9-2-2016

Brief of Amicus Curiae Fred T. Korematsu Center for Law and Equality in Support of Petitioners

Robert Chang

Jessica Levin

Fred T. Korematsu Center for Law and Equality

Attorneys for Amicus Curiae

NO. 92605-1

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

ZYION HOUSTON-SCONIERS AND TRESON ROBERTS,

Petitioners.

BRIEF OF *AMICUS CURIAE* FRED T. KOREMATSU CENTER FOR LAW AND EQUALITY IN SUPPORT OF PETITIONERS

Charles C. Sipos, WSBA No. 32825
David A. Perez, WSBA No. 43959
Alexander M. Fenner, WSBA No. 50555
PERKINS COIE LLP

Robert S. Chang, WSBA No. 44083
Jessica Levin, WSBA No. 40837
FRED T. KOREMATSU CENTER FOR LAW AND EQUALITY

Attorneys for Amicus Curiae
Fred T. Korematsu Center for Law and Equality

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I. IDENTITY AND INTEREST OF AMICUS CURIAE

The Fred T. Korematsu Center for Law and Equality (Korematsu Center) is a non-profit organization based at the Seattle University School of Law. The Korematsu Center works to advance justice through research, advocacy, and education. Inspired by the legacy of Fred Korematsu, who defied military orders during World War II that ultimately led to the unlawful incarceration of 110,000 Japanese Americans, the Korematsu Center works to advance social justice for all. It has a special interest in ensuring that juvenile sentencing reflects the widely accepted body of scientific literature demonstrating that youth are less culpable and have a greater capacity for reformation. The Korematsu Center also works to understand and remedy the racial disproportionality that plagues our criminal justice system, including how the auto-decline statute disproportionately subjects youth of color to adult punishment. The Korematsu Center does not, in this brief or otherwise, represent the official views of Seattle University.

II. ISSUE ADDRESSED BY AMICUS

Whether Washington's "auto-decline" statute, RCW 13.04.030(1)(e)(v), which requires that certain juvenile offenders be tried as adults without regard for their individual characteristics or circumstances, violates the prohibition against cruel punishment in

article I, section 14 of the Washington Constitution, and the prohibition against cruel and unusual punishment in the Eighth Amendment.

III. STATEMENT OF THE CASE

Zyion Houston-Sconiers and Treson Roberts were convicted for their participation in a group of youth that robbed trick-or-treaters at gunpoint on Halloween night, 2012. The group stole candy and a phone but inflicted no bodily harm. Zyion was 17 at the time of the offense, and Treson was 16.

Normally, defendants under the age of 18 are subject to the exclusive original jurisdiction of the juvenile courts. But because of their ages and the crimes with which they were charged, Zyion and Treson were subject to Washington's "auto-decline" statute, under which adult courts have automatic, exclusive jurisdiction over 16- and 17-year-old offenders charged with certain offenses. The purpose of the auto-decline statute is to expose juveniles to adult sentencing schemes, including mandatory enhancements. As a result of mandatory firearm enhancements, Zyion was sentenced to 31 years in prison, and Treson was sentenced to 26 years. The trial court had no discretion to impose shorter sentences, and it had no discretion to evaluate whether treatment of these teenage defendants as adults was appropriate in the first place.

A divided panel of the Court of Appeals affirmed. Judge Bjorgen

dissented, arguing that imposing these sentences mechanically, "as though by the touch of gear on gear," violated the Eighth Amendment. *State v. Houston-Sconiers*, 191 Wn. App. 436, ¶ 35 (2015) (Bjorgen, J., dissenting). He argued that the sentences could not be imposed without the "exercise of human discretion, taking into account all that law and science tells us about the nature of juveniles and the possibility of amendment of life." *Id.*

IV. SUMMARY OF ARGUMENT

Children are different from adults, and two children of the same age can be very different from one another. Over the last decade, both this Court and the United States Supreme Court have recognized that these differences are of constitutional significance, and have thus repeatedly struck down sentencing schemes that do not allow consideration of a defendant's youthfulness.

