

No; _____

In The
Supreme Court of The United States

**Gerald Daniels,
Petitioner,**

Vs.

**Janet Dowling, Warden,
Respondent,**

**On Petition For Writ of Certiorari to the
United States Court of Appeals for the Tenth Circuit**

Petition for Writ of Certiorari

**Gerald Daniels#189838
DCCC
129 Conner Road
Hominy, Ok. 74035**

Petitioner Pro Se

QUESTIONS PRESENTED

A. WHETHER A FEDERAL HABEAS COURT MAY REEXAMINE A STATE COURT'S INTERPRETATION OF STATE LAW WHEN IT IS AN OBVIOUS SUBTERFUGE TO EVADE CONSIDERATION OF A CONSTITUTIONAL ISSUE? THE COURT OF APPEALS REFUSAL TO DO SO IS IN CONFLICT WITH THE DECISION OF THIS COURT.

B. WHETHER A PRISONER ASSERTING AN EQUAL PROTECTION VIOLATION BASED ON RACE HAS TO PROVE HE WAS SIMILARLY SITUATED TO THE INDIVIDUAL IN QUESTION TO PREVAIL ON AN EQUAL PROTECTION CLAIM? THE COURT OF APPEALS DECISION THAT HE DOES IS IN CONFLICT WITH THE DECISION OF THIS COURT.

PARTIES

There are no parties to the proceedings that are not listed by the caption.

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APPENDIX C - Order Denying Petition for Rehearing, No. 18, 5006, Tenth Circuit Court of Appeals, filed April 20, 2018

APPENDIX D - Petition for Writ of Habeas Corpus, Northern District of Oklahoma, filed April 21, 2017, No. 17-CV-174-TCK-FHM

APPENDIX E - Order Affirming Denial of Post-Conviction Relief, Oklahoma Court of Criminal Appeals, No. PC-2016-1175, filed March 23, 2017

APPENDIX F - Brief of Petitioner, filed December 20, 2016, Oklahoma Court of Criminal Appeals, No. PC-2016-1175

APPENDIX G - Post Conviction Relief Application, District Court of Oklahoma County, No. CRF-88-3965, filed June 16, 2016

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PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully submit this petition for writ of certiorari to review the judgment below:

OPINIONS BELOW

The judgment of the United States Court of Appeals for the Tenth Circuit denying Certificate of Appealability is unpublished. A copy of the decision is attached as Appendix A to this petition.

The judgment of the United States District Court for the Northern District of Oklahoma denying petition for writ of habeas corpus is unpublished. A copy of the decision is attached as Appendix B to this petition.

JURISDICTION

The decision of the United States Court of Appeals for the Tenth Circuit was filed on April 10, 2018, and is final.

A timely filed petition for rehearing was denied on April 20, 2018, and a copy of the decision is attached as Appendix C to this petition.

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment to the United States Constitution provides, in relevant part:

"[N]or shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Section 1.

Title 57, Oklahoma Statutes Annotated, Section 138(A), provides in relevant part:

"No deduction shall be credited to any inmate serving a sentence of life imprisonment; However, a complete record of the inmate's participation in work, school, vocational training, or other approved program shall be maintained by the Department for consideration by the paroling authority."

STATEMENT OF THE CASE

Petitioner, who is an inmate of the Oklahoma Department of Corrections, filed a pro se (third) application for post-conviction relief in state court challenging his sentence of life imprisonment for murder, alleging, *inter alia*, that under the statutory scheme he was sentenced under, gave him a right to have his credits deducted from his life sentence when a court or legislature defined life as a number of years. See Appendix G at 1-4.

The state district court denied the application on the basis that the claim has no existing legal basis, and concerned matters of parole falling outside the scope of the Post-Conviction Procedure Act. See Appendix H at 2-8.

On appeal, petitioner complained that the district court erred by not considering his due process claim regarding his sentence, specifically, that under the statutory scheme he was sentenced under, gave him a due process right, a liberty interest, to have his earned credits deducted from his life sentence when a court or legislature defined life as a number of years. See Appendix F at 3-7.

However, the Oklahoma Court of Criminal Appeals affirmed, concluding that petitioner has not demonstrated how laws or regulations assigning a term of years to a life sentence for purposes of calculating parole eligibility have caused his particular life sentence to become illegitimate or a violation of due process. See Appendix E at 3.

Petitioner then filed a pro se § 2241 application in federal district court, alleging (1) that his life sentence exceeds the maximum sentence authorized by law and had been discharged, and (2) that the State's denial of post-conviction relief violated his rights under the equal protection clause. See Appendix D at 3-5.

Particularly, petitioner's Ground 1 alleged, *inter alia*, that under the statutory scheme he was sentenced under, gave him a right to have his credits deducted from his life sentence when a court or legislature defined life as a number of years. *Id.* at 3. In Ground 2 petitioner alleged that the denial of his application for post-conviction relief violated his equal protection rights because a white prisoner was granted post-conviction relief upon the identical claims, and petitioner is black. *Id.* at 5.

