

FILED
SUPREME COURT
STATE OF WASHINGTON
11/18/2022 3:07 PM
BY ERIN L. LENNON
CLERK

NO. 100873-2

IN THE SUPREME COURT OF THE
STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

MICHAEL REYNOLDS, JR.,

Petitioner.

SUPPLEMENTAL BRIEF OF RESPONDENT

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A. INTRODUCTION

Petitioner Michael Scott Reynolds, Jr., has demonstrated through his actions as a fully formed adult that he is a persistent violent recidivist who will continue to commit “most serious offenses” whenever not incarcerated. There is no longer any doubt as to whether his first most serious offense, committed at the age of 17, reflected transient immaturity rather than incorrigibility, because his actions since then have revealed the answer.

When Reynolds, at the age of 33, dragged a stranger out of her workplace at knifepoint and attempted to violently rape her in the bushes, his culpability was heightened by the fact that he had twice previously been convicted in adult court of “most serious offenses” and failed to take advantage of opportunities to reform his behavior. That Reynolds’ pattern of violent recidivism stretches back to age 17, rather than 19 or 20 like the defendants whose sentences this Court upheld in State v.

Moretti,¹ enhances rather than lessens the certainty that Reynolds' current offenses demonstrate precisely the type of persistently violent behavior that the Persistent Offender Accountability Act ("POAA") was designed to address.

This Court has repeatedly and unwaveringly held that the POAA, Washington's "three strikes" law, imposes punishment solely for the final strike and not for prior strikes. It reflects a reasonable judgment that an offender's culpability for a third "most serious offense" is enhanced by the fact that he has twice previously committed similar offenses and failed to take advantage of opportunities to change his behavior. As a result, a defendant's culpability for his prior strikes is irrelevant to the constitutionality of the sentence imposed for his third strike.

Reynolds does not ask this Court to overrule those decisions, nor is there any valid basis on which to do so. Reynolds is no less culpable for the violent burglary and

¹ State v. Moretti, 193 Wn.2d 809, 446 P.3d 609 (2019).

attempted rape that he committed at age 33 than the defendants in Moretti were for the third strikes that they committed at ages 32 to 41. The state constitutional prohibition on cruel punishment does not prevent the people of Washington from deciding that a fully formed adult who has proven himself to be a persistent violent recidivist should be removed from society for the remainder of his life regardless of the age at which his pattern of violent behavior began.

B. ISSUE PRESENTED

Has Reynolds failed to establish that Washington's Persistent Offender Accountability Act ("POAA") violates the Eighth Amendment and article I, section 14 in requiring imposition of a life-without-parole sentence on a fully formed adult recidivist whose first "strike" offense was prosecuted in adult court but committed at age 17?

C. STATEMENT OF THE CASE

1. AFTER NUMEROUS FELONY ADJUDICATIONS, REYNOLDS COMMITTED ATTEMPTED FIRST-DEGREE ROBBERY AT AGE 17 AND WAS CONVICTED OF HIS FIRST STRIKE IN ADULT COURT.

After two misdemeanor diversions, three misdemeanor adjudications, and seven felony adjudications, Reynolds was charged in juvenile court with attempted robbery in the first degree. CP 249, 384, 411, 417. That charge arose from an incident in which 17-year-old Reynolds, a 14-year-old, a 15-year-old, and two 18-year-olds formed a plan to rob a convenience store.² CP 387. Reynolds had been released from a Juvenile Rehabilitation Administration facility (“JRA”) only four months earlier. CP 392. Shortly before the attempted robbery, Reynolds asked if anyone in the group had a gun, and the 15-year-old said that he had a BB gun that looked like a real firearm. CP 387, 391. The 15-year-old retrieved the BB gun

² Reynolds was born on October 30, 1984. RP 811; CP 248.

and a smoke grenade from his house and gave both to Reynolds. CP 388.

Reynolds, the 16-year-old, and one of the 18-year-olds put on dark clothing that hid their faces. CP 352. Reynolds gave the smoke grenade to the 16-year-old and kept the gun for himself. CP 352. The three formed a plan, agreeing that Reynolds would demand money and cigarettes from the clerk, the 18-year-old would steal beer, and the 16-year-old would use the smoke grenade to create a diversion if there were any problems. CP 352. When the three entered the store, Reynolds pointed the gun at the clerk and demanded money. CP 382. The clerk opened the till to comply but realized that the gun was not a real firearm before handing over any money. CP 352. The clerk slammed the till shut and ordered the three to leave. CP 352. As planned, Reynolds' 16-year-old compatriot threw the smoke grenade as the three fled the store. CP 352. They were quickly identified, located, and charged. CP 352, 382.

Reynolds' Juvenile Parole Counselor ("JPC")

recommended that the juvenile court decline jurisdiction:

Michael has been receiving juvenile court services, almost non-stop, since 1999. He has had diversion, probation, parole, boot camp, and institution services. Michael has served two sentences in the Juvenile Rehabilitation Administration. I have supervised Michael's parole. He did fairly well the first time, but since August 2001, he has had difficulty following the rules. He has served 81 days incarceration for violations of his parole conditions.

Michael has been given the opportunity to participate in family and individual counseling through Sunderlands Family Counseling Center in Richland[,] Washington. He has been given the opportunity to participate in a job skills program through Work Source in Kennewick[,] Washington. Michael has been enrolled in drug and alcohol counseling at Life Changes in Kennewick. While at Mission Creek, he also earned the chance to be a member of the fire[-]fighting crew through [the Department of Natural Resources]. Michael has sabotaged all efforts and programs intended to help him. Michael has performed poorly on parole and has been out of the control of his father. He appears to be quite resistive to juvenile rehabilitation services, and the juvenile system has exhausted resources to assist in his rehabilitation. I recommend the court decline jurisdiction at this time.

CP 396.

Reynolds agreed that the juvenile court should decline jurisdiction and pled guilty to attempted first-degree robbery in adult court in exchange for the State's low-end sentencing recommendation and agreement to not file additional charges. CP 354, 399-401. The adult sentencing court imposed a low-end standard range sentence of 34.5 months in prison. CP 377. Reynolds was released from prison to community custody in December 2004, when he was 20 years old. CP 164, 308. Reynolds spent seven of the next 13 months in custody related to a community custody violation and new misdemeanor charges. CP 164.

2. AT AGE 21, REYNOLDS COMMITTED BURGLARY IN THE FIRST DEGREE AND ROBBERY IN THE FIRST DEGREE AND WAS CONVICTED OF HIS SECOND STRIKE(S).