Washington's "auto-decline" statute, in concert with the state's adult sentencing laws, creates precisely the kind of impermissible scheme that recent case law has rejected. Under the auto-decline statute, a 16- or 17-year-old defendant charged with certain crimes is *automatically* tried in adult court, with no opportunity to demonstrate that his or her youthfulness and related characteristics make trial as an adult inappropriate. If the teenage defendant is convicted, he or she is

automatically sentenced as an adult. In some cases—including this one—the defendant is subject to mandatory enhancements that result in decades-long sentences plainly inappropriate for the vast majority of juveniles.

Even where mandatory enhancements do not apply, a teenage defendant bears the burden to prove that his or her characteristics warrant an exceptional downward sentence, creating a perverse presumption that children are adults until proven otherwise. In either case, juvenile defendants subject to auto-decline face a significant probability of receiving sentences that are disproportionate in light of their youthfulness. At least until substantial new safeguards are enacted for youth defendants sentenced in adult courts,[1] that probability renders the auto-decline statute unconstitutional under both article I, section 14 and the Eighth Amendment.

[1] The so-called legislative *Miller* fix provides procedural safeguards to youth offenders convicted of aggravated murder, allowing those offenders to petition the indeterminate sentence review board for early release at 5 years prior to the expiration of their minimum term. RCW 10.95.030(3). And RCW 9.94A.730 provides a similar procedural safeguard to youth offenders convicted of crimes committed before their eighteenth birthdays who are serving sentences longer than 20 years, by allowing those offenders to petition for early release after serving 20 years. However, these two statutes do not reach all juveniles sentenced as adults by operation of the auto-decline statute. Further, these statutes do nothing to prevent the initial imposition of unconstitutional sentences—i.e., sentences imposed without consideration of the offender's youth and individual circumstances. A disproportionate sentence is disproportionate on the day it is imposed, even if there is some possibility of serving less than the entire term.

V. ARGUMENT

A. Article I, section 14 of the Washington constitution prohibits disproportionate sentences and therefore requires sentencing courts to consider an offender's youthfulness.

The Washington constitution prohibits "cruel punishment," Const. art. I, § 14, and it "is more protective than the Eighth Amendment" prohibition on "cruel and unusual punishment." *State v. Witherspoon*, 180 Wn.2d 875, 887 (2014). In addition to proscribing "certain modes of punishment," this provision requires that "sentences of ordinary imprisonment" be "proportional[]"—that is, "commensurate with the crimes for which such sentences are imposed." *State v. Fain*, 94 Wn.2d 387, 395-96 (1980).

Recent developments in the jurisprudence of this Court and the U.S. Supreme Court have established that the youthfulness of a juvenile defendant is central to the proportionality inquiry. This jurisprudential shift also recognizes that sentencing schemes that do not allow adequate consideration of the youthfulness of juvenile offenders create a substantial risk that disproportionate sentences will be imposed, rendering the schemes themselves incompatible with the constitutional proportionality requirement. In this case, the Court should recognize that the auto decline-statute is similarly unconstitutional under both article I,

section 14[2] and the Eighth Amendment, as it subjects youth to sentencing schemes that do not permit adequate consideration of youthfulness.

1. The U.S. Supreme Court has repeatedly held that youthfulness must be considered when sentencing juvenile offenders.

The U.S. Supreme Court has explicitly recognized that the substantive standards imposed by the Eighth Amendment progress over time, keeping pace with the "evolving standards of decency that mark the progress of a maturing society" and incorporating new insights and knowledge that bear on the legitimacy of certain criminal punishments. *Roper v. Simmons*, 543 U.S. 551, 560-61, 125 S. Ct. 1183, 161 L. Ed. 2d 1 (2005) (quoting *Trop v. Dulles*, 356 U.S. 86, 100-01, 78 S. Ct. 590, 2 L. Ed. 2d 630 (1958) (plurality op.)). Thus, while in 1878 it was "safe to

