

No. 92605-1

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

ZYION HOUSTON-SCONIERS AND TRESON ROBERTS,

Petitioners.

**MEMORANDUM OF *AMICI CURIAE* AMERICAN CIVIL
LIBERTIES UNION OF WASHINGTON, CENTER FOR
CHILDREN & YOUTH JUSTICE, COLUMBIA LEGAL
SERVICES, THE FRED T. KOREMATSU CENTER FOR LAW &
EQUALITY, TEAMCHILD, WASHINGTON DEFENDER
ASSOCIATION, AND WASHINGTON ASSOCIATION OF
CRIMINAL DEFENSE LAWYERS IN SUPPORT OF PETITION
FOR REVIEW**

Counsel list for *Amici Curiae* appear on following page:

TRAVIS STEARNS, WSBA 29935
Cooperating Attorney for ACLU-
WA Foundation
WASHINGTON APPELLATE
PROJECT
1511 Third Avenue, Suite 701
Seattle, WA 98101
travis@washapp.org
(206) 587-2711

NANCY L. TALNER, WSBA
11196
Senior Staff Attorney
ACLU-WA Foundation
901 Fifth Avenue, Suite 630
Seattle, WA 98164
talner@aclu-wa.org
(206) 624-2184

HICKORY M. GATELESS,
WSBA 41031
Center for Children & Youth
Justice
615 2nd Ave. Ste 275
Seattle, WA 98104
HGateless@ccyj.org
(206) 696-7503

SUZANNE ELLIOTT, WSBA
12634
Washington Association of
Criminal Defense Lawyers
705 2nd Ave. Ste 1300
Seattle, WA 98104
(206) 623-0291
suzanne@suzanneelliottlaw.com

Attorneys for *Amici Curiae*

ROBERT S. CHANG, WSBA
44083
LORRAINE K. BANNAI, WSBA
20449
JESSICA LEVIN, WSBA 40837
The Fred T. Korematsu Center for
Law & Equality
Seattle University School of Law
901 12th Ave.
P.O. Box 222000
Seattle, WA 98122
changro@seattleu.edu
bannail@seattleu.edu
levinje@seattleu.edu
(206) 398-4073

HILLARY BEHRMAN, WSBA
22675
TeamChild
1225 South Weller Street, Suite 420
Seattle, WA 98144
hillary.behrman@teamchild.org
(206) 322-2444

AMANDA LEE, WSBA 19970
CINDY A. ELSBERRY, WSBA
23127
Washington Defender Association
110 Prefontaine Pl S Ste 610
Seattle, WA 98104
amanda@defensenet.org
Cindy@defensenet.org
(206) 623-4321

NICHOLAS B. ALLEN, WSBA
42990
Columbia Legal Services
101 Yesler Way Ste 300
Seattle, WA 98104
nick.allen@columbialegal.org
(206) 464-0838

TABLE OF CONTENTS

TABLE OF CONTENTS..... i

TABLE OF AUTHORITIES ii

I. INTERESTS OF *AMICI CURIAE* 1

II. ISSUE TO BE ADDRESSED BY *AMICI*..... 1

III. STATEMENT OF THE CASE..... 1

IV. ARGUMENT 2

A. The Automatic Decline Statute Cannot Survive Constitutional Scrutiny Because it Eliminates Judicial Consideration of Constitutionally Relevant Factors in Subjecting Youth to Adult Proceedings and Sentences..... 2

1. Eliminating discretionary decline procedures violates due process by depriving youths of an opportunity to be heard on why the individual circumstances of their lives and the facts of their case would justify juvenile court retention of jurisdiction. 2

2. Automatic decline violates the Eighth Amendment and Wash. Const. art. 1, sec. 14 by mandating that young defendants be subjected to adult sentencing laws despite case law that makes age legally relevant to culpability and capacity for rehabilitation. 4

B. Automatic Decline is Harmful and Contrary to the Public Interest Because it is Associated with Increased Recidivism and Disproportionately Affects Young People of Color..... 8