Less than 13 months after completing his sentence for his first strike, then-21-year-old Reynolds and an accomplice forced their way into an occupied residence. CP 314. Reynolds and his accomplice threatened the husband and wife who lived there with large-bladed weapons and demanded money.

CP 314. When told there was no money in the home, Reynolds forced the wife to drive to an ATM at knifepoint, telling her that if she resisted he would tell his accomplice back at the residence to kill her husband. CP 315. When they reached the store where the ATM was located, the wife was able to escape and call for help. CP 315. Police responded to the residence and captured Reynolds' accomplice, who while waiting for Reynolds and the wife to return had carved a gang symbol into the husband's back with a knife. CP 315.

Though initially charged with kidnapping in the first degree and attempted robbery in the first degree, both with deadly weapon enhancements, Reynolds was allowed to plead guilty to burglary in the first degree and completed robbery in the first degree without any enhancements. CP 310-11, 319-20, 322, 329. Reynolds served a standard range sentence of 144 months in prison and was released in September 2017. CP 290, 339-41.

3. CURRENT OFFENSES: AT AGE 33, REYNOLDS COMMITTED ATTEMPTED RAPE IN THE SECOND DEGREE WITH A DEADLY WEAPON AND BURGLARY IN THE FIRST DEGREE WITH SEXUAL MOTIVATION AND A DEADLY WEAPON, HIS THIRD STRIKE(S).

In February 2018, 33-year-old Reynolds was on active supervision with the Department of Corrections, was living in DOC transitional housing, had a job at a warehouse where he was about to be promoted, and had a girlfriend. RP 811, 909, 917, 1321; CP 3. Near Reynolds' workplace in Kent was a drive-through bikini barista stand where M.G. worked the opening shift. RP 1009, 1012, 1018. Shortly before 4:45 a.m. one Tuesday, Reynolds approached the barista stand's sliding window on foot and ordered a drink. RP 573, 815, 816, 1014, 1019. When M.G. turned away to prepare the drink, Reynolds climbed through the window with a knife in his hand. RP 1020-21.

Reynolds forced M.G. out the window at knife-point and then dragged her across the parking lot to some bushes with his

knife at her throat. RP 1028. Reynolds threw M.G. to the ground on her back, climbed on top of her, struck her all over her body, and ripped off her lingerie. RP 1029. He tried to kiss M.G. on the mouth, but she turned her face away, so he kissed her neck and groped her body. RP 1029, 1031. Reynolds touched M.G.'s breasts and the outside of her vagina as she struggled to block his hands with her own. RP 1030-31. Realizing that Reynolds planned to rape her, M.G. begged him not to. RP 1031. Reynolds then put down the knife and wrapped both hands around M.G.'s throat, strangling her until she felt like she was about to pass out from lack of oxygen. RP 1030, 1034. M.G. frantically felt the ground around her, trying to locate the knife to defend herself, but could not find it. RP 1030.

Reynolds broke off his attack when another car drove up to the espresso stand. RP 1035-36. As Reynolds got into his vehicle and drove away, the customer heard M.G. screaming and crying for help, saying "he's trying to rape and kill me,"

and then saw M.G. run up in torn lingerie. RP 658-59, 665, 668, 1037.

Part of the attack was caught on the espresso stand's surveillance video, and M.G.'s DNA was found on a sweatshirt Reynolds hid at his workplace later that day. RP 605, 609-10, 771-74, 839-40, 852-53, 943, 947, 982, 1217, 1222-26, 1388. When shown the surveillance video, Reynolds admitted that it was him in the video, but denied any memory of stopping at the espresso stand the previous morning. RP 820-21.

A jury deliberated for less than three and a half hours before finding Reynolds guilty as charged of burglary in the first degree and attempted rape in the second degree, with special findings that the burglary was committed with sexual motivation and that both crimes were committed while armed with a deadly weapon. CP 55-56, 556-59.

After a contested hearing, the trial court found that Reynolds had previously been convicted on two separate occasions of "most serious offenses" and rejected various

constitutional and statutory challenges to the application of the POAA. CP 250-51; RP 1497-98, 1509, 1517, 1536-38. The court imposed concurrent sentences of life in prison without the possibility of parole under the POAA. CP 244, 246.

The Court of Appeals affirmed Reynolds' sentence on direct appeal. State v. Reynolds, 21 Wn. App. 2d 179, 505 P.3d 1174 (2022). Among other issues, it rejected Reynolds' argument that his life sentence violated the state and federal cruel punishment clauses because he had committed his first strike before the age of 18. Applying the framework and logic of this Court's decision in Moretti, the Court of Appeals held Reynolds had failed to establish that article I, section 14 categorically barred the imposition of a mandatory life without parole ("LWOP") sentence on a fully formed adult recidivist who committed his first strike at age 17. Id. at 189-96. It also held that Reynolds had failed to establish that the POAA was

unconstitutional as applied to him under the Fain³ gross disproportionality test. Id. at 196-99. This Court granted Reynolds' petition for review.

D. ARGUMENT

REYNOLDS FAILS TO ESTABLISH HIS CLAIM THAT, BECAUSE HE BEGAN COMMITTING STRIKE OFFENSES AT AGE 17 RATHER THAN 19, THE LIFE SENTENCE IMPOSED FOR HIS THIRD STRIKE AT AGE 33 IS UNCONSTITUTIONAL.

Reynolds asserts that the life sentence imposed in this case constituted unconstitutionally cruel punishment because Reynolds was 17 years old when he committed his first strike offense and the POAA did not permit the sentencing court to take his youth at the time of that crime into account when sentencing him for current offenses. This claim should be rejected. This Court has repeatedly held that a mandatory life sentence under the POAA punishes only the third strike offense, not prior strikes. Thus, this Court held in Moretti, an analysis of the constitutionality of a POAA sentence looks only

³ State v. Fain, 94 Wn.2d 387, 390-91, 617 P.2d 720 (1980).

at the defendant's culpability for the offenses being sentenced. Because Reynolds does not contend, let alone establish, that youth affected his culpability for the current offenses, his claim fails. Reynolds is no less culpable for the strike offenses he committed at age 33 than were the defendants in Moretti.

1. The Logic and Reasoning of Moretti Control Nearly Every Disputed Issue in this Case.

In Moretti, this Court addressed a challenge nearly identical to the one Reynolds makes here—the only difference is that Reynolds committed his first strike at age 17 rather than age 19 to 20. Id. at 814-17. Like Reynolds, the Moretti defendants' second strikes were committed as young as age 21, and their third strikes were committed as fully formed adults between the ages of 32 and 41. Id. Like Reynolds, the Moretti defendants argued that the POAA violated the Eighth Amendment and article I, section 14 because it required the sentencing court to impose a sentence of life without parole for their third strikes without taking into consideration their youthfulness at the time of their first strikes. Id. at 814-15.