[2] Petitioners argue in their supplemental briefs that the auto-decline statute violates article I, section 14. Br. of Pet. Houston-Sconiers at 16; Br. of Pet. Roberts. In the event this Court concludes that this state constitutional argument was not adequately raised below by the parties, *but see Picard v. Connor*, 404 U.S. 270, 278, 92 S. Ct. 509, 30 L. Ed. 2d 438 (1971) (party need not "cit[e] 'book and verse'" to preserve constitutional argument); RAP 2.5(a)(3), the Court should nonetheless exercise its discretion to consider it here. *See Int'l Ass'n of Fire Fighters, Local 46 v. City of Everett*, 146 Wn.2d 29, 36-37 (2002) (Supreme Court may consider argument not raised below where issue is of public importance and addressing it would serve judicial economy). Ensuring fair and humane treatment of children in the criminal justice system is a matter of paramount public importance. And the volume of litigation in this Court and the Courts of Appeals involving the auto-decline statute demonstrates that resolving questions regarding the validity of that statute here will serve judicial economy significantly. *See, e.g.*, *State v. Posey*, 161 Wn.2d 638 (2012) (addressing effect of acquittal on count that qualified youth defendant for auto-decline); *State v. Salavea*, 151 Wn.2d 133 (2004) (addressing time at which age criterion must be satisfied); *In re Pers. Restraint Petition of Dalluge*, 152 Wn.2d 772 (2004) (effect of dismissal of qualifying count); *State v. Mora*, 138 Wn.2d 43 (1999) (same); *State v. Solis-Diaz*, 194 Wn. App.129 (2016) (vacating second adult sentence of youth defendant subject to auto-decline after successful petition for post-conviction relief).

affirm" that drawing and quartering, public dissection, and burning at the stake would violate the Constitution, *Wilkerson v. Utah*, 99 U.S. 130, 135-36, 25 L. Ed. 345 (1878), over the course of the twentieth century the Court extended the reach of the Eighth Amendment to prohibit more than patently barbaric modes of execution. It applied the provision to invalidate a severe prison sentence for falsifying public records, *Weems v. United States*, 217 U.S. 349, 382, 30 S. Ct. 544, 54 L. Ed. 793 (1910), to prohibit any custodial punishment at all under a statute that criminalized addiction to narcotics, *Robinson v. California*, 370 U.S. 660, 667, 82 S. Ct. 1417, 8 L. Ed. 2d 758 (1962), and to hold generally that a "criminal sentence must be proportionate to the crime for which the defendant was convicted," *Solem v. Helm*, 463 U.S. 277, 290, 103 S. Ct. 3001, 77 L. Ed. 2d 637 (1983).[3]

The Court's Eighth Amendment jurisprudence in this century has centered on its evolving understanding of the characteristics of children and how these characteristics in youth offenders bear upon the traditional retributive goals of the criminal justice system. In *Roper*, the Court invalidated the death sentence of a defendant who was 17 when he

[3] The Court addressed the proportionality standard again in a fractured series of opinions in *Harmelin v. Michigan*, 501 U.S. 957, 111 S. Ct. 2680, 115 L. Ed. 2d 836 (1991). Justice Kennedy's plurality opinion in that case adopted a "grossly disproportionate" standard for constitutional review of the length of prison sentences. *Id.* at 1001 (Kennedy, J., concurring).

committed the crime of which he was convicted. 543 U.S. at 556. It explained that three "general differences between juveniles under 18 and adults demonstrate that juvenile offenders cannot with reliability be classified among the worst offenders." *Id*. at 569. First, "as any parent knows and as … scientific and sociological studies … tend to confirm," the "lack of maturity and … underdeveloped sense of responsibility" that are understandably found in children "often result in impetuous and ill-considered actions and decisions." *Id*. (citation and internal quotation marks omitted). Second, "juveniles are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure." *Id*. Finally, the "character of a juvenile is not as well formed as that of an adult," meaning that juvenile defendants, in general, are more likely to be successfully reformed. *Id*. at 570. The upshot was that a death sentence that may be permissible for an adult offender could not be imposed on juvenile offenders "whose culpability or blameworthiness is diminished, to a substantial degree, by reason of youth and immaturity." *Id*. at 571.