V. CONCLUSION..... 10

TABLE OF AUTHORITIES

Cases

State v. Chavez,
163 Wn.2d 262, 180 P.3d 1250 (2008) 3

State v. Fain,
94 Wn.2d 387, 617 P.2d 720 (1980) 7

State v. Houston-Sconiers,
___ Wn.App. ___, ___ P.3d ___, 2015 WL 7471791 (2015) 4, 6

State v. J.H.,
96 Wn.App. 167, 978 P.2d 1121 (1999) 3

State v. O’Dell,
183 Wn.2d 680, 358 P.3d 359 (2015) 5

State v. S.J.C.,
183 Wn.2d 408, 352 P.3d 749 (2015) 3

State v. Saenz,
175 Wn.2d 167, 283 P.3d 1094 (2012) 3

Federal Cases

Eddings v. Oklahoma,
455 U.S. 104, 102 S. Ct. 869, 71 L. Ed. 2d 1 (1982) 7

Graham v. Florida,
560 U.S. 48, 130 S. Ct. 2011, 176 L. Ed. 2d 825 (2010) 5

Johnson v. Texas,
509 U.S. 350, 113 S. Ct. 2658, 125 L. Ed. 2d 290 (1993) 7

Kent v. United States,
383 U.S. 541, 86 S. Ct. 1045, 16 L. Ed. 2d 84 (1966) 4

Miller v. Alabama,
___ U.S. ___, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012) 5, 6, 7

<i>Montgomery v. Louisiana</i> , ___ U.S. ___, 136 S. Ct. 718, 2016 WL 280758 (2016).....	5
<i>Roper v. Simmons</i> , 543 U.S. 551, 125 S. Ct. 1183, 161 L. Ed. 2d 1 (2005)	5, 6
Statutes	
RCW 13.04.030	2
State Court Rules	
RAP 13.4(b)	1, 2, 8, 10
Other Authorities	
American Sociological Association, <i>Race, Ethnicity and the Criminal Justice System</i> (Sept. 2007)	10
Children’s Law Center, Inc., <i>Falling Through the Cracks: A New Look at Ohio Youth in the Adult Criminal Justice System</i> (2012).....	9
Dr. Phillip Atiba Goff et al., <i>The Essence of Innocence: Consequences of Dehumanizing Black Children</i> (2014)	10
Elizabeth Drake, <i>The Effectiveness of Declining Juvenile Court Jurisdiction of Youthful Offenders</i> (2013)	8
Jason J. Washburn et al., <i>Psychiatric Disorders among Detained Youths: A Comparison of Youths Processed in Juvenile Court and Adult Criminal Court</i> , 59 <i>Psychiatric Services</i> 965 (2008).....	9
Washington Sentencing Guidelines Commission, <i>Disproportionality and Disparity in Juvenile Sentencing</i> (2007)	9

“There can be no keener revelation of a society’s soul than the way in which it treats its children.” Nelson Mandela¹

I. INTERESTS OF *AMICI CURIAE*

The interests of *amici* are set forth in the accompanying Motion.

II. ISSUE TO BE ADDRESSED BY *AMICI*

Whether review should be granted under RAP 13.4(b) because recent case law supports the constitutional requirement of individualized consideration prior to subjecting youth to adult court proceedings.

III. STATEMENT OF THE CASE

Zyion Houston-Sconiers and Treson Roberts, African-Americans age 17 and 16, were part of a group of youth convicted of robbing trick or treaters at gunpoint on a single night, Halloween of 2012, and taking candy and a phone without inflicting any bodily harm. Solely because of their ages and the nature of the charges filed by the prosecutor, Zyion and Treson were denied the opportunity to have a court consider whether they should remain in juvenile court and were instead prosecuted, convicted, and sentenced in adult court. They received sentences of 31 years and 26 years. A divided Court of Appeals panel affirmed, rejecting both Petitioners’ challenge to the constitutionality of the automatic decline statute.