And like Reynolds, they argued that their sentences were grossly disproportionate because their youth at the time of their first strikes made them less culpable. Id. at 832.

This Court unanimously rejected those arguments, correctly concluding that because a POAA sentence is punishment for only the third strike, not “cumulative punishment for prior crimes,” it is neither categorically cruel nor grossly disproportionate under article I, section 14 to mandate a sentence of life without parole for “a fully developed adult offender who committed one of their prior strike offenses as a young adult.”⁴ Id. at 826, 830, 834 (majority), 835 (Yu, J., concurring).

While this Court did not opine on the constitutionality of imposing a POAA sentence on a defendant whose first strike was committed before the age of 18, the reasoning of Moretti

⁴ The Court’s rejection of the Moretti defendants’ state constitutional claims also served as a rejection of their Eighth Amendment claims. Moretti, 193 Wn.2d at 819.

applies with equal strength to a fully formed adult recidivist who committed his first strike at the age of 17.

All three divisions of the Court of Appeals have consistently applied the reasoning of Moretti to reject constitutional challenges to POAA sentences of offenders who committed their first strikes as juveniles. Reynolds, 21 Wn. App. 2d at 188-99; State v. Teas, 10 Wn. App. 2d 111, 131-35, 447 P.3d 606 (2019); In re Pers. Restraint of Williams, 18 Wn. App. 2d 707, 722-23, 493 P.3d 779, 781 (2021); State v. Simmons, Unpublished, No. 80563-1-I, 19 Wn. App. 2d 1039, 2021 WL 4947119, at *8-11 (Oct. 25, 2021), review denied, 199 Wn.2d 1003 (2022); State v. Smith, Unpublished, No. 36213-2-III, 16 Wn. App. 2d 1041, 2021 WL 568530, at *9 (Apr. 6, 2021); State v. Vasquez, Unpublished, No. 36281-7-III, 15 Wn. App. 2d 1048, 2020 WL 7258650, at *5-6 (Dec. 10, 2020), review denied, 197 Wn.2d 1007 (2021).

2. The Culpability of a Fully Formed Adult Who Has Proven Himself an Incurable Violent Recidivist Is Not Lessened by the Fact That His Violent Offenses Began at 17 Rather than 19.

The fact that Reynolds was 17 years old at the time of his first strike rather than 19 years old like Moretti does not provide a logical basis to depart from the reasoning and result of Moretti. Research has shown that although most juvenile offenders' crimes are a manifestation of "adolescence-limited" antisocial behavior, which the offenders outgrow as they leave adolescence behind, a much smaller group of young offenders "begin acting out early in life and persist long after adolescence," displaying "life-course-persistent" antisocial behavior. Megan Kurlychek & Alysha Gagnon, Reducing Recidivism in Serious and Violent Youthful Offenders: Fact, Fiction, and A Path Forward, 103 Marq. L. Rev. 877, 886-87 (2020); Terrie E. Moffitt, Adolescence-Limited and Life-Course-Persistent Antisocial Behavior: A Developmental Taxonomy, 100 Psychol. Rev. 674, 678-79 (1993). During

adolescence, it is very difficult to determine whether a given juvenile offender's criminal behavior will be adolescence-limited or life-course-persistent. State v. Bassett, 192 Wn.2d 67, 89, 428 P.3d 343 (2018).

It is this inability to predict the future that renders the imposition of a life-without-parole sentence on a juvenile offender unconstitutional under article I, section 14. Bassett, 192 Wn.2d at 90. Although this Court “recognized that an LWOP sentence could be permissible for juveniles whose crimes reflect irreparable corruption,” it determined that “allowing an LWOP sentence to be an option in the first instance create[d] too great a risk” that a juvenile whose crime does *not* reflect irreparable corruption would receive such a sentence. State v. Anderson, ___ Wn.2d ___, 516 P.3d 1213, 1222 (2022) (discussing Bassett, 192 Wn.2d at 89).

As this Court noted in Moretti, when a formerly-youthful offender continues to repeatedly commit violent offenses into his 30s, there is no longer any uncertainty about whether the

offenses he committed as a young person reflected transient immaturity or incorrigibility. 193 Wn.2d at 829. Defendants who “commit[] their third most serious offense as adults in their 30s and 40s . . . have shown that they are part of this rare group of offenders who are ‘simply unable to bring [their] conduct within the social norms prescribed by the criminal law.’” Id. (quoting Rummel v. Estelle, 445 U.S. 263, 284, 100 S. Ct. 1133, 63 L. Ed. 2d 382 (1980)). As such, “the concerns applicable to sentencing juveniles do not apply to adults who continue to reoffend after their brains have fully developed.” Moretti, 193 Wn.2d at 818. These statements remain true regardless of the defendant’s age at the time of his first strike.

The fact that Reynolds committed his first strike at 17 years old rather than 19 or 20 does not make him less culpable for the violent burglary and attempted rape he committed as a 33-year-old than the Moretti defendants were for their third strikes. An offender who commits most serious offenses at ages 17, 21, and 33 is no more likely to conform his future

conduct to the law than an offender who commits most serious offenses at ages 19, 21, and 33. If anything, an offender like Reynolds has demonstrated a longer, more entrenched pattern of violent behavior—and thus poses a greater risk to the community—than someone like Moretti, whose pattern of violence spans only from age 20 to age 32. Id. at 814.

Like the Moretti defendants, Reynolds was convicted of his first strike offense in adult court at a time when it was unclear whether he would continue to violently reoffend after leaving adolescence behind. Like the Moretti defendants, Reynolds received a sentence of less than three years for his first strike, giving him the opportunity to learn from his mistakes and make better choices following his release from prison in his early 20s. Moreover, Reynolds had already received extensive rehabilitative services through the juvenile court system *before* he committed the offense that led to his first strike conviction in adult court.

Like the Moretti defendants, Reynolds failed to change his behavior after his first strike and in fact committed increasingly serious strike offenses each time he was released from prison thereafter, despite receiving increasingly lengthy sentences. By the time he was convicted of his third strike in his mid-30s, Reynolds had committed five most serious offenses in sixteen years and demonstrated that, like the Moretti defendants, he is part of the small group of offenders “who are ‘simply unable to bring [their] conduct within the social norms prescribed by the criminal law.’” Id. at 829 (quoting Rummel, 445 U.S. at 284).

