute are void. But *French* examined the validity of an enhanced sentence based on a prior possession of a controlled substance *conviction* that this Court held to be unconstitutional and void. 21 Wn. App. 2d at 894.

By contrast, the aggravated-murder statute (RCW 10.95.020), i.e., the statute that criminalizes aggravated murder, has never been deemed unconstitutional; it was the aggravated-murder *sentencing* statute (RCW 10.95.030) that the lead opinion in *Monschke* took issue with. Schoenhals was not convicted of violating the aggravated-murder sentencing

statute, so his citation to precedent holding that "*convictions* under unconstitutional statutes ... are as no conviction at all and invalidate the prisoner's *sentence*," is inapt. *See In re Pers. Restraint of Runyon*, 121 Wn.2d 432, 445, 853 P.2d 424 (1993) (emphasis added) (citations omitted). Schoenhals remains convicted of aggravated murder; his *conviction* is not void, and thus his sentence is not either.

Moreover, as Schoenhals concedes, a statute that is unconstitutional *as applied* is not void on its face or incapable of valid application to other circumstances. *Found. for the Handicapped v. Dep't of Soc. & Health Servs. of Washington State*, 97 Wn.2d 691, 695, 648 P.2d 884 (1982). And the lead opinion in *Monschke* concluded that the aggravated-murder sentencing statute was unconstitutional only insofar as it made LWOP mandatory for 18- to 20-year-olds — not that it was unconstitutional in its entirety. *Carter*, 3 Wn.3d at 219.

Finally, this Court held in *Carter* that the aggravated-murder sentencing statute may be severed to avoid the

mandatory application of an LWOP sentence to those under age 21.[7] 3 Wn.2d at 217. Thus, even if the lead opinion in *Monschke* established a new rule that mandatory LWOP is unconstitutional as applied to certain offenders, it is still capable of valid application and is not "void" as Schoenhals argues. And Schoenhals himself appears to concede that a personal-restraint petitioner whose sentence is merely "voidable" (i.e., erroneous) must make a substantive showing of constitutional disproportionality to be entitled to retroactive resentencing.

Schoenhals fails to persuasively argue that *Houston-Sconiers*' retroactivity analysis, as outlined in *Ali* and *Hinton*,

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[7] In *Carter*, the State appealed the new judgments and sentences of the consolidated defendants after it had *agreed* to resentencing after *Monschke*. *Carter*, 3 Wn.3d at 234 n.4, 7 (2024) (Madsen, J., dissenting). Because the State had agreed to resentencing, *Carter* had no need to address *Monschke*'s retroactivity. *Id.* at 205 (noting the agreement of the parties that Carter's claim was timely). The dissent acknowledged that retroactivity was an open question. *Id.* at n.7 (citing *Davis*, 200 Wn.2d at 84).

would not apply equally to any new rule stated by the lead opinion in *Monschke*. Schoenhals argues that "*Monschke* struck a statute. *Houston-Sconiers* did not," and he tries to cast *Monschke* as an "individualization" case and *Houston-Sconiers* as an "individual sentence disproportionality" case. Pet.'s Supp. Brf. at 21. This strained distinction should easily be rejected.

Houston-Sconiers concluded that mandatory sentencing provisions for juveniles were unconstitutional and "[t]o the extent our state statutes have been interpreted to bar such discretion with regard to juveniles, they are overruled." 188 Wn.2d at 21. *Monschke*'s lead opinion reasoned that mandatory LWOP sentences are unconstitutional as to 18- to 20-year-olds and, if precedential, would have invalidated the mandatory portion of the aggravated-murder sentencing statute as it applies to those offenders. In other words, both *Houston-Sconiers* and *Monschke* invalidated mandatory sentencing schemes and declared that contrary statutory provisions were

"overruled" or "invalidated." They are indistinguishable in this regard and any holding regarding retroactivity should be identical.

In conclusion, even if *Monschke*'s lead opinion states a principle of law, only its substantive rule — that LWOP is precluded for those 18- to 20-year-olds whose youthful qualities are such that LWOP is constitutionally disproportionate punishment — would be retroactive.

c. Any New Substantive Rule Announced in *Monschke* Is Not Material to Schoenhals' Sentence.

Monschke is not material to Schoenhals' case because the only retroactive component of *Monschke* would be its substantive component, and Schoenhals fails to establish a substantive violation — that his LWOP sentence is constitutionally disproportionate.

i. Assigning punishment necessarily requires consideration of the proper role of science in moral and political thinking.

Deciding when a person becomes an adult and what punishment is appropriate is rooted partly in a myriad of moral, philosophical, religious, and innate judgments, informed by both neuroscience and behavioral sciences. The range and depth of thinking on this subject is uniquely suited to legislative decision-making where a range of societal thoughts, beliefs, and attitudes are necessarily represented.