¹http://db.nelsonmandela.org/speeches/pub_view.asp?pg=item&ItemID=NMS250&txtstr=Mahlam

IV. ARGUMENT

Washington's automatic decline statute unconstitutionally restricts the due process rights of youth charged with certain crimes and eliminates the requirement that a judicial officer make an individualized determination of culpability before subjecting a youth to adult court jurisdiction. RCW 13.04.030(1)(e)(v). Automatic decline fails to reduce recidivism and creates harmful racial disparities. These issues are of substantial public interest that should be determined by this Court, thus satisfying RAP 13.4(b)(1), (2), (3), and (4) and justifying a grant of review.

A. The Automatic Decline Statute Cannot Survive Constitutional Scrutiny Because it Eliminates Judicial Consideration of Constitutionally Relevant Factors in Subjecting Youth to Adult Proceedings and Sentences.

1. Eliminating discretionary decline procedures violates due process by depriving youths of an opportunity to be heard on why the individual circumstances of their lives and the facts of their case would justify juvenile court retention of jurisdiction.

The elimination of a decline hearing and judicial discretion to retain juvenile jurisdiction inflicts a legally significant harm on young defendants, not only because of the sentencing consequences, but also because the benefits of juvenile court proceedings are lost. “[T]his court has consistently concluded” there are “well-defined differences between

Washington’s juvenile justice and adult criminal systems While punishment is the paramount purpose of the adult criminal system, the policies of the JJA . . . [include] responding to the needs of youthful offenders, and to hold juveniles accountable for their offenses.” *State v. Chavez*, 163 Wn.2d 262, 267-68, 180 P.3d 1250 (2008).

“[A]n adult criminal conviction carries far more serious ramifications for an individual than a juvenile adjudication, no matter where the juvenile serves his time.” *Id.* at 271. As this Court recognized in *State v. Saenz*, 175 Wn.2d 167, 172-73, 283 P.3d 1094 (2012), the differences between juvenile and adult court are “fundamental,” including greater consideration of mitigating factors in sentencing, limits on the length and conditions of confinement, and lesser records consequences in juvenile court.² Most recently, in *State v. S.J.C.*, 183 Wn.2d 408, 352 P.3d 749 (2015), this Court discussed the history and rationale for having juvenile courts in Washington, noting that juvenile courts maintain a rehabilitative purpose far more than adult courts. The automatic decline statute overrides any consideration of these differences, inflicting severe harm on youth.

Not only does automatic decline deprive young defendants of the above-described benefits of juvenile court, it also deprives them of the

² See also, *State v. J.H.*, 96 Wn.App. 167, 978 P.2d 1121 (1999).

decline hearing procedure itself, which requires investigation and judicial consideration of numerous factors relating to the circumstances of the offense and individual mitigating circumstances. At the decline hearing, the court must consider the eight factors set forth in *Kent v. United States*, 383 U.S. 541, 86 S. Ct. 1045, 16 L. Ed. 2d 84 (1966),³ to decide whether to decline jurisdiction. The automatic decline statute precludes consideration of any of these factors, depriving young defendants of a constitutionally required process and inflicting an irreparable loss – the lost benefits of the juvenile court system – in violation of the state and federal due process clauses.

2. Automatic decline violates the Eighth Amendment and Wash. Const. art. 1, sec. 14 by mandating that young defendants be subjected to adult sentencing laws despite case law that makes age legally relevant to culpability and capacity for rehabilitation.

As the dissent in the Court of Appeals recognized,⁴ recent rulings from the United States Supreme Court and this Court have found that youth matters for sentencing purposes and that courts must conduct an individualized analysis into the culpability and capacity for rehabilitation of young people before sentencing them to adult terms. The automatic

³ The *Kent* factors include the sophistication and maturity of the juvenile as determined by consideration of the juvenile's home, environment, situation, emotional attitude, and pattern of living and likelihood of reasonable rehabilitation of the juvenile. *Kent*, 383 U.S. at 566–67.