The fact that Reynolds’ string of strike offenses began at age 17 rather than age 19 does not lessen Reynolds’ culpability for the strike offenses he committed at age 33, nor does it suggest that Reynolds is outside the class of offenders whom the people of Washington have reasonably decided should, as a matter of policy, be permanently removed from society.

3. Reynolds' Argument Would Require This Court to Abandon Centuries of Precedent Holding That Recidivist Sentencing Statutes Do Not Impose Cumulative Punishment for Prior Offenses.

Like the Moretti defendants, Reynolds premises his arguments on the faulty assumption that his current sentence punishes him for his youthful conduct. See Moretti, 193 Wn.2d at 826. In order to grant Reynolds the relief he seeks, this Court would have to abandon two centuries of precedent that Reynolds has not established to be incorrect and harmful. See State v. Otton, 185 Wn.2d 673, 678, 374 P.3d 1108 (2016) (“[T]his court will reject its prior holdings only upon a clear showing that an established rule is incorrect and harmful.” (internal quotation marks omitted)).

This Court has repeatedly held that “recidivist statutes do not impose cumulative punishment for prior crimes. The repetition of criminal conduct aggravates the guilt of the last conviction and justifies a heavier penalty for the crime.” Moretti, 193 Wn.2d at 826 (internal quotation marks omitted);

State v. Lee, 87 Wn.2d 932, 937, 558 P.2d 236 (1976); State v. Miles, 34 Wn.2d 55, 62, 207 P.2d 1209 (1949); State v. Le Pitre, 54 Wash. 166, 168, 103 P. 27 (1909). This principle dates back to the founding era if not earlier, and has been repeatedly incorporated into holdings of the United States Supreme Court. See, e.g., Graham v. West Virginia, 224 U.S. 616, 623, 32 S. Ct. 583, 56 L. Ed. 917 (1912) (citing, inter alia, In re Ross, 19 Mass. 165, 171 (1824), sub nom. Ross's Case, 2 Pick. 165, 170)).

This principle is central to the holdings of this Court and the United States Supreme Court that it does not violate the ex post facto clause to apply a recidivist sentencing scheme to an offender who committed a predicate offense before the scheme was enacted. E.g., Gryger v. Burke, 334 U.S. 728, 732, 68 S. Ct. 1256, 92 L. Ed. 1683 (1948); Le Pitre, 54 Wash. at 168. It is also implicated in the use of prior criminal history to elevate a defendant's standard sentencing range. See United States v. Rodriguez, 553 U.S. 377, 386, 128 S. Ct. 1783, 170 L. Ed. 2d

719 (2008) (analogizing higher sentence under recidivism statute to higher standard sentencing range based on prior criminal history and concluding that in neither case is punishment imposed “for the prior convictions or the defendant’s status as a recidivist”).

Reynolds does not ask this Court to overturn its prior holdings, nor could he establish a basis to do so. He simply ignores them, and implicitly asks this Court to do the same. This Court should reject that invitation.

4. For the Same Reasons as in Moretti, Reynolds Fails to Establish that article I, section 14 Categorically Bars Mandatory LWOP for an Older Adult Recidivist Who Committed His First Strike at Age 17.

The first step in a categorical bar analysis is to determine whether there is a national consensus against the sentencing practice at issue. Moretti, 193 Wn.2d at 821 (citing Bassett, 192 Wn.2d at 87). The second is for the court “to exercise [its] independent judgement” and “consider ‘the culpability of the offender[] at issue in light of [his] crime[] and characteristics,

along with the severity of the punishment in question’ and ‘whether the challenged sentencing practice serves legitimate penological goals.’” Id. (quoting Bassett, 192 Wn.2d at 87). Reynolds fails to establish that either step supports a conclusion that article I, section 14 categorically bars the imposition of a POAA sentence on offenders like him.

- a. Reynolds fails to establish any national consensus against considering juvenile-age adult court convictions in adult recidivist sentencing schemes.

To determine whether there is a national consensus against a particular sentencing practice, Washington courts consider “objective indicia of society’s standards, as expressed in legislative enactments and state practice.” Moretti, 193 Wn.2d at 821. The offender challenging the constitutionality of his sentence bears the burden to show that a national consensus exists. Id.

Reynolds has utterly failed to establish a national consensus against the use of juvenile-age adult court

convictions in adult recidivist sentencing schemes. He focuses on trends in sentences imposed for crimes committed by juveniles, but such trends are irrelevant, as Reynolds challenges the sentence imposed on him for crimes he committed as a 33-year-old, not as a juvenile.

As explained in the Brief of Respondent below, Reynolds accurately identified only two states that do not permit consideration of any offenses committed before the age of 18 in their adult recidivist sentencing schemes. Ky. Rev. Stat. § 532.080; N.M. Stat. § 31-18-23(C); Br. of Respondent at 24-31; RAP 13.7(a) (briefs filed in Court of Appeals will be considered by this Court). Kentucky's and New Mexico's stances on this issue are not evidence of a recent trend, as both states have excluded juvenile-age offenses from their recidivist sentencing schemes since 1974 and 1994, respectively. 1974 Ky. Acts ch. 406, § 280; 1994 N.M. Laws ch. 24, § 2.

In his petition for review, Reynolds identified one additional state that now bars consideration of juvenile-age

adult court convictions in its recidivist sentencing scheme. Pet. for Review at 15 n.6. As of July 2021, Illinois’s “three strikes” statute now requires that all three strikes be committed at the age of 21 or older. 730 Ill. Comp. Stat. 5/5-4.5-95(a); 2020 Ill. Legis. Serv. P.A. 101-652, § 10-281.

Reynolds has not accurately identified any other state that prohibits the sentencing practice he challenges as unconstitutionally cruel. See Br. of Respondent at 24-32. Approximately 25 states impose mandatory LWOP upon a second, third or fourth conviction for a qualifying offense under some circumstances, but all 50 have some form of recidivist sentencing statute that authorizes or requires a longer sentence for an offender who has previously been convicted of a given number and/or type of offense. See Appendix A. Kentucky, New Mexico, and Illinois appear to be the *only* states that do not permit a juvenile-age adult court conviction to serve as a predicate conviction under any circumstances. Appendix A.

As far as undersigned counsel is aware, no court has ever found a national consensus against this practice. E.g., Moretti, 193 Wn.2d at 822 (“[M]any state [and federal] courts have held that when sentencing an adult recidivist, it is not cruel and unusual to consider strike offenses committed when the offender was . . . a juvenile.”); State v. Ryan, 249 N.J. 581, 597, 268 A.3d 311 (2022) (“[M]ost states with similar three-strikes legislation count juvenile-age convictions as strikes where the defendant was waived up to adult court.”). Reynolds has failed to meet his burden to establish a national consensus against allowing juvenile-age adult court convictions to serve as a predicate offense in an adult recidivist sentencing scheme.

