

FILED
Court of Appeals
Division II
State of Washington
11/6/2017 2:40 PM
NO. 49863-4-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON,
DIVISION II

STATE OF WASHINGTON,

Appellant,

v.

MARVIN LEO,

Respondent.

MOTION OF FRED T. KOREMATSU CENTER FOR LAW AND
EQUALITY, COLUMBIA LEGAL SERVICES, AND WASHINGTON
DEFENDER ASSOCIATION FOR LEAVE TO FILE *AMICUS CURIAE*
BRIEF IN SUPPORT OF RESPONDENT

Jessica Levin, WSBA #40837
Lorraine K. Bannai, WSBA #20449
Robert S. Chang, WSBA #44083
Evangeline Zhou, Licensed Legal Intern #9773952
Cameron Ford, Licensed Legal Intern #9797132

RONALD A. PETERSON LAW CLINIC
SEATTLE UNIVERSITY SCHOOL OF LAW
1215 East Columbia St.
Seattle, WA 98122
Tel: (206) 398-4130
levinje@seattleu.edu
bannail@seattleu.edu
changro@seattleu.edu

Counsel for *Amicus Curiae*
FRED T. KOREMATSU CENTER FOR LAW AND EQUALITY

Additional counsel listed on the following page

Nick Allen, WSBA #42990
Nick Straley, WSBA #25963

COLUMBIA LEGAL SERVICES
INSTITUTIONS PROJECT
101 Yesler Way, Suite 300
Seattle, WA 98104
Tel: (206) 464-0838
nick.allen@columbialegal.org
nick.straley@columbialegal.org

Counsel for *Amicus Curiae*
COLUMBIA LEGAL SERVICES

Hillary Behrman, WSBA #22675
Director of Legal Services
Cindy A. Elsberry, WSBA #23127
Felony Resource Attorney

WASHINGTON DEFENDER ASSOCIATION
110 Prefontaine Pl. S., Suite 610
Seattle, WA 98104
Tel: (206) 623-4321
hillary@defensenet.org
cindy@defensenet.org

Counsel for *Amicus Curiae*
WASHINGTON DEFENDER ASSOCIATION

I. MOTION FOR PERMISSION TO FILE BRIEF OF *AMICUS CURIAE*.

1. Identity of Moving Parties

The Fred T. Korematsu Center for Law and Equality (“Korematsu Center”) is based at Seattle University School of Law and advances justice through research, advocacy, and education. The Korematsu Center is dedicated to advancing the legacy of Fred Korematsu, who defied the military orders during World War II that ultimately led to the incarceration of over 120,000 Japanese Americans. He took his challenge to the military orders to the United States Supreme Court, which upheld his conviction in 1944 on the ground that the removal of Japanese Americans was justified by “military necessity.” Mr. Korematsu went on to successfully reopen his case and clear his conviction and to champion the cause of civil liberties and civil rights for all people. The Korematsu Center, inspired by his example, works to advance his legacy by promoting social justice. The Korematsu Center does not, in this brief or otherwise, represent the official views of Seattle University. The Korematsu Center has a special interest in ensuring that youth receive sentences that reflect the widely-accepted body of scientific literature demonstrating that youth are less culpable and have a greater capacity for reformation; in this vein, the Korematsu Center contributed an *amicus curiae* brief in *State v. Houston-*

Sconiers, 188 Wn.2d 1, 391 P.3d 409 (2017), signed on to the *amicus curiae* brief in *State v. Ramos*, 187 Wn.2d 420, 387 P.3d 650 (2017), and is co-counsel for appellant in *State v. Scott*, 196 Wn. App. 961, 385 P.3d 783, *review granted*, 188 Wn.2d 1001 (argued Sept. 12, 2017).

Columbia Legal Services (“CLS”) is a non-profit civil legal aid firm that represents low income Washingtonians on a variety of systemic legal issues. Its Institutions Project (“IP”) represents incarcerated and formerly incarcerated persons, including juveniles. IP has a long-standing juvenile justice priority. As part of that priority, it advocates for juvenile transfer and sentencing reform, including juvenile life without parole sentences. CLS has sought and received leave to file *amicus* briefs on related juvenile sentencing issues in the past.

The Washington Defender Association (“WDA”) is a statewide non-profit organization whose membership consists of public defender agencies, defenders of the indigent, and others who are committed to improving public defense. A primary purpose of WDA is to improve the administration of justice and to stimulate efforts to remedy inadequacies in substantive and procedural law that contribute to injustice. WDA has been involved in issues related to juvenile justice and juvenile representation for many years, providing training for defenders in the juvenile justice system and advocating for juvenile justice reform. WDA is particularly interested

when the justice system fails to acknowledge and respond to well-established and meaningful aspects of youth that justify treating young offenders differently from mature adult offenders. WDA has previously been granted leave to file *amicus* briefs on numerous issues related to criminal defense and representation of the indigent defendants.