Five years later, in *Graham v. Florida*, 560 U.S. 48, 130 S. Ct. 2011, 176 L. Ed. 2d 825 (2010), the Court followed the reasoning in *Roper* to hold that a sentence of life in prison without parole for a juvenile convicted of a non-homicide crime violated the Eighth Amendment. It explained that "[a]n offender's age is relevant to the Eighth Amendment,

and criminal procedure laws that fail to take defendants' youthfulness into account at all would be flawed." *Id*. at 76.

In *Miller v. Alabama*, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012), the Court extended its holdings in *Roper* and *Graham* to hold that "penalty schemes" that include mandatory life-without-parole sentences for juveniles violate the Eighth Amendment because they impose harsh sentences without appropriate consideration of the youthfulness of the defendant. *Id*. at 2466. "By removing youth from the balance," the mandatory schemes the Court invalidated "prevent[ed] the sentencer from taking into account [the] central considerations" identified in *Graham*. *Miller*, 132 S. Ct. at 2466.

Most recently, in *Montgomery v. Louisiana*, 136 S. Ct. 718, 193 L. Ed. 2d 599 (2016), the Court held that the Eighth Amendment prohibition on mandatory life without parole for juveniles that was recognized in *Miller* was a "substantive right" (and therefore retroactive), and explicitly stated that "[a] hearing where 'youth and its attendant characteristics' are considered as sentencing factors is necessary to separate those juveniles who may be sentenced to life without parole from those who may not." *Id*. at 736 (citation omitted).

The quartet of cases beginning with *Roper* establish that children are different from adults for Eighth Amendment purposes and that some

sentences that may be appropriate for adult defendants are nonetheless unconstitutional when imposed on juveniles.

2. In *State v. O'Dell*, this Court recognized that youthfulness must be considered whenever young offenders are sentenced.

This Court followed the reasoning of the U.S. Supreme Court decisions described above in *State v. O'Dell*, 183 Wn.2d 680 (2015).[4] There, this Court reversed the 95-month sentence of a defendant who had committed statutory rape 10 days after his 18th birthday. The trial court imposed the sentence after concluding that it was barred from "consider[ing] age as a mitigating circumstance" under adult sentencing scheme. *Id*. at 685. Relying extensively on Eighth Amendment precedents and "advances in the scientific literature," this Court held that a trial court "*must* be allowed to consider youth as a mitigating factor when imposing a sentence" on young-adult defendants who were just over 18 when they committed their crimes. *Id*. at 695-96 (emphasis added).

Even though the defendant in *O'Dell* was, in fact, a young adult at the time the offense was committed, this Court's decision relied upon the recent developments in Eighth Amendment jurisprudence and recognized more broadly that there *must* be a meaningful opportunity to consider the

[4] The State's attempt to limit *Miller*'s application in Washington, Resp't Br. at 13-14, simply ignores *O'Dell*.

youthfulness and maturity of a young defendant before a sentence can be imposed. And, like the Court in *Miller*, this Court reversed the sentence of the defendant in *O'Dell* without finding that that sentence was, in fact, disproportionate to the defendant's offense. Rather, the sentence was invalid because, as a procedural matter, the trial court failed to consider the defendant's youthfulness as a potential mitigating factor. *Id*. at 698-99.

3. Criminal procedures that prevent adequate consideration of the youthfulness of juvenile defendants at sentencing violate the Eighth Amendment and article I, section 14.