- b. This Court’s independent judgment has already determined that concerns related to adolescent brain development are not present in POAA sentencing of older adult recidivists.

The second step in the categorical analysis requires a reviewing court to exercise its independent judgment, considering “the culpability of the offenders at issue in light of

their crimes and characteristics, along with the severity of the punishment in question’ and ‘whether the challenged sentencing practice serves legitimate penological goals.’” Moretti, 193 Wn.2d at 823 (quoting Bassett, 192 Wn.2d at 87). As explained at length in the Brief of Respondent, Reynolds’ case is indistinguishable from Moretti on these issues. See Br. of Respondent at 33-38; RAP 13.7(a). Reynolds has failed to meet his burden to establish that article I, section 14 categorically prohibits imposing a life without parole sentence on a fully developed adult offender who committed one of their prior strike offenses as a juvenile.

5. Reynolds Fails to Establish That the POAA is Unconstitutional Under article I, section 14 as Applied to Him.

A sentence that is not categorically unconstitutional under article I, section 14 may nevertheless be unconstitutional as applied “if it is grossly disproportionate to the offense.”

Moretti, 193 Wn.2d at 830. When conducting a proportionality analysis of a POAA sentence under article I, section 14, courts

consider the four factors set out in State v. Fain: (1) the nature of the offense, which encompasses both the nature of the crime and the defendant's culpability in committing it; (2) the legislative purpose behind the POAA; (3) the punishment the defendant would have received in other jurisdictions; and (4) the punishment meted out for other offenses in the same jurisdiction. Moretti, 193 Wn.2d at 830, 832; State v. Fain, 94 Wn.2d at 397. This Court has repeatedly looked only at the final strike offense when conducting a Fain proportionality review. Moretti, 193 Wn.2d at 830-34; State v. Witherspoon, 180 Wn.2d 875, 887-88, 329 P.3d 888 (2014); State v. Rivers, 129 Wn.2d 697, 713-14, 921 P.2d 495 (1996).

Reynolds does not assess the proportionality of his sentence to his current offenses. Br. of Appellant at 27-30. Instead, he argues only that "proportionality review under Fain should . . . evolve" to also examine a defendant's culpability for his prior strikes. Br. of Appellant at 29. Not only is a sentencing court ill-equipped to assess a defendant's relative

culpability for a prior strike that was committed and sentenced years and perhaps decades earlier, but such a rule would lead to mini retrials in every third-strike sentencing. This Court has already explicitly rejected the same proposed modification to its proportionality review in Moretti, and Reynolds does not argue that this Court's holding was incorrect and harmful. Moretti, 193 Wn.2d at 832 (“[O]ur proportionality review focuses on the nature of the current offense, not the nature of past offenses.”). His claim therefore fails.

Reynolds does not even attempt to establish that his sentence is grossly disproportionate to the offenses he committed against M.G., nor could he successfully do so. There is no evidence that Reynolds was less culpable than any other offender convicted of first-degree burglary or attempted second-degree rape, each of which independently constitutes his third strike offense. As explained in the briefing below, the circumstances of Reynolds' current offenses demonstrate that his culpability for those offenses is in fact much higher than for

many third-strike offenses. Br. of Respondent at 40-41.

Reynolds' life sentence is in no way grossly disproportionate to his crimes.

Even if this Court were to include Reynolds's prior strikes in its proportionality review, as he urges, Reynolds would still fail to establish that his sentence is grossly disproportionate to his crimes. Since the age of 16, Reynolds has never succeeded in living in the community for six continuous months without committing a strike offense.⁵ His first strike was a premeditated attempted robbery in which Reynolds led the planning, resorted to using a BB gun only when his initial request for a real firearm went unfulfilled, and executed the crime exactly as he had planned. Reynolds had seven prior felony adjudications, had received all the

⁵ Reynolds was released from JRA at age 16, four months before his first strike. CP 392. He was in custody for seven of the thirteen months between his release from prison on his first strike and the commission of his second strike. CP 164. He spent less than five months in the community between his second and third strikes. CP 1, 291.

rehabilitative services juvenile court had to offer, and went on to commit far more serious crimes as an adult. There is simply no support in the record for the contention that Reynolds' decision to commit his first strike was attributable to youthful immaturity, impulsivity, or peer pressure.

Reynolds' second set of strike offenses was far more serious than his first, and his third set of strike offenses was more serious still. Reynolds has demonstrated that he is exactly the kind of incorrigible offender that the people of Washington had in mind when they enacted the POAA. A sentence of life in prison without the possibility of parole is by no means grossly disproportionate to Reynolds' pattern of criminal behavior.

6. The Eighth Amendment Does Not Bar Reynolds' POAA sentence.

Because Reynolds fails to establish that his sentence is unconstitutional under article I, section 14, he necessarily also fails to establish his claim that his sentence is unconstitutional under the Eighth Amendment. Moretti, 193 Wn.2d at 820. As

far as the State is aware, every court in the nation that has considered whether the Eighth Amendment permits the use of a juvenile-age adult court conviction as a predicate for recidivist sentencing has upheld the practice. See Appendix A; State v. McDougald, 2022-NCCOA-526, ¶ 25, 876 S.E.2d 648, 659 (N.C. Ct. App. 2022) (listing select cases).

E. CONCLUSION


For all the foregoing reasons, the State respectfully asks this Court to affirm Reynolds' sentence.

This document contains 5,597 words, excluding the parts of the document exempted from the word count by RAP 18.17.

DATED this 18th day of November, 2022.

Respectfully submitted,

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Appendix

State	Juvenile-age conviction can serve as predicate for recidivist sentencing?	Recidivist statute imposes mandatory LWOP in some circumstances?	Use of juvenile offenses as strikes explicitly found constitutional?
Alabama	Yes. <u>Phillips v. State</u> , 462 So. 2d 981, 986 (Ala. Crim. App. 1984).	Yes. Ala. Code § 13A-5-9(c)(4).	
Alaska	Yes. Alaska Stat. § 47.12.030(a); <u>Gray v. State</u> , 267 P.3d 667, 669 (Alaska Ct. App. 2011).	No. But imposes mandatory term of 99 years in some circumstances. Alaska Stat. § 12.55.125(a)(2).	
Arizona	No relevant caselaw located, but no indication that juvenile-age adult court convictions do not qualify. Ariz. Rev. Stat. § 13-501(F); Ariz. Rev. Stat. § 13-706(A).	Yes. Ariz. Rev. Stat. Ann. § 13-706(B).	
Arkansas	Yes. <u>Wilson v. State</u> , 2017 Ark. 217, 8, 521 S.W.3d 123 (2017).	Yes. Ark. Code § 5-4-501(d)(2)(A).	Yes. <u>Wilson v. State</u> , 2017 Ark. 217, 8, 521 S.W.3d 123 (2017).
California	Yes. Cal. Penal Code § 667(d)(3).	Yes. Cal. Penal Code § 667.7(a)(2).	