It is important to ask what role brain science should play in deciding the appropriate punishment for any given offender. Punishment is ordinarily considered a moral, normative, and policy-based question to be decided by the elected representatives in the legislative body of a democracy. Brain science may certainly be relevant to such questions, but it is hardly capable of *answering* those questions. Rather, science can only inform decision-making in light of society's concept

of criminal responsibility. Punishment is not meted out simply based on what a person "deserves" because of their personal circumstances, including brain development, or simply as a deterrent or to rehabilitate an offender. The determination of punishment cannot be reduced to a scientific formula.

Equally valid are the societal beliefs that punishment should be based on the criminal conduct itself as well as incapacitation of the offender. The SRA adopted a model of just desserts for equal crime and rejected the failed rehabilitative models that preceded it.[8] D. Boerner, *Sentencing*

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[8] The legislature's primary purpose when establishing the SRA was to replace the prior indeterminate, rehabilitation-oriented system with a determinate system focusing on "proportionality, equality and justice." *State v. Garcia-Martinez*, 88 Wn. App. 322, 327-28, 944 P.2d 1104 (1997) (citations omitted).

> [S]tudies had shown the indeterminate sentencing system resulted in significant disparity among sentences imposed for similar offenses depending on the decision-maker's own personal philosophy and perspective. The Legislature was particularly concerned that the punishment for a criminal offense be proportionate both to the seriousness of the offense and the offender's criminal history, thereby ensuring that the punishment imposed

in Washington § 2.1 et seq. (The Purposes of the Sentencing Reform Act). Recent incorporation of rehabilitative options in the SRA does not eradicate legitimate societal goals of punishment and incapacitation. Stiff punishment for particularly heinous acts serves as society's gesture of collective disapprobation. It is simply not true that punishing a young offender with a long sentence serves no penological goals; it may well serve the democratic societal goals of just desserts and incapacitation. While *Miller* suggests that the value of such goals diminishes in the face of immaturity, they cannot and should not be discounted altogether.

Neuroscience research provides group data showing a developmental trajectory in brain structure and function during adolescence and into adulthood. Richard J. Bonnie & Elizabeth

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> would be just … the Legislature sought to ensure that punishment for each criminal offense would be commensurate with that imposed on others with similar criminal histories committing a similar offense.

Id.

S. Scott, *The Teenage Brain: Adolescent Brain Research & the Law*, 22 Current Directions in Psych. Sci., 22, 116, 158-61 (2013).

> [H]owever, the research does not currently allow us to move from that group data to measuring the neurobiological maturity of an individual adolescent because there is too much variability within age groups and across development. Indeed, we do not currently have accurate behavioral measures of maturity…[A]n expert who offers an opinion that a particular 14-year-old defendant has a mature or immature brain as compared with other 14-year-olds (or 'has the maturity of a 17-year-old') is exceeding the limits of science. Currently the only legitimate use of adolescent brain research in individual cases is to provide decision makers with general descriptions of brain maturation.

Id. If there is no way for scientists to distinguish between children, adolescents, teens, youth, emerging adults, and adults, the conclusion is not "everyone is a child" any more than "everyone is an adult." Rather, the conclusion is that *democratically elected policymakers* must choose the naturally arbitrary point at which a child has become an adult, informed by both science and culture.

Caution should be taken when declaring constitutional rules based on nascent scientific research and where much more is *not known* than is known. Determining what actions are criminal in a civilized society and what should be the appropriate punishment for such criminal acts is a policy-based, political decision that we entrust to our elected legislature as representatives of the citizenry. There is nothing in the state constitution generally, or in article I, section 14 specifically, that grants the judicial branch the power to make that decision instead of the democratically elected representatives of this state on behalf of its citizens.[9]

[9] The legislature is currently considering a bill that would set the sentence for 18- to 20-year-old aggravated murderers whose crimes reflect the diminished culpability of youth as an indeterminate life sentence with judicial discretion to set a minimum term of at least 25 years. *See* HB 1317, located at https://lawfilesext.leg.wa.gov/biennium/2025-26/Pdf/Bills/House%20Bills/1317.pdf?q=20250202172544.

ii. Schoenhals' mitigation does not support a conclusion that LWOP is a constitutionally disproportionate punishment in his case.

To establish materiality, Schoenhals must show that any new substantive and retroactive rule "changed the law in a way that entitles [him] to relief." *Kennedy*, 200 Wn.2d at 21. Schoenhals can do that only by establishing that *his crime* reflected the diminished culpability of youth such that LWOP is unconstitutionally disproportionate *as to him*. He has failed to do so.