Roper, *Graham*, and *Miller* also demonstrate that sentencing regimes that fail to provide an adequate opportunity for consideration of the youthfulness of juvenile defendants are themselves unconstitutional. Critically, the Court in *Miller* did not hold merely that disproportionate sentences that resulted from a flawed scheme violated the Eighth Amendment. Instead, it held that the scheme itself was unconstitutional—recognizing a *procedural corollary* to the right against cruel and unusual punishment that "require[s]" the state to "take into account how children are different, and how those differences counsel against" extraordinarily severe sentences. 132 S. Ct. at 2469; *Graham*, 560 U.S. at 76; *see also Houston-Sconiers*, 191 Wn. App. ¶ 35 (Bjorgen, J., dissenting) ("The lesson of *Miller* … is that the Eighth Amendment does not allow the

possibility of forfeitures of such magnitude to be raised automatically for crimes committed by children.") (emphasis added).[5] Because article I, section 14 is more protective than the Eighth Amendment, it follows that our state constitution must also prohibit procedures that prevent courts from considering the youthfulness of juvenile offenders.

B. The auto-decline statute prevents adequate consideration of the youthfulness of juvenile offenders and creates a constitutionally significant risk of disproportionate punishment, in violation of article I, section 14.

Just as the U.S. Supreme Court has recognized that criminal procedures that create a significant risk of disproportionate sentences by preventing adequate consideration of a juvenile defendant's youthfulness violate the Eighth Amendment, this Court should hold that the auto-decline statute violates article I, section 14. As set forth in more detail below, the auto-decline statute both deprives the juvenile offender of the opportunity to establish lessened culpability at a declination hearing *and*

[5] These cases also call into question the narrow view articulated by this Court in *In re Boot* that Eighth Amendment issues are "not ordinarily . . . ripe for adjudication until . . . [a defendant is] actually sentenced." 130 Wn.2d 553, 569 (1996). *Graham* and *Miller* invalidated the entire sentencing schemes under which the individual sentences at issue were imposed, teaching that for Eighth Amendment purposes (and therefore for article I, section 14 purposes as well), the constitutional analysis of punishment focuses on statutory schemes as a whole, and not simply at the sentences received. *Graham*, 560 U.S. at 76 ("criminal procedure laws that fail to take defendants' youthfulness into account at all would be flawed."); *Miller*, 132 S. Ct. at 2466. In any event, the petitioners here *have* been sentenced, unlike the petitioners in *Boot*.

subjects that juvenile offender to adult sentencing schemes.[6] Sentencing a juvenile under an adult sentencing scheme carries with it a constitutionally cognizable risk that juvenile defendants will be sentenced without adequate consideration of their particular maturity and other age-related characteristics.[7]

1. The auto-decline statute prevents consideration of youthfulness at two distinct points.

The auto-decline statute was enacted with the intention to "address the problem of youth violence by increasing the severity and certainty of punishment for youth who commit violent acts." *State v. Mora*, 138 Wn.2d 43, 50 (1999). It operates by preventing the consideration of the youthfulness of defendants at two distinct points in the life of the case.

First, auto-decline deprives the juvenile court of the opportunity to conduct a decline hearing at the outset of the case.[8] A decline hearing

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[6] The State's acknowledgement of the purpose of the auto-decline statute—"to increase potential punishment for certain [juvenile] offenders," Resp't Br. at 15 —contradicts its own assertion later in its brief that "[a]ssignment of certain older juveniles who are charged with violent or other serious crimes to adult court is not punitive in nature," Resp't Br. at 18, and belies its characterization of the issue in this case as one merely of jurisdiction. Both petitioners and amicus ask this Court to determine whether the *risks* and *consequences* that flow from the auto-decline statute pass constitutional muster.

[7] In *Boot*, 130 Wn.2d 553, this Court rejected an Eighth Amendment challenge to the auto-decline statute on ripeness grounds, as the defendants had not yet been sentenced. The Court did not hold that sentencing children as adults without consideration of their youth and related individual factors was permissible. And even if it had, that conclusion is flatly contradicted by *Miller*. Importantly, moreover, the Court in *Boot* explicitly acknowledged that it considered "only federal constitutional law"—it did not consider article I, section 14. *Id*. at 569.