State	Juvenile-age conviction can serve as predicate for recidivist sentencing?	Recidivist statute imposes mandatory LWOP in some circumstances?	Use of juvenile offenses as strikes explicitly found constitutional?
Colorado	Yes. <u>People v. Porter</u> , 459 P.3d 710, 711, 714–15 (Colo. App. 2019).	No. But mandatory life with no parole for first 40 years in some circumstances. Colo. Rev. Stat. § 18-1.3-801.	Yes. <u>People v. Porter</u> , 459 P.3d 710, 714–15 (Colo. App. 2019).
Connecticut	No relevant caselaw located, but no indication that juvenile-age adult prosecutions do not qualify. Conn. Gen. Stat. § 46b-127 (requiring transfer from juvenile court to adult court in some cases).	No. But in some circumstances mandates “a term of imprisonment and a period of special parole . . . which together constitute a sentence of imprisonment for life.” Conn. Gen. Stat. Ann. § 53a-40(j).	
Delaware	Yes. <u>Vickers v. State</u> , 117 A.3d 516 (Del. 2015).	Yes. Del. Code Ann. tit. 11, § 4214(d), (e).	
Florida	Yes. <u>Willingham v. State</u> , 315 So. 3d 708, 712-13 (Fla. 4th DCA 2021); <u>McDuffey v. State</u> , 286 So. 3d 364, 367–68 (Fla. Dist. Ct. App. 2019).	Yes. Fla. Stat. Ann. § 775.082(9)(a)3.a.	Yes. <u>Willingham v. State</u> , 315 So. 3d 708, 712-13 (Fla. 4th DCA 2021); <u>McDuffey v. State</u> , 286 So. 3d 364, 367–68 (Fla. Dist. Ct. App. 2019).
Georgia	Yes. <u>Moore v. State</u> , 276 Ga. App. 55, 55, 622 S.E.2d 417, 418 (2005).	Yes, unless parties agree otherwise. Ga. Code § 17-10-7(b)(2).	

State	Juvenile-age conviction can serve as predicate for recidivist sentencing?	Recidivist statute imposes mandatory LWOP in some circumstances?	Use of juvenile offenses as strikes explicitly found constitutional?
Hawaii	<p>No relevant caselaw located, but no indication that juvenile-age adult court convictions do not qualify.</p> <p>Haw. Rev. Stat. § 571-22 (permits waiving 16-year-old to adult court for any felony after making certain findings)</p>	<p>Yes.</p> <p>Haw. Rev. Stat. §§ 706-661, -662.</p>	
Idaho	<p>No relevant caselaw located, but no indication that juvenile-age adult court convictions do not qualify.</p> <p>Idaho Code § 20-508(1)(b) (permits discretionary decline of any juvenile 14 or older charged with a felony).</p>	<p>No.</p> <p>Idaho Code § 19-2514 (imposes mandatory minimum).</p>	
Illinois	<p>No.</p> <p>730 Ill. Comp. Stat. 5/5-4.5-95(a)</p>	<p>Yes.</p> <p>730 Ill. Comp. Stat. 5/5-4.5-95(a)(5).</p>	
Indiana	<p>Yes.</p> <p><u>White v. State</u>, 963 N.E.2d 511, 519 (Ind. 2012).</p>	<p>No.</p> <p>Ind. Code § 35-50-2-8 (tacking on additional fixed term of up to 20yrs upon a habitual offender finding).</p>	
Iowa	<p>Yes.</p> <p><u>State v. Oliver</u>, 812 N.W.2d 636, 647 (Iowa 2012).</p>	<p>Yes.</p> <p>Iowa Code §§ 902.1(1), 902.14.</p>	

State	Juvenile-age conviction can serve as predicate for recidivist sentencing?	Recidivist statute imposes mandatory LWOP in some circumstances?	Use of juvenile offenses as strikes explicitly found constitutional?
Kansas	<p>No relevant caselaw located, but no indication that juvenile-age adult court convictions do not qualify.</p> <p><u>State v. Boyer</u>, 289 Kan. 108, 116, 209 P.3d 705 (2009) (holding juvenile court adjudications do not count as a predicate for persistent sex offender finding).</p> <p>Kan. Stat. § 38-2347 (permitting transfer to adult court of juveniles age 14+).</p>	<p>No.</p> <p>Kan. Stat. § 21-6804(j) (doubling maximum duration of presumptive imprisonment term upon “persistent sex offender” finding).</p>	
Kentucky	<p>No.</p> <p>Ky. Rev. Stat. Ann. § 532.080.</p>	<p>No.</p> <p>Ky. Rev. Stat. Ann. § 532.080.</p>	
Louisiana	<p>Yes.</p> <p><u>State v. Green</u>, 2016-0107 (La. 6/29/17), 225 So. 3d 1033, 1041.</p> <p><u>State v. Youngblood</u>, 26,722 (La. App. 2 Cir. 12/22/94), 647 So. 2d 1388, 1391.</p>	<p>Yes.</p> <p>La. Rev. Stat. Ann. § 15:529.1(A)(2)(b), (3)(b).</p>	

State	Juvenile-age conviction can serve as predicate for recidivist sentencing?	Recidivist statute imposes mandatory LWOP in some circumstances?	Use of juvenile offenses as strikes explicitly found constitutional?
Maine	<p>No relevant caselaw located, but no indication that juvenile-age adult court convictions do not qualify; some juvenile adjudications can serve as predicates.</p> <p>Me. Rev. Stat. tit. 15, § 3101 (permits juveniles to be prosecuted in adult court in certain cases).</p> <p><u>State v. Brockelbank</u>, 2011 ME 118, ¶ 14, 33 A.3d 925, 930 (nonpublic juvenile adjudications—contrasted with public juvenile adjudications—cannot be used to enhance a later adult sentence).</p>	<p>No.</p> <p>Me. Rev. Stat. tit. 17-A, § 1604.</p> <p>Me. Rev. Stat. tit. 17-A, § 253-A.</p>	
Maryland	<p>Yes.</p> <p><u>Muir v. State</u>, 308 Md. 208, 217–18, 517 A.2d 1105, 1110 (1986).</p>	<p>Yes.</p> <p>Md. Code Ann., Crim. Law § 14-101(b)(1)</p>	
Massachusetts	<p>Yes.</p> <p><u>Commonwealth v. Baez</u>, 480 Mass. 328, 329, 104 N.E.3d 646, 650 (2018) (generally “conviction” means only adult court convictions, but one recidivist statute permits juvenile <i>adjudications</i> to serve as predicates).</p>	<p>Yes.</p> <p>Mass. Gen. Laws Ann. ch. 279, § 25.</p>	