Importantly, Schoenhals denies committing the offense that he now claims was impacted by his immature brain. To this day, Schoenhals still denies that he killed 14-year-old Mark Wallace and incorrectly contends that he was convicted of aggravated murder merely through his participation in a burglary that turned fatal. That legally is not true. Schoenhals was found guilty of the aggravated premeditated murder of the teenage boy — not felony murder. Appendix D to

Respondent's Supp. Brf. in COA. Aggravated murder requires a *premeditated, intentional* murder with the presence of one or more statutorily enumerated aggravating circumstances. *See* RCW 10.95.020; RCW 9A.32.030(1)(a). The jury found that Schoenhals premeditatedly and intentionally killed Wallace, that he was armed with a deadly weapon at the time, and that he murdered Wallace to conceal his own identity. *Id.* Schoenhals still denies this and minimizes his acts as mere participation in a burglary during which Wallace died at someone else's hand.[10]

Schoenhals cannot demonstrate that his premeditated, aggravated murder of Wallace reflected "youthful immaturity, impetuosity, or failure to appreciate risks and consequences" when he will not even admit that he killed Wallace. Schoenhals' own expert, Dr. Ronald Roesch, acknowledged

[10] As recently as 2019, in a clemency petition, Schoenhals claimed that he was innocent of killing Wallace and stated, in his own words, "I didn't kill Marky and the news [from the police] that he died during the burglary that I took part in shocked me." *See* App. A to State's Resp. to CrR 7.8 Mot.

that Schoenhals denied committing the murder, and yet Roesch asserted that Schoenhals nonetheless "accepts full responsibility for it." Roesch Report, at pg. 15. Notwithstanding the impossibility of this assertion, it appears to account for Roesch's inability to render an opinion as to whether and how youth played a role in Schoenhals' crime.[11]

Proof of diminished culpability requires more than saying, "I did not commit the crime, but if I did, I was youthfully immature." It requires proof that Schoenhals' immaturity, impetuosity, or failure to appreciate risks and consequences *actually* played a role in Wallace's premeditated murder. Youth alone does not establish a right to a lesser sentence. "[S]ome under 18 have already attained a level of maturity some adults will never reach." *Roper v. Simmons*, 543

[11] Roesch admitted, in a different case, that if the juvenile had denied committing the crime, it would have made it impossible for Roesch to render an opinion as to the role immaturity played in the "offense context." *See* App. B to State's Resp. to CrR 7.8 Mot.

U.S. 551, 574, 125 S. Ct. 1183, 161 L. Ed. 2d 1 (2005). An adult sentence is constitutionally disproportionate only for those juvenile offenders whose crimes reflect youthful immaturity, impetuosity, or the failure to appreciate risks and consequences. *State v. Anderson*, 200 Wn.2d 266, 286, 516 P.3d 1213 (2022).

Roesch's report simply does not support a conclusion that immaturity played a role in Schoenhals' offense such that his LWOP sentence is constitutionally disproportionate. Roesch, incredibly, speculates that Schoenhals was "likely" more impulsive and immature than other 20-year-olds based on a standardized assessment meant for juveniles aged nine to 18 that Roesch administered to Schoenhals when he was in his *50s*. Roesch Report, at pgs. 10-11. Roesch apparently directed Schoenhals to respond to questions on the assessment as he would if he were an "adolescent," which is to say, role-play. *Id.* How Schoenhals — a middle-aged adult — could possibly suspend four decades of life experience and respond to the questions "as an adolescent" is unclear; it certainly calls into

question the scientific value of this exercise, seriously undermining the validity of the test results and Roesch's opinions.

Moreover, Roesch is not a neurologist. He did not administer or review any brain scans, and he offered no opinion regarding neurological evidence of Schoenhals' brain development at the time of the crime in 1985. Roesch's report made no mention of how neurological brain science might apply to Schoenhals individually (who was 20 at the time of the crime). There was almost no discussion whatsoever of how such science might inform the sentencing of a 20-year-old offender, and there was no discussion of the facts of the crime or how principles of brain science might apply to the facts of it. At no point in his report did Roesch offer any opinion that Schoenhals' *crime* reflected youthful immaturity.

Moreover, Roesch's report repeatedly referred to "adolescents" and "juveniles" and made no distinction between a 14-year-old juvenile and the 20-year-old young adult that

Schoenhals was. Instead, Roesch repeatedly referred to Schoenhals as an "adolescent," and erroneously stated at one point that Schoenhals was 19 at the time of his crime. Roesch Report, at 15. Roesch's report simply does not support a conclusion that Schoenhals' culpability for committing aggravated first-degree murder was mitigated by youth. Generalities about the science of brain development are not sufficient to establish a connection between those traits and Schoenhals' criminal behavior, but generalities are all Schoenhals offers. He is essentially saying that because he was young his crime reflected youth, but this Court and the United States Supreme Court have rejected the simplicity of that reasoning.