The District Court denied both claims, finding that Ground 1 alleged an error of state law rather than a cognizable federal habeas claim. See Appendix B at 5-6. As to Ground 2, the District Court found that the state district court order upon which petitioner relied did not support his claim of an equal protection violation because the state district judge did not address the merits of the claims described by petitioner as identical to those he raised in his application for post-conviction relief. See *id.* at 7-8.

On appeal, petitioner reasserted his due process and equal protection claims, however, the Court of Appeals denied relief, concluding that petitioner did not raise his due process claim in his § 2241 application and therefore the claim was forfeited. See Appendix A at 4. With regards to petitioner's claim of an equal protection violation, the Court of Appeals concluded that petitioner did not prove that he and the white prisoner are similarly situated, as required to prevail on an equal protection claim. *Id.* at 5.

Additional facts will be stated as they become necessary.

REASONS FOR GRANTING THE PETITION

A. A FEDERAL HABEAS COURT MAY REEXAMINE A STATE COURT'S INTERPRETATION OF STATE LAW WHEN IT IS AN OBVIOUS SUBTERFUGE TO EVADE CONSIDERATION OF A CONSTITUTIONAL ISSUE. THE COURT OF APPEALS REFUSAL TO DO SO IS IN CONFLICT WITH THE DECISION OF THIS COURT.

In the case at bar, petitioner filed a pro se § 2241 application in District Court, alleging, *inter alia*, that under the statutory scheme he was sentenced under, gave him a right to have his credits deducted from his life sentence when a court or legislature defined life as a number of years. Petitioner argued that the state appellate court's rejection of his claim was contrary to clearly established federal law, as determined by this Court, because it decided his case differently than this Court has done on a set of materially indistinguishable facts. See Appendix D at 3-4.

However, because petitioner did not use the phrase due process in his argument in his § 2241 application as he asserted in his brief on appeal, the Court of Appeals concluded that petitioner forfeited his due process argument in District Court. See Appendix A at 4. The Court of Appeals refused to reexamine the state appellate court's decision in petitioner's case as he requested it to do for the same reasons, i.e., petition had not raised a due process argument in his § 2241 application. *Id.*, Appendix A at 4 (emphasis supplied).

The mere fact that petitioner did not use the phrase due process in his argument in his § 2241 application in District Court did not mean that petitioner forfeited his due process argument. Construing petitioner's argument in his § 2241 application liberally, as this Court instructed a federal habeas court to do in pro se cases, see Haines v. Kerner, 404 U.S. 519, 520-21 (1972), petitioner's allegations of error are sufficient to assert a due process violation regarding his sentence, even though petitioner did not use the phrase due process in his argument. *Id.*; see also Boag v. MacDougall, 454 U.S. 364 (1982).

Petitioner's § 2241 application specifically alleges that "under the statutory scheme he was sentenced under, gave him a right to have his credits deducted from his life sentence when a court or legislature defined life as a number of years. See Appendix D at 3. This reference to "right" can only mean the right to due process under the Fourteenth Amendment. See 57 O.S. § 138(A). Therefore, the Court of Appeals decision was erroneous as a matter of law.

Haines v. Kerner, *supra*; Boag v. MacDougall, *supra*.

In Mullaney v. Wilbur, 421 U.S. 684 (1975), this Court held that a federal habeas court may reexamine a state court's interpretation of state law when it is an obvious subterfuge to evade consideration of a constitutional issue. *Id.* at 691 n. 11. Here, the state appellate court did not address petitioner's due process claim regarding his sentence, i.e., petitioner's right to have his credits deducted from his life sentence when a court or legislature defines life as a number of years. See Appendix E at 2-3, then, compare to, Appendix F at 3-7. Instead, the state appellate court simply ruled that petitioner "has not demonstrated how laws or regulations assigning a term of years to a life sentence for purposes of calculating parole eligibility have somehow caused his particular life sentence to become illegitimate or a violation of due process." See Appendix E at 3.¹

Thus, the state appellate court's decision was an obvious subterfuge to evade consideration of petitioner's due process claim regarding his sentence. As such, the Court of Appeals should have reexamined it as petitioner requested it to do, as it frustrates due process. Mullaney v. Wilbur, *supra*, at 691 n.11.

¹ Although the Court of Appeals concluded that it was unclear whether the state appellate court addressed petitioner's due process claim, see Appendix 4 at footnote 2, as shown above, the record unequivocally reveals that petitioner's due process claim was not addressed by the state appellate court.