State	Juvenile-age conviction can serve as predicate for recidivist sentencing?	Recidivist statute imposes mandatory LWOP in some circumstances?	Use of juvenile offenses as strikes explicitly found constitutional?
Michigan	<p>Yes.</p> <p><u>People v. Jones</u>, 297 Mich. App. 80, 85-86, 823 N.W.2d 312, 315–16 (2012).</p>	<p>No.</p> <p>Mich. Comp. Laws Ann. § 769.11 (permits higher sentences); Mich. Comp. Laws Ann. § 769.12(1)(a) (25-yr mandatory minimum)</p>	
Minnesota	<p>Yes.</p> <p>Minn. Stat. § 260B.130 (some felonies by juveniles 14+yo are given blended juvenile/adult sentences labeled “Extended Jurisdiction Juvenile prosecutions”); Minn. Stat. § 260B.245, subd. 1 (EJJ prosecutions are “treated in the same manner as an adult felony criminal conviction for purposes of the Sentencing Guidelines”).</p> <p><u>State v. Jiles</u>, 767 N.W.2d 27, 29 (Minn. Ct. App. 2009) (extended jurisdiction juvenile conviction qualifies as predicate conviction for purposes of statute imposing mandatory minimum sentence)</p>	<p>Yes.</p> <p>Minn. Stat. Ann. § 609.3455, subd. 2(a)(2).</p>	

State	Juvenile-age conviction can serve as predicate for recidivist sentencing?	Recidivist statute imposes mandatory LWOP in some circumstances?	Use of juvenile offenses as strikes explicitly found constitutional?
Mississippi	<p>Yes.</p> <p><u>Skinner v. State</u>, 120 So. 3d 419, 425 (Miss. Ct. App. 2013).</p> <p><u>Skinner v. State</u>, 2021-CA-00080-COA, __ So. 3d __, 2022 WL 14334625, at *12-13 (Miss. Ct. App. May 17, 2022)</p>	<p>Yes.</p>	<p>Miss. Code Ann. § 99-19-83.</p>
Missouri	<p>Yes.</p> <p><u>State v. Taylor</u>, 781 S.W.2d 229, 232 (Mo. Ct. App. 1989).</p>	<p>No.</p> <p>Mo. Ann. Stat. § 558.016 (imposes longer sentences).</p> <p>Mo. Ann. Stat. § 558.019 (requires offenders to serve a longer portion of their sentence before being eligible for parole).</p>	
Montana	<p>Yes.</p> <p>Mont. Code Ann. § 46-18-502.</p> <p><u>State v. Mainwaring</u>, 335 Mont. 322, 327–28, 330, 151 P.3d 53 (2007).</p>	<p>Yes.</p> <p>Mont. Code Ann. § 46-18-219.</p>	
Nebraska	<p>Yes.</p> <p><u>Kennedy v. State</u>, 171 Neb. 160, 176, 105 N.W.2d 710, 721 (1960).</p>	<p>No.</p> <p>Neb. Rev. Stat. § 29-2221.</p>	

State	Juvenile-age conviction can serve as predicate for recidivist sentencing?	Recidivist statute imposes mandatory LWOP in some circumstances?	Use of juvenile offenses as strikes explicitly found constitutional?
Nevada	Yes. <u>Mullner v. State</u> , 133 Nev. 796, 797, 406 P.3d 473 (2017).	No. Nev. Rev. Stat. Ann. §§ 207.010, .012.	
New Hampshire	No relevant caselaw located, but no indication that juvenile-age adult court convictions do not qualify; some juvenile adjudications can serve as predicates. N.H. Rev. Stat. Ann. § 628:1(II) (permits transfer of some juveniles to adult court).	Yes. N.H. Rev. Stat. Ann. § 632–A:10–a(III).	
New Jersey	Yes. <u>State v. Ryan</u> , 249 N.J. 581, 596–97, 268 A.3d 311 (2022).	Yes. N.J. Stat. Ann. § 2C:43-7.1(a).	Yes. <u>State v. Ryan</u> , 249 N.J. 581, 596–97, 268 A.3d 311 (2022).
New Mexico	No. N.M. Stat. § 31-18-23(C).	No. N.M. Stat. § 31-18-23.	
New York	Yes. N.Y. Pen. Law § 60.10(2).	No. N.Y. Penal Law §§ 70.04 (sets man mins for second “violent” felony); 70.06 (sets maxes and some mins for second felony); 70.08; 70.10.	

State	Juvenile-age conviction can serve as predicate for recidivist sentencing?	Recidivist statute imposes mandatory LWOP in some circumstances?	Use of juvenile offenses as strikes explicitly found constitutional?
North Carolina	Yes. <u>State v. McDougald</u> , 2022-NCCOA-526, ¶ 25, 876 S.E.2d 648, 658–59 (N.C. Ct. App. 2022).	Yes. N.C. Gen. Stat. Ann. § 14-7.7(a), §14-7.12.	Yes. <u>State v. McDougald</u> , 2022-NCCOA-526, ¶ 25, 876 S.E.2d 648, 658–59 (N.C. Ct. App. 2022).
North Dakota	Yes, for “dangerous special offender” finding. N.D. Cent. Code § 12.1-32-09(1)(d). No, for “habitual offender” finding. N.D. Cent. Code § 12.1-32-09(1)(c).	No. N.D. Cent. Code §§ 12.1-32-09(1)(c) (authorizes higher sentence upon “habitual offender” finding), 12.1-32-09(1)(d) (authorizes identical sentences upon “dangerous special offender” finding).	
Ohio	Yes. <u>Cf. State v. Hand</u> , 149 Ohio St. 3d 94, 97, 73 N.E.3d 448, 452–53 (2016) (holding that, as written, Ohio Rev. Code Ann. § 2901.08(A) permits prior juvenile court adjudication to serve as predicate for recidivist sentencing under Ohio Rev. Code Ann. § 2929.13(F), but finding that to violate <u>Appendi</u>).	Unclear. Ohio Rev. Code Ann. § 2929.13(F).	