2. Statement of Relief Sought

Amici seek permission, pursuant to RAP 10.6(a), for leave to file the *amicus curiae* brief that accompanies this motion on the basis that it will assist the Court by providing further explanation and analysis on state constitutional issues regarding *de facto* juvenile life without parole sentences.

3. Facts Relevant to Motion

The *amicus curiae* brief was prepared by lawyers authorized to practice law in Washington, as required by RAP 10.6(a). The brief likewise satisfies the requirements of RAP 10.6(b):

(i) Amici's Interest in this Case

Amici's interest in this case is detailed in the identity of the parties section above.

(ii) Familiarity with Issues and Argument

Attorneys for *amici* have reviewed the record and the arguments presented by the parties. *Amici* are familiar with the scope of the

arguments presented by the parties and will not unduly repeat arguments raised by any of the parties.

(iii) Issues to Which Amicus Curiae Brief Will Be Directed

Amici's brief will address whether, under Washington's constitution, juvenile life without parole is ever constitutional. *Amici* argue that 1) the categorical bar against juvenile life without parole announced in *State v. Bassett*, 198 Wn. App. 714, 394 P.3d 430 (2017), *review granted*, 402 P.3d 827 (2017), applies with equal force to *de facto* life sentences, and 2) alternatively, that article I, section 14's heightened protection requires affirming the trial court's sentence and rejecting the State's proposed reading of RCW 10.95.030(3)(a)(ii) as requiring consecutive minimum sentences.

(iv) Belief that Additional Argument Is Necessary on These Issues

Both the United States and Washington State recognize that "children are constitutionally different" for purposes of criminal sentencing. *Amici's* analysis on the state constitutional issues implicated by the so-called *Miller* fix statute, RCW 10.95.030(3), elaborates on the heightened protection required by article I, section 14 in the juvenile sentencing context, which the parties raised but did not fully develop.

Accordingly, *amici* believe that additional argument is necessary on these issues and that the brief will assist the Court in considering the appeal.

4. Grounds for Relief and Argument

Amici request that the Court allow the filing of the brief on the ground that the brief meets all of the requirements contained in RAP 10.6 for submission of an *amicus curiae* brief.

II. TIMELINESS

Under RAP 10.2(f), the attached *amicus curiae* brief is due on or before November 6, 2017. This motion and the accompanying brief are therefore timely filed.

III. CONCLUSION

Amici respectfully request that the Court accept the proposed brief for filing and permit it to participate in the case as *amici curiae*.

RESPECTFULLY SUBMITTED this 6th day of November, 2017.

s/ Jessica Levin

Jessica Levin, WSBA #40837
Lorraine K. Bannai, WSBA #20449
Robert S. Chang, WSBA #44083
Evangeline Zhou, Licensed Legal Intern #9773952
Cameron Ford, Licensed Legal Intern #9797132

Counsel for *Amicus Curiae*
FRED T. KOREMATSU CENTER FOR LAW AND EQUALITY

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COLUMBIA LEGAL SERVICES

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Director of Legal Services
Cindy A. Elsberry, WSBA #23127
Felony Resource Attorney

Counsel for *Amicus Curiae*
WASHINGTON DEFENDER ASSOCIATION

DECLARATION OF SERVICE

I declare under penalty of perjury under the laws of the State of Washington, that on November 6, 2017, the forgoing document was electronically filed with the Washington State Appellate Court Portal, which will effect service of such filing on all attorneys of record.

Signed in Seattle, Washington, this 6th day of November, 2017.

s/ Jessica Levin

Jessica Levin
Counsel for *Amicus Curiae*
FRED T. KOREMATSU CENTER FOR LAW AND EQUALITY

KOREMATSU CENTER FOR LAW AND EQUALITY

November 06, 2017 - 2:40 PM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 49863-4
Appellate Court Case Title: State of Washington, Appellant v. Marvin Lofi Leo, Respondent
Superior Court Case Number: 98-1-03161-3

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- levinje@seattleu.edu
- nick.allen@columbialegal.org
- nick.straley@columbialegal.org
- wapofficemail@washapp.org

Comments:

Sender Name: Jessica Levin - Email: levinje@seattleu.edu
Address:
901 12TH AVE
KOREMATSU CENTER FOR LAW & EQUALITY
SEATTLE, WA, 98122-4411
Phone: 206-398-4167

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