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Court Administrator/Clerk

The Court of Appeals
of the
State of Washington

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May 4, 2018

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CASE #: 77849-8-I
Personal Restraint Petition of: Douglas Ho

Counsel:

The following notation ruling by Commissioner Mary Neel of the Court was entered on April 26, 2018, regarding petitioner's motion to transfer personal restraint proceedings to King County Superior Court:

Granted.

Sincerely,



Richard D. Johnson
Court Administrator/Clerk

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR KING COUNTY

STATE OF WASHINGTON
Plaintiff,

v.

VICTOR CONTRERAS and
DOUGLAS HO,
Defendant.

No. 12-1-04411-9 SEA
12-1-04410-1 SEA

ORDER GRANTING CRIMINAL RULE
7.8 MOTIONS TO SCHEDULE A
RESENTENCING HEARING

[CLERK'S ACTION REQUIRED]

THIS COURT, having considered the Defendants' Motions To Vacate Judgment Pursuant To CrR 7.8, the State's Memorandum of Law Re: Court's Authority To Resentence Defendant, and Defendant Contreras's Response to State's Memorandum, and the parties having appeared by and through their respective counsel of record, and the court having heard argument of counsel, and being fully advised in the premises:

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendants' Motions are GRANTED:

Douglas Ho and Victor Contreras were given essentially life sentences by this Court for first degree assaults with firearm enhancements, committed when they were teenagers involved in a gang.

1 Ho had just turned 18; Contreras was 19. This Court imposed standard range sentences of 50 years and
2 six months for Ho and just under 44 years for Contreras.¹

3 At their sentencing hearing, held September 5, 2014, neither defense attorney argued for a
4 sentence below the standard range based on youth.² The State argued that there was no decisional or
5 statutory or factual basis for an exceptional sentence below the standard range. This Court sentenced Ho
6 and Contreras to sentences within their standard ranges, approximately 50 years and 44 years,
7 respectively.

8 Had youth been available and argued as a mitigating factor, this Court would have imposed
9 sentences below the standard range.

10 Ho and Contreras now seek resentencing under Criminal Rule 7.8 (c)(2), arguing that In re
11 Petition of Light-Roth, 200 Wn. App. 149, review granted, 189 Wn.2d 1030 (2017), and the Eight
12 Amendment proscription against cruel and unusual punishment so require, and that they have made a
13 substantial showing of entitlement to relief.

14 The State defends these sentences, arguing that Light-Roth may be reversed on appeal, so this
15 Court should transfer the motions to the Court of Appeals for consideration as personal restraint
16 petitions (PRPs)³ and a stay; Light-Roth is distinguishable from these cases; and these sentences are
17 legal and just under the Sentencing Reform Act (SRA).

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21 ¹ Ho and Contreras are not eligible for any “good time” on the firearm enhancement, RCW 9.94A.533, which must be served
with no reduction as “straight time”, see 9.94A.729(2), and they are entitled only to a maximum of 10% “good time” on
Assault in the First Degree, RCW 9A.36.011, because it is a serious violent offense. See RCW 9.94A.729(3)(b).

22 ² Ho argued for a sentence below the standard range since he was prevented from accepting the State’s offered plea bargain
and lesser sentence because the offer was conditioned on both defendants pleading guilty. Contreras had rejected the State’s
23 offer and demanded his right to trial, thus precluding Ho from accepting. This Court rejected that as a legal basis under the
Sentencing Reform Act (SRA) for an exceptional sentence.

Contreras’ trial attorney did not file a sentencing brief or argue at the hearing for a sentence below the standard range.

³ Both defendants have already filed PRPs, alleging these and other grounds, which are pending in the Court of Appeals.

1 This Court finds that the Light-Roth case mandates a new sentencing hearing and, accordingly,
2 there has been a sufficient showing of entitlement to relief.⁴

3 Light-Roth committed murder when he was 19 years old and in 2004 was sentenced within his
4 standard range to just under 28 years in prison. Light-Roth's lawyers, at his sentencing hearing, did not
5 argue youth as a mitigating factor. Light-Roth, 200 Wn. App. 149.

6 In Light-Roth's successful second PRP, Division One of the Court of Appeals held that State v.
7 O'Dell, 183 Wn.2d 680 (2015), had expanded a youthful defendant's ability to argue for an exceptional
8 sentence; was a significant change in the law; and applied retroactively. The Court of Appeals further
9 ruled that O'Dell was material to Light-Roth's case because, had O'Dell been decided before Light-Roth
10 was sentenced, Light-Roth could have argued for an exceptional sentence based on that case. Light-
11 Roth, 200 Wn. App. at 163. ("We conclude that the denial of an opportunity to receive an exceptional
12 sentence is sufficient to make O'Dell material to Light-Roth's sentence."). Thus, the Court held, Light-
13 Roth's motion was not time-barred under RCW 10.73.090, .100, and he was entitled to a resentencing
14 hearing.

15 These cases present a strikingly stronger argument for resentencing than did the facts in Light-
16 Roth and compel the conclusion that resentencing is mandated. Like in Light-Roth, Ho and Contreras's
17 sentencing hearing pre-dated State v. O'Dell and so, according to the Court of Appeals, youth was not
18 available as a basis for a sentence below the standard range. O'Dell makes youth material to these
19 sentences. Light-Roth, 200 Wn. App. at 163. Like Light-Roth, Contreras was 19 years old when he
20 committed his crimes. Ho was younger, 18 years and four months. But, unlike Light-Roth, these
21 defendants did not kill anyone. Yet, largely because of how the State charged them, Ho and Contreras
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⁴ This court held a hearing on March 16, 2018, as required by Criminal Rule 7.8(c), and by this Order finds Ho and Contreras have made a sufficient showing they are entitled to relief.

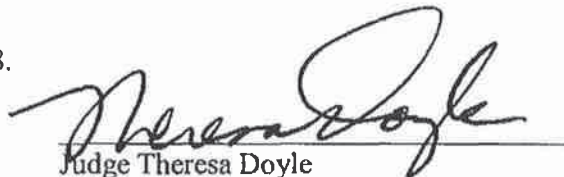
1 received substantially longer sentences for their assaults than the 28 years Light-Roth received for
2 murder.

3 A near life sentence for a non-homicide crime committed when a person is a teenager seems
4 disproportionate and wrong. Recent brain science shows that the human brain is not fully developed at
5 ages 18 and 19 and that we human beings are more impulsive and have poorer judgment at those ages.
6 Peer pressure is strong, thus making gang involvement more likely.

7 The King County Prosecuting Attorney in recent years has recognized this reality, and
8 approaches cases involving young defendants thoughtfully and much differently today than it did when
9 Ho's and Contreras' cases went to trial. There is no doubt in my mind that today, this prosecuting
10 attorney would not have sought such lengthy sentences. Prosecutors have an ethical duty to pursue
11 justice in every case, State v. Walker, 182 Wn.2d 463, 476 (2015), and ours takes this responsibility
12 very seriously. If the State remains convinced that these 50-year and 43-year sentences are just and fair
13 and proportionate to the crimes, it may make that case at the resentencing hearing. As always, this
14 Court would consider seriously the State's arguments.

15 For now, Ho and Contreras are entitled to their day in court. Resentencing is scheduled for April
16 27, 2018, at 1:00pm. Counsel may request that the Court of Appeals transfer the pending PRPs to this
17 Court for consolidation with these cases.

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19 DATED this 19th day of March, 2018.

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21 Judge Theresa Doyle
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