State	Juvenile-age conviction can serve as predicate for recidivist sentencing?	Recidivist statute imposes mandatory LWOP in some circumstances?	Use of juvenile offenses as strikes explicitly found constitutional?
Oklahoma	Yes. <u>Collums v. State</u> , 654 P.2d 1070, 1072–73 (Okla. Crim. App. 1982).	Yes. Okla. Stat. Ann. tit. 21, § 51.1a.	
Oregon	Yes. Or. Rev. Stat. § 161.725(3)(a) (age restriction only for under 16); Or. Rev. Stat. § 137.719 (no age restriction).	Yes. Or. Rev. Stat. § 137.719.	
Pennsylvania	Yes. <u>Com. v. Lawson</u> , 2014 PA Super 68, 90 A.3d 1, 7–8 (Pa. Super. Ct. 2014).	Yes. 42 Pa. Cons. Stat. Ann. § 9715(a).	Yes. <u>Com. v. Lawson</u> , 2014 PA Super 68, 90 A.3d 1, 7–8 (Pa. Super. Ct. 2014).
Rhode Island	No relevant caselaw located, but no indication that juvenile-age adult court convictions do not qualify. R.I. Gen. Laws Ann. §§ 14-1-7.1 (no minimum age for waiver to adult court), 14-1-5(1) (17-year-olds charged with certain crimes automatically prosecuted as adults once probable cause found).	No. R.I. Gen. Laws Ann. § 12-19-21(a).	

State	Juvenile-age conviction can serve as predicate for recidivist sentencing?	Recidivist statute imposes mandatory LWOP in some circumstances?	Use of juvenile offenses as strikes explicitly found constitutional?
South Carolina	Yes. <u>State v. Standard</u> , 351 S.C. 199, 203-04, 569 S.E.2d 325 (2002); <u>State v. Green</u> , 412 S.C. 65, 85-87, 770 S.E.2d 424 (Ct. App. 2015).	Yes. S.C. Code Ann. § 17-25-45.	Yes. <u>State v. Standard</u> , 351 S.C. 199, 203-04, 569 S.E.2d 325 (2002); <u>State v. Green</u> , 412 S.C. 65, 85-87, 770 S.E.2d 424 (Ct. App. 2015).
South Dakota	No relevant caselaw located, but no indication that juvenile-age adult court convictions do not qualify. S.D. Codified Laws § 22-7-9 (no age requirements for predicate convictions can serve as predicate). S.D. Codified Laws § 26-11-3.1 (presumption that certain juveniles will be prosecuted as adults).	No. S.D. Codified Laws § 22-7-7. S.D. Codified Laws § 22-6-1.	
Tennessee	Yes. Tenn. Code Ann. § 40-35-120(e)(3). <u>Mullins v. Davis</u> , 517 F. Supp. 7, 8 (E.D. Tenn. 1980), <u>aff'd</u> , 661 F.2d 933 (6th Cir. 1981).	Yes. Tenn. Code Ann. § 40-35-120(g).	Yes. <u>Mullins v. Davis</u> , 517 F. Supp. 7, 8 (E.D. Tenn. 1980), <u>aff'd</u> , 661 F.2d 933 (6th Cir. 1981).

State	Juvenile-age conviction can serve as predicate for recidivist sentencing?	Recidivist statute imposes mandatory LWOP in some circumstances?	Use of juvenile offenses as strikes explicitly found constitutional?
Texas	<p>Yes.</p> <p>Tex. Penal Code Ann. § 12.42(c)(4) (18+ age restriction for current offense, but none for predicate).</p> <p>Tex. Penal Code Ann. § 12.42(f) (even juvenile court <i>adjudication</i> may serve as predicate for mandatory minimum under Tex. Penal Code Ann. § 12.42(c)(1)).</p>	<p>Yes.</p> <p>Tex. Penal Code Ann. § 12.42(c)(4)</p>	
Utah	<p>No relevant caselaw located, but no indication that juvenile-age adult court convictions do not qualify.</p> <p>Utah Code Ann. § 78A-5-102.5(2) (certain crimes by 16- and 17-year-olds automatically prosecuted in adult court).</p>	<p>No.</p> <p>Utah Code Ann. § 76-3-203.5.</p>	
Vermont	<p>Yes.</p> <p><u>State v. Rideout</u>, 182 Vt. 113, 124-131, 933 A.2d 706, 714 (2007).</p>	<p>Unclear.</p> <p>Vt. Stat. Ann. tit. 13, § 11</p>	<p>Yes.</p> <p><u>State v. Rideout</u>, 182 Vt. 113, 124-131, 933 A.2d 706, 714 (2007).</p>

State	Juvenile-age conviction can serve as predicate for recidivist sentencing?	Recidivist statute imposes mandatory LWOP in some circumstances?	Use of juvenile offenses as strikes explicitly found constitutional?
Virginia	<p>No relevant caselaw located, but no indication that juvenile-age adult court convictions do not qualify.</p> <p>Va. Code Ann. § 16.1-269.1 (permits any felony charge against a juvenile age 14 or older to be transferred to adult court at the discretion of the trial court).</p>	<p>Yes.</p> <p>Va. Code Ann. § 19.2-297.1.</p>	
Washington			
West Virginia	<p>Yes.</p> <p>Cf. <u>Justice v. Hedrick</u>, 177 W. Va. 53, 56, 350 S.E.2d 565 (1986).</p>	<p>Yes.</p> <p>W. Va. Code Ann. § 61-11-18(c).</p>	
Wisconsin	<p>Yes.</p> <p>Wis. Stat. § 939.62(3)(a) (excludes juvenile court adjudications but not juvenile-age adult court convictions).</p> <p>Wis. Stat. § 938.02(10m) (all 17-year-olds prosecuted exclusively in adult court)</p>	<p>Yes.</p> <p>Wis. Stat. § 939.62(2m)(b), (c).</p>	

State	Juvenile-age conviction can serve as predicate for recidivist sentencing?	Recidivist statute imposes mandatory LWOP in some circumstances?	Use of juvenile offenses as strikes explicitly found constitutional?
Wyoming	<p>Yes.</p> <p>Wyo. Stat. § 6-10-201(b) (18+ age restriction on predicates for 3rd strike life sentence, but no age restriction on predicates for 2nd strike 10-year mandatory minimum)</p>	<p>Yes, but may not be predicated on juvenile-age convictions.</p> <p>Wyo. Stat. § 6-10-201(b)(ii).</p>	<p>Yes.</p> <p><u>Counts v. State</u>, 338 P.3d 902, 903 (Wyo. 2014).</p>

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Note: The Filing Id is 20221118150623SC135661