⁴ *State v. Houston-Sconiers*, __ Wn.App. ___, __ P.3d ___, 2015 WL 7471791 (2015) (Bjorgen, J., dissenting).

decline statute is unconstitutional because it authorizes imposing the same mandatory sentences as adults receive, making any consideration of age either eliminated or severely curtailed. In *Roper v. Simmons*, 543 U.S. 551, 578, 125 S. Ct. 1183, 161 L. Ed. 2d 1 (2005), and in numerous subsequent rulings, courts have consistently drawn “on developments in psychology and neuroscience showing ‘fundamental differences between juvenile and adult minds’” to conclude that the law must allow consideration of the lesser culpability of youth before subjecting them to the same lengthy prison sentences as adults. *Graham v. Florida*, 560 U.S. 48, 68, 130 S. Ct. 2011, 176 L. Ed. 2d 825 (2010); *Miller v. Alabama*, ___ U.S. ___, 132 S. Ct. 2455, 2464, 183 L. Ed. 2d 407 (2012); *Montgomery v. Louisiana*, ___ U.S. ___, 136 S. Ct. 718, 2016 WL 280758, at *1 (2016); *State v. O’Dell*, 183 Wn.2d 680, 693, 358 P.3d 359 (2015).

Youthfulness is legally relevant. It is legally relevant to young people who committed crimes under the age of 18, *Miller, supra*, and to young people who are over 18. *O’Dell, supra*. It is legally relevant even when the adult sentence is not life without parole or a life equivalent.

O’Dell, supra. The reasons for its relevance are:

First, juveniles more often display “[a] lack of maturity and an underdeveloped sense of responsibility,” often resulting in “impetuous and ill-considered actions and decisions.” This susceptibility means that their “irresponsible conduct is not as morally reprehensible as that of an adult.” Second, juveniles “are

more vulnerable or susceptible to negative influences and outside pressures, including peer pressure.” This “vulnerability and comparative lack of control over their immediate surroundings” give juveniles “a greater claim than adults to be forgiven for failing to escape negative influences.” Finally, “the character of a juvenile is not as well formed as that of an adult. The personality traits of juveniles, less fixed.” Thus, “it is less supportable to conclude that even a heinous crime committed by a juvenile is evidence of irretrievably depraved character.” (internal citation marks omitted)

Houston-Sconiers, supra, (Bjorgen, J., dissenting) (citing *Roper, supra*).

Many of the above-described characteristics were present here: impetuous and ill-considered decisions, peer pressure, and a single day’s events which “are less likely to be evidence of irretrievable depravity.” *Miller*, 132 S. Ct. at 2464. Yet the automatic decline statute eliminates consideration of whether there might be lessened moral culpability, *Roper*, 543 U.S. at 571, or an enhanced prospect of reformation, *Miller*, 132 S. Ct. at 2465. It eliminates consideration of family and home environment from which youth may be unable to extricate themselves. Instead of “recogniz[ing] that the penological justifications for imposing the harshest sentences were diminished for juveniles,”⁵ as required by *Roper* and *Miller*, the statute left no choice but adult court proceedings and mandatory adult sentencing.

In contrast to the above-cited court rulings emphasizing that youth constitutionally matters, the automatic decline statute subjects youth to

⁵ *Houston-Sconiers, supra*, (Bjorgen, J., dissenting).