[8] When a juvenile is charged with a crime that is not subject to the auto-decline statute, the court may hold a hearing and transfer the defendant for prosecution as an adult "upon

requires the juvenile court to "consider the relevant reports, facts, opinions, and arguments presented by the parties and their counsel," which may include evidence regarding the youthfulness and maturity of the defendant. RCW 13.40.110(3). Thus, the auto-decline statute precludes any judicial consideration of the particular characteristics of the juvenile before it *automatically* subjects the juvenile to adjudication in adult court. Even if adult court is plainly an inappropriate forum for a particular juvenile offender, or if adult penalties are plainly disproportionate for a teenager, the adult court has no authority to remand a case governed by auto-decline to juvenile court without the consent of the prosecutor. RCW 13.04.030(1)(e)(v)(E)(III). This is precisely the sort of law "prevent[ing]" consideration of the particular characteristics of a juvenile offender that the Federal and Washington constitutions prohibit. *Miller*, 132 S. Ct. at 2458; *O'Dell*, 183 Wn.2d at 696-99.

Second, auto-decline subjects juvenile defendants to adult sentencing, which *never* provides an adequate opportunity for consideration of a juvenile defendant's youthfulness, and *can* result in long mandatory sentence enhancements—as Zyion's and Treson's

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a finding that the declination would be in the best interest of the juvenile or the public." RCW 13.40.110(3). While decline hearings are discretionary in many cases, they are mandatory for certain offenses—if a 16- or 17-year-old defendant is charged with a Class A felony, for example, the court is required to hold a decline hearing. RCW 13.40.110(2)(a).

sentences so powerfully reflect. Zyion was sentenced to "the mandatory 372 months' confinement"—31 years—for the seven firearms enhancements with which he was charged. Treson was sentenced to 312 months—26 years—for six firearms enhancements. The trial court had no discretion to reduce or decline to impose those sentences—even in the face of the State's recommendation that both defendants receive exceptional sentences of zero months for the underlying crimes, which the trial court followed. *Houston-Sconiers*, 191 Wn. App. ¶ 7. That Zyion and Treson would enter prison as teenagers and not be released until they were middle-aged adults could not affect this mandatory sentence.

Thus, in this situation, the law "fail[s] to take defendants' youthfulness into account at all"—exactly the kind of procedure the Court in *Graham* described as "flawed." *Graham*, 560 U.S. at 76. The auto-decline statute first prevented Zyion and Treson from advocating that their cases be tried in juvenile court, and then subjected them to the adult sentencing scheme, which imposed mandatory decades-long sentences and precluded the sentencing court from adequately "consider[ing] youth as a mitigating factor when imposing a sentence." *O'Dell*, 183 Wn.2d at 696.[9]

[9] Zyion Houston-Sconiers and Treson Roberts were sentenced before this Court decided *O'Dell*, so neither they nor the trial court had the benefit of that decision.

2. The auto-decline statute creates a constitutionally significant risk that juvenile offenders will receive disproportionate sentences under adult sentencing schemes.

Even if the operation of auto-decline does not result in disproportionate sentences in every case, it is unconstitutional simply because it "poses too great a risk of disproportionate punishment." *Miller*, 132 S. Ct. at 2469. Even where a juvenile defendant subject to auto-decline does not face a mandatory sentencing enhancement, he or she still faces treatment as an adult under the Sentencing Reform Act ("SRA"). *See* RCW 9.94A.030(35) (defining "offender" to include "a person who … is less than eighteen years of age but whose case is under superior court jurisdiction under RCW 13.04.030"). When the Legislature enacted the SRA in 1981, it designed the statute for fully culpable adult offenders, without "the benefit of … advances in the scientific literature" described in *Roper* and its progeny that show that "age may well mitigate a defendant's culpability." *O'Dell*, 183 Wn.2d at 695.

It is true that under *O'Dell*, a young defendant may argue that his or her youthfulness is a "mitigating circumstance[]" that warrants an "exceptional sentence below the standard range." RCW 9.94A.535(1). Crucially, however, it is still the *defendant's* burden to "establish[]" the mitigating circumstance "by a preponderance of the evidence." *Id*. That

is likely sufficient for young-adult defendants like the one in *O'Dell*—a defendant who, although he was only a few days over 18 when he committed the crime at issue, was nonetheless old enough to vote, to serve on a jury, to purchase tobacco, and to be conscripted into the armed forces. A presumption that a legal adult has the characteristics of an adult makes sense.