Moreover, it is clear from the record before this Court, that petitioner was denied due process, as guaranteed him by the Fourteenth Amendment to the United States Constitution. The statutory scheme petitioner was sentenced under, 57 O.S. § 138(A), gave him a right, to have his credits deducted from his life sentence when a court or legislature defined life as a number of years. In 1997, the state legislature defined life as not less than 18 years nor more than 60 years. See Laws 1997 HB 1213, c. 133 § 4(6). Although the sentencing provision of this law was repealed before it ever became operative, see Laws 1999 HB 1009, c. 5 § 452, (as petitioner's pleadings argued throughout the state and federal court proceedings), the 1997 definition of life cannot be repealed, and accrued, vested rights, can in no way be denied after a statute is repealed. Pre-1997 parts of a sentence, even if repealed, must still be applied when it benefits a prisoner. See Resplution Trust Corp. v. Wright, 868 F. Supp. 301 (W.D. Okla. 1993). Therefore, by refusing to deduct petitioner's credits from his life sentence under the 1997 definition of life to result in his completion of his sentence, his scheme was *ex post facto* changed, voiding his sentence. See Weaver v. Graham, 450 U.S. 24 (1981).

Because the Court of Appeals did not reexamine the state appellate court's interpretation of state law, this case should be reversed to resolve this conflict with this Court's decision in Mullaney v. Wilbur, *supra*.

Resolving this conflict is important not only to petitioner, but also to other similarly situated prisoners. The issue of whether due process gave petitioner the right to have his credits deducted from his sentence under the 1997 definition of life to result in his completion of his sentence is flowing through the state prison system and state and federal courts at this current time.

Resolving this conflict is even more important in light of the fact that petitioner and others similarly situated have long ago completed their life sentences under the 1997 definition of life, with deductions of earned credits, but have not been released. The Due Process Clause of the Fourteenth Amendment was designed to protect an individual from arbitrary governmental action, and it should do so here. See Wolff v. McDonnell, 418 U.S. 539, 558 (1974).

B. A PRISONER ASSERTING AN EQUAL PROTECTION VIOLATION BASED ON RACE DOES NOT HAVE TO PROVE THAT HE WAS SIMILARLY SITUATED TO THE INDIVIDUAL IN QUESTION TO PREVAIL ON AN EQUAL PROTECTION CLAIM. THE COURT OF APPEALS DECISION THAT HE DOES IS IN CONFLICT WITH THE DECISION OF THIS COURT.

In the case at bar, petitioner filed a § 2241 application in District Court, alleging, *inter alia*, that his rights under the equal protections clause was violated when a state court denied his application for post-conviction relief based upon the identical claims it granted a white prisoner's application. Petitioner identified himself as black, and stated that the Constitution prohibited the State from discrimination on the basis of a person's race. See Appendix D at 5.

The District Court denied the equal protection claim, finding that the state court did not address the merits of the claims described by petitioner as identical to those raised in his application for post-conviction relief. See Appendix B at 7-8.

On appeal, the Court of Appeals affirmed, concluding that merely submitting the identical claim as the white prisoner does not prove that petitioner and the white prisoner are similarly situated, as is required to prevail on an equal protection claim. See Appendix A at 5 (emphasis added).

However, when an equal protection claim involves dissimilar treatment based on race, the government must prove that the dissimilar treatment is

"narrowly tailored" to advance a "compelling governmental interest." Johnson v. Cal., 543 U.S. 499, 505 (2005). This heightened test is known as "strict scrutiny." Thus, the Court of Appeals decision is erroneous as a matter of law.

Moreover, the state court decision granting the white prisoner relief should have been reexamined as petitioner requested, because it was an obvious subterfuge to evade consideration of a constitutional issue. See Mullaney v. Wilbur, 421 U.S. 684, 691 n.11 (1975). The white prisoner did not request in his application for the state to modify his life sentence to time served because of his "health" or "age." But that's exactly what the state court ruled, leaving the due process claim raised by the white prisoner unaddressed.² Thus, the state court decision frustrate due process and was required to be reexamined by the Court of Appeals. Mullaney v. Wilbur, *supra*.

Resolving this conflict is of great importance to petitioner and other similarly situated black Oklahoma State prisoners because the state court arbitrarily used its judicial powers to exclude them contrary to its duties to administer the laws equally to everyone within its jurisdiction. U.S. Const. Amend. 14. Petitioner and a host of other similarly situated black prisoners have fully served their life sentences in the same manner as the white prisoner who was sentenced to time already served in the department of corrections on his life sentence upon the identical claim petitioner and the other black prisoners were, and are being, denied relief. This grave injustice must be rectified.

²The white prisoner's due process claim, like petitioner's, was that under the statutory scheme he was sentenced under, gave him a right, to have his credits deducted from his life sentence when a court or legislature defines life as a number of years. See Appendix G at 3, and Appendix A at 5.

CONCLUSION

For this reason, the petition for writ of certiorari should be granted.

Respectfully Submitted,



Gerald Daniels #189838

Dick Conner Correctional Center
129 Conner Road
Hominy, OK 74035

PETITIONER PRO SE