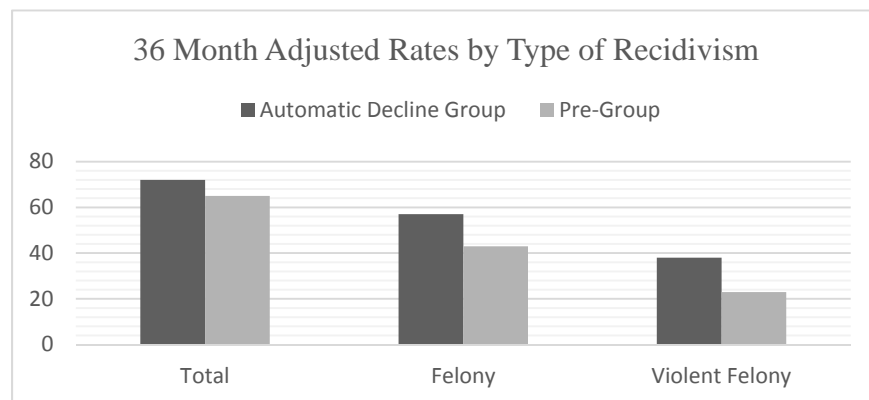
adult sentences based solely on age and the charged crime. It wholly eliminates judicial discretion to consider the “character and record of the individual offender or circumstances,” *Miller*, 132 S. Ct. at 2467, and the “mitigating qualities of youth,” *Johnson v. Texas*, 509 U.S. 350, 367, 113 S. Ct. 2658, 125 L. Ed. 2d 290 (1993). The prosecutor’s charging decision alone mandates exposure to adult sentencing laws. There is neither investigation nor judicial consideration of the background and emotional development of the youthful defendant (as required by *Miller*) either at the time the youth is transferred to adult court or, due to the mandatory sentence enhancements applicable under the adult sentencing law, at the time of sentencing. *Miller*, 132 S. Ct. at 2467 (citing *Eddings v. Oklahoma*, 455 U.S. 104, 110–112, 102 S. Ct. 869, 71 L. Ed. 2d 1 (1982)). The statute subjects young people to excessive and disproportionate punishment by excluding any consideration of the potential reduced culpability of younger defendants. The statute’s failure to acknowledge the constitutional significance of age and the need for individualized culpability assessments of young defendants renders it unconstitutional under the state and federal due process clauses, the Eighth Amendment and Washington Constitution art. I, § 14.⁶ Continuing to allow this

⁶ While the Court need not reach state constitutional issues here, the Court could choose to consider state constitutional concerns such as proportionality. *State v. Fain*, 94 Wn.2d 387, 617 P.2d 720 (1980).

unconstitutional scheme to persist would be a grave error, satisfying the requirements of RAP 13.4(b) and justifying this Court’s review.

B. Automatic Decline is Harmful and Contrary to the Public Interest Because it is Associated with Increased Recidivism and Disproportionately Affects Young People of Color

The automatic decline statute is associated with increased recidivism and contributes to unfair racial disparities in the criminal justice system. In 2013, the Washington State Institute for Public Policy assessed whether automatic decline resulted in reduced recidivism, and concluded it does not; indeed, juveniles who were automatically declined had a *higher* rate of recidivism than those who had remained in juvenile court. Elizabeth Drake, *The Effectiveness of Declining Juvenile Court Jurisdiction of Youthful Offenders* at 1, 9 (2013).⁷



Other research confirms that young people whose cases are transferred to adult court are more likely to recidivate than youth with

⁷ Available at http://www.wsipp.wa.gov/ReportFile/1544/Wsipp_The-Effectiveness-of-Declining-Juvenile-Court-Jurisdiction-of-Youth_Final-Report.pdf

similar offenses whose cases remained in juvenile court. Children’s Law Center, Inc., *Falling Through the Cracks: A New Look at Ohio Youth in the Adult Criminal Justice System*, 1 (2012), available at http://www.campaignforyouthjustice.org/documents/FR_OH_0512.pdf. In fact, youth prosecuted in adult courts commit new crimes sooner and more frequently. Jason J. Washburn et al., *Psychiatric Disorders among Detained Youths: A Comparison of Youths Processed in Juvenile Court and Adult Criminal Court*, 59 *Psychiatric Services* 965, 972 (2008). These harmful effects support granting review.