On the other hand, a presumption that a *legal child* has the characteristics of an adult does not make sense. A juvenile defendant may struggle to establish youth as a mitigating circumstance for any of a number of reasons—ineffective or overextended counsel, inadequate resources to muster compelling expert and lay testimony, or simply a trial court's reflexive but scientifically inaccurate belief that juveniles who commit "adult" crimes are somehow more mature than their peers. None of those is a good reason to punish a child as an adult. Absent an antecedent judicial finding (as in a declination hearing) that a juvenile defendant ought to be treated as an adult, assigning juvenile defendants the burden to prove youth as a mitigating factor prevents courts from appropriately considering the youthfulness of juvenile defendants. If the State believes that a particular child charged with a crime is markedly *unlike* other children—i.e., that the defendant lacks the characteristics of youth that require differential treatment at sentencing—the State should

bear the burden of establishing the juvenile acted with adult culpability.

The legislature might be able to remedy this constitutional defect by amending adult sentencing laws to (1) eliminate mandatory sentence enhancements for juveniles tried as adults and (2) establish a rebuttable presumption that juvenile defendants tried in adult courts should receive exceptional sentences below the standard range.[10] But it has not done so. In the meantime, the auto-decline statute denies juvenile defendants any opportunity to argue that treatment as adults is inappropriate and continues to send them to be tried and sentenced under unconstitutional procedures that do not adequately take their youthfulness into consideration. Unless and until the Legislature significantly revises sentencing laws as they apply to juvenile defendants in adult courts, Washington's auto-decline statute violates article I, section 14.

VI. CONCLUSION

This Court should agree with Petitioners that the auto-decline statute, RCW 13.04.030(1)(e)(v), violates the Eighth Amendment and article I, section 14 because it exposes juvenile defendants to adult sentencing laws without providing an opportunity for their youthfulness to be adequately considered.

[10] However, legislative changes to the adult sentencing scheme would not be sufficient to address other potential constitutional problems with auto-decline, including due process concerns inherent in mandatory trial of juvenile defendants in adult courts. *See* Br. of Pet. Roberts.

DATED: September 2, 2016

FRED T. KOREMATSU CENTER FOR LAW AND EQUALITY

By: */s/ Alexander M. Fenner*

Charles C. Sipos, WSBA No. 32825
David A. Perez, WSBA No. 43959
Alexander M. Fenner, WSBA No. 50555
PERKINS COIE LLP

Robert S. Chang, WSBA No. 44083
Jessica Levin, WSBA No. 40837
FRED T. KOREMATSU CENTER FOR LAW AND EQUALITY

Attorneys for Amicus Curiae

Fred T. Korematsu Center for Law and Equality

DECLARATION OF SERVICE

I declare, under penalty of perjury, under the laws of the State of Washington, that on the date below I served a copy of the foregoing Amicus Curiae Brief of the Fred T. Korematsu Center for Law & Equality, by mailing the same, properly addressed and prepaid, to:

STEPHANIE C. CUNNINGHAM
4616 25th Avenue NE, No. 552
Seattle, Washington 98105
Phone (206) 526-5001
Counsel for Petitioner Zyion Houston-Sconiers

KATHRYN A. RUSSELL SELK
RUSSELL SELK LAW OFFICE
1037 Northeast 65th Street, PMB 176
Seattle, Washington 98115
206.782.3353
Counsel for Petitioner Treson Roberts

THOMAS C. ROBERTS
930 Tacoma Avenue South
Room 946
Tacoma, WA 98402
253-798-7400
Counsel for Respondent

Signed in Seattle, Washington, this 2d day of September, 2016.

By: */s/ Alexander M. Fenner*

Alexander M. Fenner
Counsel for *Amicus Curiae*