Schoenhals faults the State for not offering evidence to the trial court in response to his CrR 7.8 motion, but there is no requirement that a court agree with an expert witness' assessment of youthful culpability. *State v. Krueger*, 28 Wn. App. 2d 549, 560, 540 P.3d 126 (2023), *review denied*, 547

P.3d 900 (2024). Sentencing courts have discretion when sentencing youthful offenders and a court may consider an offender's mitigation and find that it does not support a finding of reduced culpability.[12] *Id.* There is no requirement that the State counter the offender's offer with its own expert, especially if the State believes the defense expert's conclusions to be insufficient or off-mark.

An adult sentence is constitutionally disproportionate *only* for those whose *crimes* reflect youthful immaturity, impetuosity, or the failure to appreciate risks and consequences. *Anderson*, 200 Wn.2d at 286. A jury concluded that

[12] When transferring Schoenhals' CrR 7.8 motion to the Court of Appeals, Judge Thorp noted the importance of an expert's accuracy: "If the lenses that people have on are incorrect, the conclusions that they reach are questionable to me, so when I have someone discussing Mr. Schoenhals' trial and incarceration, and believe that he was 20 at the time of the trial or the verdict, frankly, and sentencing in February of 1986, that is just fundamentally incorrect … I am not persuaded by those who didn't take the time to verify or to double check that on something that is so significant when you are talking about youthfulness." 7/21/23RP 25.

Schoenhals stabbed Mark Wallace in the neck, intentionally killing the teen to conceal his identity as the perpetrator. Schoenhals denies that he committed these acts. Because Schoenhals has failed to establish that his youth or immaturity reduced his culpability for Wallace's murder, he has failed to establish that his sentence is constitutionally disproportionate.

Even if this Court were to conclude that *Monschke* is a significant and retroactive change in the law, Schoenhals has not established that it is material to him. He has failed to meet any of the three requirements for a significant change in the law under RCW 10.73.100(7). His petition is time-barred.

2. SCHOENHALS HAS FAILED TO ESTABLISH ACTUAL AND SUBSTANTIAL PREJUDICE FROM ANY ERROR OF THE SENTENCING COURT.

Even if this Court were to conclude that Schoenhals' claim is timely, he has failed to establish actual and substantial prejudice from any failure of the sentencing court to discretionarily impose sentence after considering youth.

A defendant claiming collateral relief is required to show both error and prejudicial effect. For claimed constitutional errors, a defendant must establish actual and substantial prejudice. *In re Pers. Restraint of Davis*, 152 Wn.2d 647, 671-72, 101 P.3d 1 (2004). Schoenhals argues that no showing of prejudice is needed here, but he is wrong.

This Court has rejected Schoenhals' argument in the context of *Houston-Sconiers* and its rule of individualized sentencing for juvenile offenders in adult court. In *Forcha-Williams*, this Court stated that "the ultimate question" was whether a trial court's failure to understand and exercise discretion was a violation of the substantive rule prohibiting punishment disproportionate to culpability. 200 Wn.2d at 599. *Forcha-Williams* reaffirmed *In re Pers. Restraint of Meippen*, 193 Wn.2d 310, 440 P.3d 978 (2019), which held that juvenile offenders collaterally challenging their sentences under *Houston-Sconiers* must show prejudice in addition to error. *Forcha-Williams*, 200 Wn.2d at 600-01. There is no logical

basis to require *adult* petitioners to make *less* of a showing than *juvenile* offenders.

Schoenhals has not established himself to be a member of the class of offenders that any substantive rule in *Monschke* addressed — 18- to 20-year-olds whose culpability was reduced by the mitigating qualities of youth — because he has not shown his crime to mitigated by such qualities. Consistent with the "ultimate question" outlined in *Forcha-Williams*, Schoenhals has not established that the failure of the trial court to exercise discretion resulted in the imposition of an unconstitutional sentence in his case.

As detailed above, Schoenhals denies committing aggravated murder. Dr. Roesch's report does not convincingly state a basis to conclude that immaturity played a role in the crime or that the sentencing court would have imposed a lesser sentence if it had considered youth. *See Anderson*, 200 Wn.2d at 291-92 (legislatively mandated sentence appropriate where crime does not reflect *y*outhful immaturity, impetuosity, or

failure to appreciate risks and consequences). When Schoenhals cannot show that immaturity played a role in a crime that he will not even admit committing, he cannot show actual and substantial prejudice. His personal restraint petition should be dismissed.

D. CONCLUSION

For the above reasons, the State respectfully asks this Court to dismiss Schoenhals' personal restraint petition.

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DATED this 3rd day of FEBRUARY, 2025.

Respectfully submitted,

LEESA MANION (she/her)
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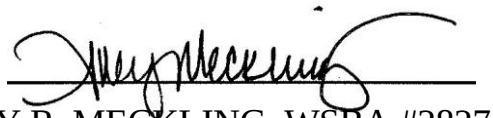
By: 
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