Moreover, Washington’s Sentencing Guidelines Commission has found persons of color are disproportionately represented in both automatic and discretionary decline. Sentencing Guidelines Commission, *Disproportionality and Disparity in Juvenile Sentencing*, 4 (2007).⁸ The Commission found disproportionate over-representation of several groups in automatic declines. Notably, African American youth are affected approximately ten times more often than one would expect given their population proportion, as shown in the following chart. *Id.*

Race/ Ethnicity	Automatic		Discretionary	
	Total	Ratio	Total	Ratio
African	17	10.31	8	5.27

⁸Chart showing total number of cases and ratio comparing number of declines to population proportion for each group, available at http://www.cfc.wa.gov/PublicationSentencing/DisparityDisproportionality/Juvenile_DisparityDisproportionality_FY2007.pdf.


American				
Asian	3	1.13	0	0
Caucasian	15	0.49	23	0.81
Latino	2	0.42	3	0.68
Native American	1	1.17	1	1.27

These findings are consistent with a 2014 American Psychological Association study that found African-American boys are considered to be older and less innocent than their white counterparts by the time they are as young as age 10.⁹ Requiring an individualized consideration of culpability at a decline hearing instead of automatic decline would reduce the damaging consequences of prosecutor charging practices and eliminate an opportunity for disparity to accumulate, further supporting a grant of review.¹⁰

V. CONCLUSION

The validity of the automatic decline statute is a significant constitutional question justifying review. RAP 13.4(b).

DATED this 23rd day of February 2016.

By: 
 TRAVIS STEARNS, WSBA 29935

⁹Dr. Phillip Atiba Goff et al., *The Essence of Innocence: Consequences of Dehumanizing Black Children* (2014), available at <http://www.apa.org/news/press/releases/2014/03/black-boys-older.aspx> (summary); <http://www.apa.org/pubs/journals/releases/psp-a0035663.pdf> (full article reporting study results)

¹⁰ See, American Sociological Association, *Race, Ethnicity and the Criminal Justice System*, 9 (Sept. 2007), available at <http://www.asanet.org/images/press/docs/pdf/ASARaceCrime.pdf>.

Cooperating Attorney for ACLU-WA
Foundation
WASHINGTON APPELLATE PROJECT
1511 Third Avenue, Suite 701
Seattle, WA 98101
travis@washapp.org
(206) 587-2711

NANCY L. TALNER, WSBA 11196
Senior Staff Attorney
ACLU-WA Foundation
901 Fifth Avenue, Suite 630
Seattle, WA 98164
talner@aclu-wa.org
(206) 624-2184

HICKORY M. GATELESS, WSBA 41031
Center for Children & Youth Justice
615 2nd Ave. Ste 275
Seattle, WA 98104
HGateless@ccyj.org
(206) 696-7503

NICHOLAS B. ALLEN, WSBA 42990
Columbia Legal Services
101 Yesler Way Ste 300
Seattle, WA 98104
nick.allen@columbialegal.org
(206) 464-0838

ROBERT S. CHANG, WSBA 44083
LORRAINE K. BANNAI, WSBA 20449
JESSICA LEVIN, WSBA 40837
The Fred T. Korematsu Center for Law &
Equality
Seattle University School of Law
901 12th Ave.
P.O. Box 222000
Seattle, WA 98122
changro@seattleu.edu
bannail@seattleu.edu

levinje@seattleu.edu

(206) 398-4073

HILLARY BEHRMAN, WSBA 22675

TeamChild

1225 South Weller Street, Suite 420

Seattle, WA 98144

hillary.behrman@teamchild.org

(206) 322-2444

AMANDA LEE, WSBA 19970

CINDY A. ELSBERRY, WSBA 23127

Washington Defender Association

110 Prefontaine Pl S Ste 610

Seattle, WA 98104

amanda@defensenet.org

Cindy@defensenet.org

(206) 623-4321

SUZANNE ELLIOTT, WSBA 12634

Washington Association of Criminal

Defense Lawyers

705 2nd Ave. Ste 1300

Seattle, WA 98104

suzanne@suzanneelliottlaw.com

(206) 623-0291