

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

DARRELL TAYLOR — PETITIONER
(Your Name)

vs.

SUPERINTENDENT ALBION SCI, et al — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO
The United States Court of Appeals For The
Third Circuit

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

DARREL TAYLOR HY5830
(Your Name)

SCI Albion, 10745 Route 18 D/A 13
(Address)

Albion, PA 16475-0002
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

Did the Lower Courts incorrectly hold that Alleyne v. United States did not affect time limitations and held not retroactive on collateral review when the U.S. Supreme Court has left open that possibility with the right combination of holdings, holding otherwise? (1)

Does the Petitioner have to abide by time limitations initiated by another Branch, where Federal and State Rules are exclusively for the Judicial Branch, an issue overlooked by the Lower Courts? (2)

Will a Procedure Default bar A Fifth and Fourteenth Amendment Due Process violation where Trial and initial PCRA Counsel were both ineffective at the time for not challenging a clearly non-waivable illegal sentence? (3)

Is the Petitioners Due Process Rights violated when a Court having lawful Jurisdiction to determine grant or denial of Habeas issues, refuses to address a non-waivable claim sua sponte due to a time limitation determination? (4)

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Superintendent Michael Clark
PA. State Attorney General

TABLE OF AUTHORITIES CITED

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix C to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the Superior Court court appears at Appendix D to the petition and is

reported at Com. v. Taylor, 153 A.2d 1118 (Pa.---, or, Super 2016)
 has been designated for publication but is not yet reported; or,
 is unpublished.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was March 22, 2018.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.
 An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A _____.
The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from **state courts**:

The date on which the highest state court decided my case was March 22, 2017. A copy of that decision appears at Appendix 1C.

A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.
 An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A _____.
The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fifth Amendment U.S. Constitution

"... nor be deprived of life, liberty, or property, without due process of law..."

Fourteenth Amendment U.S. Constitution

"... nor shall any State deprive any person of life, liberty, or property, without due process of law..."

Sixth Amendment U.S. Constitution

"... and to have the assistance of counsel for his defense."

Pa. Constitution Art V, section 10 (c)

"The Supreme Court shall have the power to prescribe general rules governing practice, procedure and conduct of all courts
... if such rules are consistent with this Constitution and
neither abridge, enlarge nor modify the substantive rights
... All laws shall be suspended to the extent that they are
inconsistent with rules prescribed under these provisions..."

42 Pa.C.S.A. § 9714 (a)(1)

"Any person who is convicted in any court of this Commonwealth of a crime of violence shall... Upon a second conviction for a crime of violence, the court shall give the person oral and written notice of the penalties under this section for a third conviction for a crime of violence--"

3(b)

STATEMENT OF THE CASE

1. On January 15, 2009 Petitioner was tried and convicted after a Jury trial of robbery and sentenced to a term of 25-50 years imprisonment according to a mandatory minimum statute 42 Pa.C.S.A 9714(a)(2).
2. On March 30, 2010 the Superior Court affirmed. *Commonwealth v. Taylor*, 996 A.2d 558 (Pa.Super.2010). Petitioner did not seek further review with the State Supreme Court.
3. On March 10, 2011 Petitioner filed a timely PCRA Petition alleging ineffective Assistance of Counsel for failing to bring forth Speedy Trial violation. Counsel was appointed who filed a Motion to Withdraw and No-Merit Letter May 11, 2011.
4. On June 13, 2011 the PCRA Court granted Appointed Counsel's request and issued notice to Petitioner, ultimately denying relief on July 7, 2011.
5. On March 22, 2012 the Superior Court affirmed. *Commonwealth v. Taylor*, 47 A.3d 1253 (Pa.Super 2012). No further appeal sought in the State Supreme Court.
6. On April 6, 2015 Petitioner filed a Second PCRA Petition pro se and Amended Petition on June 26, 2015. Requesting appointment of Counsel and alleging inter alia A violation of the State and Federal Constitution or laws which, in the circumstances of the particular case, so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place. "... nor be deprived of life; liberty, or property, without due process of law..." [U.S. Constitutional Amendment Five]; "... nor shall any State deprive any person of life, liberty, or property, without due process of law;" [U.S. Const Amendment Fourteen]

