

SUPREME COURT OF THE UNITED STATES

WASHINGTON, D.C.

JOHN GRAY, §
TDCJ-ID #475245, §
Petitioner pro se, §
v. § No. 18-5002
LORIE DAVIS, Director of §
Texas Department of Criminal §
Justice Institutional Division §

PETITIONER'S GOOD FAITH TIMELY MOTION FOR REHEARING UNDER RULE 44

OF THE COURT'S ORDER OF OCTOBER 1st, 2018

TO ALL OR THE MAJORITY OF THE HONORABLE SUPREME COURT JUSTICES:

Petitioner, proceeding pro se and unrepresented by counsel, brings this instant motion for rehearing in good faith under Rule 44 and in compliance with Rule 38(b) and Rule 29, and would respectfully show the following grounds:

I. JURISDICTION

On October 1, 2018, the Clerk of the Court issued a letter to the Petitioner stating that the Court denied the motion for leave to proceed in forma pauperis and dismissed the petition for a writ of certiorari under Rule 39.8 in the above styled and numbered case.

II. GROUNDS

GROUND #1: Following this instant motion is a single page TDCJ-ID document dated 02/06/2018 served by Respondent Davis to the Petitioner which clearly shows a maximum sentence of 27-years and the sentence begin date of 8/9/1987 but, where the document also shows an illegal or unconstitutional sentence maximum expiration date of 10/25/2025 which has been increased beyond the

true and correct lawful original sentence maximum expiration date of 8/9/2014 as the jury intended when assessing the 27-years punishment in cause 481656.

GROUND #2: Petitioner is illegally and unconstitutionally confined since on or after the day of August 9th, 2014, under TDCJ#475245 and cause 481656 because of the Respondant's retroactive application of Texas Government Code §§ 508.149 in tandem with 508.283 to the primary 1987 offense of cause 481656 under TDCJ#475245. The Fifth Circuit U.S. Court of Appeals has already ruled that it is unconstitutional for the Respondent to retroactively apply 508.149 to offenses committed before the 1997 enactment and, the Texas Court of Criminal Appeals has already ruled that it is a federal ex post facto violation for Respondent to retroactively apply 508.149 to offenses committed before the 1997 enactment of the code. See: *McCall v. Dretke*, 390 F.3d 358, at 365-366 (5th Cir.2004) and; *Ex Parte Schroeter*, 958 S.W.2d 811 (Tex.Cr.App.1997). The Respondent's retroactive application of 508.149 in tandem with 508.283 is the means in which the Respondent increased the original 27-years imposed by the jury to an additional approximate total of 11-years as clearly reflected in the TDCJ-ID document included with this motion with separate certificate of service. Petitioner's illegal and unconstitutional confinement past the date of August 9th, 2014, without due process of law is contrary to clearly established Supreme Court law. See: *Johnson v. U.S.*, 120 S.Ct. 1795, at 1800-1801 (2000) and *Lynce v. Mathis*, 117 S.Ct. 891 (1997).

GROUND #3: Petitioner is entitled to rehearing by the majority of the Supreme Court because the facts demonstrated in grounds 1 and 2 are debatable among jurists of reason and could rule differently than the decision of October 1st, 2018, to deny and dismiss the petition for certiorari under Rule 39.8 without a decision on the merits as shown in the grounds above.

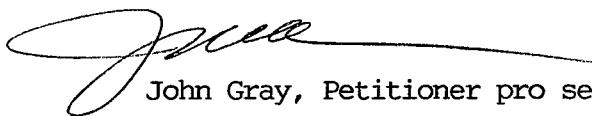
GROUND #4: Rehearing is necessary with a decision on the merits because:

- (1) Petitioner is factually illegally confined by Respondent without due process by the unconstitutional retroactive application of Tex.Gov't Code §§ 508.149 in tandem with 508.283 to create the unconstitutional increase of the jury's original 27-years punishment as shown in the attached TDCJ-ID document;
- (2) the October 1st, 2018, denial and dismissal order of the petition for a writ of certiorari as frivolous or malicious is contrary to the documentary evidence and facts and Petitioner's fundamental federal right to equal protection under clearly established Supreme Court law, including the Due Process Clause and the Ex Post Facto Clause to the United States Constitution;
- (3) the motion for rehearing is made in good faith because the motion to proceed IFP and the petition for certiorari is not frivolous or malicious as shown above.

WHEREFORE, premises considered, Petitioner respectfully requests for the majority of Supreme Court Justices to grant this motion for rehearing to proceed further because he has no other adequate remedy at law to challenge his illegal and unconstitutional confinement by Respondent.

I hereby declare or verify under the penalty of perjury that all of the above and below is true and correct to my knowledge and beliefs. 28 U.S.C. § 1746.

October 10, 2018.



John Gray, Petitioner pro se and

unrepresented by counsel

TDCJ Boyd Unit - #475245

200 Spur 113

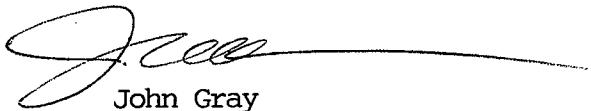
Teague, Texas 75860

CERTIFICATE OF PETITIONER UNREPRESENTED BY COUNSEL

I am the Petitioner pro se and unrepresented by counsel and I bring the instant motion for rehearing in good faith and not for delay under Rule 44.1.2. because the denial of the motion to proceed in forma pauperis and the dismissal of the petition for a writ of certiorari as frivolous or malicious was wrong and is debatable among the majority of the Supreme Court Jurists of reason because the Petitioner is entitled to equal protection of clearly established Supreme Court law and the United States Constitution based on the specific Grounds briefly and distinctly raised above. I am entitled to rehearing by the majority of the Supreme Court because I have no other adequate remedy at law in state courts or any lower federal courts to correct an ongoing manifest injustice in the ongoing illegal and unconstitutional confinement past the correct sentence maximum expiration date of 8-9-2014 without due process and the equal protection of law which prohibits increased punishments originally imposed. In good faith I request for the Court to request a response to the motion for rehearing, in the interest of justice.

I hereby declare under the penalty of perjury that all of the above and below of this Certificate is true and correct. 28 U.S.C. § 1746.

October 10, 2018.



John Gray

Petitioner pro se unrepresented by counsel

Boyd Unit 475245

200 Spur 113

Teague, Texas 75860

UNIT COPY
ITS40952

T.D.C.J.-INSTITUTIONAL DIVISION 02/06/2018-210
INMATE TIMESLIPS

GRAY, JOHN ROBERT

TDC:00475245 SID:01579047 UNIT: BY
HOUSING/BED: A1 B21

*PRJ-REL-DATE: 08 17 2019 MAX-EXP-DATE: 10 25 2025
*INMATE STATUS: S3 MAX TERM: 27 00 00

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|-----------------------|----------|-------------------|------------|
| FLAT TIME CREDITED: | 19 03 12 | CALC BEGIN DATE: | 08 09 1987 |
| GOOD TIME CREDITED: | 3 10 26 | TDC RECEIVE DATE: | 03 09 1988 |
| BONUS TIME CREDITED: | 0 00 00 | GOOD TIME LOST: | 0 |
| WORK TIME CREDITED: | 0 00 00 | WORK TIME LOST: | 0 |
| *TOTAL TIME CREDITED: | 23 02 08 | | |

*STATUS EFFECT DATE: 01 31 2018 JAIL GOOD TIME RECEIVED: YES

DEC: SBA5591 QCC: SBA9813

STAT CHG: S3/01 31 2018

PAROLE DATA: SUBMITTED FOR BOARD REVIEW
CHANGE TO: STATUS/