Petitioner also alleged the imposition of a sentence greater than the lawful maximum; That the allegation of error has not been previously litigated or waived; that the failure to litigate the issue prior to or during trial...or on direct appeal could not have been the result of any rational, strategic, or tactical decision by counsel. 42 Pa.C.S.A (a)(2)(i)(vii)(3)(4).

Petitioner maintained that he was charged and convicted of a statute that he could not be convicted of for sentencing purposes. The prosecution charged and sought out a conviction for a third strike offender according to 42 Pa.C.S.A 9714(a)(2) where Petitioner had never be properly convicted of a second offense. Petitioner brought where the State's highest court held ("where he was never sentenced as a second-strike offender, a third-strike sentence cannot be imposed.") Commonwealth v. McClintic, 586 Pa. 465,909 A.2d 1241,1249 (PA 2006); Commonwealth v. Shiffer,583 Pa. 478,879 A.2d 185 (PA 2005). (see: Commonwealth v. Armstrong, 2013 Pa. Super. 220,74 A.3d 228,239-240(Pa Super.2013)

Under 42 Pa.C.S.A 9714(a)(1) in relevant part ("Upon a second conviction for a crime of violence, the court shall give the person oral and written notice of the penalties under this section for a third conviction for a crime of violence") See also Jones v. United States, 526 U.S. 227,249,119 S.Ct. 1215,143 L.Ed.2d 311(1999) and Commonwealth v. Fields, 107 A.3d 738,746(Pa Supreme Ct. 2014) (Baer J. in his dissent). As it appears in "Historical and Statutory Note" 2007, Main Volume of 42 Pa.C.S.A §9714, this statute became effective with "Act 1982-54 legislation, section 4 of Act 1982, March 8, P.L. 169, No. 54, which provided that the mandatory sentences provided in such act shall be applicable to offenses committed after the effective date." (see also 42 Pa.C.S. §1921(a)(b)).

Petitioner's first offense in 1974 was committed before the effective date.

Issues as such, as well as issues of ineffective assistance of counsel claims are reserved for collateral review. Both trial and PCRA Counsel failed to raise this at initial Review on collateral attack, and a "procedural default will not bar a federal habeas court from hearing those claims if, in the initial-review collateral proceeding, there was no counsel or counsel in that proceeding was ineffective. Martinez v. Ryan, 566 U.S.1,5-14(2012). Petitioner established the fact that the issue could never be waived as a matter of right. Even sua sponte. Commonwealth v. Orellana, 2014 PA SUPER. 33,86 A.2d 877,883 n.7 (PA.Super 2014)(citation omitted.) as long as the reviewing court has jurisdiction, which the PCRA limits the types of claims that are cognizable. These claims are mentioned. There was no rational while counsel's or the Court left off these issues on initial collateral review or on second collateral review, which upon grant would have attached the Alleyne decision by way of Commonwealth v. Newman, 99 A.3d 86,92 (Pa.Super 2014)(En Banc); Commonwealth v. Melendez-Nigron, no. 494-2015 (Unpublished), decided September 25, 2015 on collateral review after United States v. Winkleman, 746 F.3d 134,136(3rd Cir. 2014). See also Commonwealth v. Garcia, 2015 PA.SUPER Unpublished. LEXIS 1380, No. 2844 EDA 2013(en banc).

Petitioner , with the help of inmates at the institution speaking about new cases on law library Bulletin Board, saw fit that in involved petitioner.

Petitioner established the fact that he suffers from multiple illnesses in his collateral review petition, among them being • Nervous disorder, • Sleep apnea, • High blood pressure, • Hepatitis C, • Enlarged prostate, and • Lipoma tumor affecting his ability to understand and comprehend things. Illnesses documented

with Medical staff at the institution at SCI Albion.

7. On July 14, 2015 the PCRA Court issued intent to dismiss notice, and dismissed second petition as untimely August 17, 2015. See Appendix E attached. Generally, the above dates are mentioned in the Superior Court Opinion filed June 24, 2016 pp 1-2 introduced by Respondents in the U.S. District Court, here at Appendix D.

8. Petitioner appealed to the Superior Court at No.1573 MDA 2015 in which the Superior Court affirmed on June 24, 2016 lower court's untimely issue. While it addressed whether Alleyne provides relief where increase in minimum sentence is based on prior conviction, it failed to consider that Alleyne did not bar where increase in minimum sentence was based on prior illegal sentence conviction.

9. Petitioner sought review in the State Supreme Court which denied allowance March 22, 2017. See Order attached as Appendix C.

10. Petitioner sought Petition under 28 U.S.C. §2254 for Writ of Habeas Corpus May 16, 2017 (documented May 22, 2017) alleging Constitutional issues of illegal sentence. Although Pet itioner maintained counsel abandoned him on this issue. A violation of Effective Assistance of Counsel. A issue clearly invoking Martinez v. Ryan mentioned earlier.

11. On June 13, 2013 The U.S. District Court Ordered Respondent to respond to time limitation issue and whether Petitioner's Second PCRA is properly filed.

12. Respondents responded in two separate filings by Partial and Supplemental Answers. The former on June 20, 2017 (in which Petitioner filed a traverse July 14, 2017), the later November 15, 2017 due to the first Answer failing to

address Alleyne argument.

13. On November 27, 2017 the United States District Court issued Order and Memorandum dismissing the writ as time barred and denying Certificate of Appealability. See Appendix B attached.

14. Petitioner appealed to the United States Court of Appeals for the 3rd Circuit.

15. On March 22, 2018 the United States District Court, by Order dismissed agreeing with lower District Court in which this petition follows. See Appendix A attached.

REASONS FOR GRANTING THE PETITION

THE UNITED STATES SUPREME COURT HAS LEFT OPEN THE POSSIBILITY "WITH THE RIGHT COMBINATION OF HOLDINGS," IT COULD MAKE A NEW RULE RETROACTIVE OVER THE COURSE OF TWO OR MORE CASES, A POINT DISREGARDED BY LOWER APPEAL COURTS USING ALLEYNE DECISION.

In United States v. Redd, 735 F.3d 88,91 (2013), the Court stated: ("The Supreme Court has left open the possiblty "with the right combination of holding," it could make a new rule retroactive over the course of two or more cases, but "only if the holdings in those cases necessarily dictate retroactively of the new rule." TYLER,533 U.S. at 666. "The clearest instance of course, in which [The Supreme Court] can be said to have 'made' a new rule retroactive in a case of collateral review and applied the rule to that case," Id. at 669 (O'Connor J., concurring). It has not done so here; none of the dozen or so cases that the Supreme Court remanded for further proceedings in light of ALLEYNE involve collateral attacks on convictions.) REDD, at 91.

But see: Commonwealth v. Melendez No. 494 2015 (unpublished), decided September 25, 2015, decided on collateral review.

Also, the court in U.S. v. Redd, Id. at 91, went on to state: ("Alternatively, the Supreme Court could also make a new rule of law retroactively by placing it within a category of cases previously held to be retroactive. See: Tyler , Supra, at 666; at 668-69(O'Connor J., concurring).

Taking the above argument into consideration, ALLEYNE, by way of NEWMAN, GARCIA; and MELENDEZ-NIGRON is retroactive. as mentioned already on page 6 here of the Statement of Facts. (please refer to cites there).

THE COURTS BELOW USED TIME CONSTRAINTS TO BAR PETITIONER FROM RELIEF. STATE AND FEDERALY IMPLICATING A LIABILITY INTEREST PROTECTED BY THE FOURTEENTH AMENDMENT.

The State Constitution Article V 10(c) states in relevant part: ("The Supreme Court shall have the power to prescribe general rules governing practice, procedure... if such rules are consistent with the Constitution and neither abridge, enlarge nor modify the substantive rights of any litigant...all laws shall be suspended to the extent that they are inconsistent with rules prescribed under these provisions.")

In Commonwealth v. Peterkin, 554 Pa. 547,772 A.2d 638,643 (Pa. 1998), fn. 8 the State Supreme Court mentioned how ("...The restrictions at issue-time for filing- is procedural in nature...")

Also, the Supreme Court in Payne v. Dept. of Corrections, 582 Pa. 375,871 A.2d 795,801 (Pa. 2005):

("This court's power to establish rules of procedure for state courts is exclusive. In the case of In re 42 Pa.C.S. §1703,482 Pa. 522,394 A.2d 444, (1978), we expressly rejected the notion that the General Assembly exercises concurrent power in this regard.

* * * The Pennsylvania Constitution grants the judiciary,-and the judiciary alone power over rulemaking.")

Id at 801 (all emphasis mines)

Therefore, it is clear that the General Assembly could enact such a statute outside of the judicial branch placing a time limit on PCRA Petitions that did not exist before.

In Hicks v. Oklahoma,447 U.S. 343,346, 100 S.Ct. 227,65 L.Ed.2d 175(1980) The U.S. Supreme Court made clear (" [T]he failure of a state to abide by its own

statutory commands may implicate a liberty interest protected by the Fourteenth Amendment against arbitrary deprivation by a state." Fetterly v. Paskett, 997 F.2d 1295,1300 (9th Cir. 1993), cert. denied, 513 U.S. 914,115 S.Ct. 290,130 L.Ed.2d 205(1999).

Also, Any appellate attacks on such defectively void judgments can never be time barred. U.S. v. One Toshiba Color Television, 213 F.3d 147,157-158(3rd Cir. 2000).

This Supreme Court should declare these time limits unconstitutional clearly as well as allow Petitioners claims to proceed as his sentence is clearly illegal as a third time offender. He should be sentenced as a second time offender. No society could tolerate such as sentence which is not fair.

A PROCEDURAL DEFAULT WILL NOT BAR A FEDERAL HABEAS COURT FROM HEARING THOSE CLAIMS IF, IN THE INITIAL-REVIEW COLLATERAL PROCEEDING, THERE WAS NO COUNSEL OR COUNSEL IN THAT PROCEEDING WAS IN EFFECTIVE.

This was mentioned in the case of Martine v. Ryan, 566 U.S. 1,5-14 (2012) by this U.S. Supreme Court. Petitioner's First Counsel failed to raise the issue of his sentence being illegal allowing the Petitioner to be deprived of "...life , liberty, or property, without due process of law..." under the Fifth and Fourteenth Amendments. Ineffective undet the Sixth Amendment. Petitioner request this Court to declare as such.

THE LOWER COURTS REFUSES TO ADDRESS PETITONERS NON-WAIVALBE CLAIM OF ILLEGAL SENTENCE, DISREGARDING IT DOES HAVE LAWFUL JURISDICTION.

Petitioner after establishing his sentence is illegal, and that an illegal sentence could never be waived as a matter of right, and could even be raise sua sponte as in Commonwealth v. Orellana, 2014 PA SUPER,33,86 A.2d 877,883 n.7 (PA. Super 2014)(citations omitted), established that fact that both State and Federal Courts can hear his claim. In State the jurisdiction rest in PCRA Court and if missed there by any court who has jurisdiction to address any issue. Even one seemingly time barred. As Petitioner hasn't seen any case defining what kind of jurisdiction. As each court regarding this issue, can hear or raise it themselves along with the issue they are deciding. Can this Supreme Court decide on this issue.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Darell Taylor

Date: June 22, 2018