

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

PAUL E. RINEHART- PETITIONER

vs,

STATE OF OHIO - RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE SUPREME COURT OF OHIO

PETITION FOR WRIT OF CERTIORARI

PAUL E. RINEHART #A558-240
LONDON CORRECTIONAL INSTUTION
P.O. BOX 69
LONDON, OHIO 43140

QUESTION(S) PRESENTED

Can a trial court enhance a defendant's sentence(s) to more than the minimum sentence upon judicial fact finding from a judge rather than the findings found by a jury.

This Honorable Court has previously held in *Apprendi v. New Jersey*, 530 US 466, 147 Led2d 435, 120 Sct 2348 (2000) Stands for the proposition that any sentence enhancement not admitted by the defendant or found by a jury violates a defendants sixth amendment right to trial by jury. This not only supports *Apprendi* but it extends it holdings to the Sentencing guidelines.

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:

Matthew S. Schmidt
Ross County Prosecutor's 72 N. Paint Street
Chillicothe, Ohio 45601

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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

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is reported at 2018-Ohio-3026; 2018 Ohio LEXIS 1895.

The opinion of the Fourth District Court of Appeals court appears at the Appendix B and is reported at 2018-Ohio-1261; 2018 Ohio App. LEXIS 1382.

JURISDICTION

The date on which the highest state court decided my case was August 1, 2018. A copy of that decision appears at Appendix A.

A timely petition for rehearing was thereafter denied on the following date: **N/A**

An extension of time to file the petition for a writ of certiorari was granted: **N/A**

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case presents a violation of right to trial by jury in pursuant to the Sixth Amendment of the United States Constitution.

Legislation is a vehicle used to create, rescind, or repeal laws, or statutes. Once the Legislation rescinds, or repeals a law, or statute and a trial court sentences a defendant under that rescinded, or repealed statute, the sentence(s) is void ab initio according to *State v. Beasley*, 14 Ohio St. 3d 74, 14 Ohio B 511, 471 N.E.2d 774.

In the instant case, in 2006, *State v. Foster*, 109 Ohio St. 3d 1, 2006-Ohio-856, 845

N.E.2d 470, 2006 Ohio LEXIS 516 was the vehicle used to severe R.C. 2929.14(B), (C), R.C 2929.19(B)(2), R.C. 2929.14(D)(2),(3) and R.C. 2929.14(E)(4), Id at

¶99. On August 23, 2007, the trial court sentenced the Appellant under some of those severed statues in which renders Appellant's sentences null, void and contrary to law pursuant to *Beasley, supra*. In a nut shell, Appellants argument is that he was sentenced under statues that didn't exist.

STATEMENT OF THE CASE

On August 10, 2007 a Ross County Jury found Appellant guilty of aggravated murder with a gun specification and tampering with evidence.

On August 23, 2007, the trial court sentenced the Appellant to a cumulative sentence of thirty-one years to life in the Ohio Department of Rehabilitation and Corrections.

Appellant timely filed a direct Appeal with the Fourth District Court of Appeals.

On November 6, 2008, the Fourth District Court of Appeals affirmed the trial court's decision. *State v. Rinehart*, (4th Dist.), 2008-Ohio-5770.

On January 19, 2017, Appellant filed a Pro Se "Motion To Correct An Illegal Sentence" in the trial court asserting that his sentences were void because the trial court issued judicial fact findings found in R.C. 2929.14B)(2) and 2929.14(E)(4) that were prohibited between February 2006 pursuant to *State v. Foster, supra*, and the effective date of House Bill 86 in September 2011.

The State of Ohio never filed any response to Appellant's motion. On June 22, 2017, the trial court entered a decision overruling Appellant's motion without issuing any findings of facts or conclusion to law. Appellant timely filed a Notice of Appeal.

On Appeal the Appellant issued one assignment of err. "THE TRIAL COURT ERRORED OVERRULING APPELLANT'S MOTION TO CORRECT AN ILLEGAL SENTENCE WHEN THE SENTENCE IS VOID."

On March 29, 2018, the Fourth Appellate District affirmed the trial court's decision and recast Appellant's motion into a post conviction petition as defined in R.C. 2953.21. See Exhibit B.

Appellant subsequently timely filed a Memorandum In Jurisdiction Brief to The Supreme Court of Ohio proffering two propositions of law. The First proposition of law : "THE TRIAL COURT ERRED WHEN IT SENTENCED THE APPELLANT UNDER AN UNAUTHORIZED STATUE WHEN IMPOSING MAXIMUM CONSECUTIVE SENTENCES POST FOSTER. The Second Proposition of law was: "THE TRIAL COURT ERRED WHEN IT SENTENCED THE APPELLANT UNDER AN UNAUTHORIZED STATUE POST FOSTER." Petitioner also filed a Motion For Relief in The Supreme Court of Ohio arguing that This Honorable Court holds in *Blakely v. Washington* (2004), 542 U.S. 296, 124 S.Ct. 2531, 159 L.Ed.2d 403 and *United States v. Booker* (2005), 543 U.S. 220, 125 S.Ct. 738, 160 L.Ed.2d 621, that trail courts should not engage in judicial fact finding to enhance a defendants sentences. The Supreme Court of Ohio followed that ruling in *State v. Foster*, 109 Ohio St. 3d 1, 2006-Ohio-856, 845 N.E.2d 470, 2006 Ohio LEXIS 516. In doing so, The Supreme Court of Ohio severed portions of Ohio Sentencing Statues, R.C. 2929.14(B), (C), R.C 2929.19(B)(2), R.C. 2929.14(D)(2),(3) and R.C. 2929.14(E)(4).

On August 1, 2018, The Supreme Court of Ohio declined jurisdiction to entertain the Petitioner's appeal and denied his motion for relief. See Appendix A.

REASONS FOR GRANTING THE PETITION

This Honorable Court holds in *Blakely v. Washington* (2004), 542 U.S. 296, 124 S.Ct. 2531, 159 L.Ed.2d 403 and *United States v. Booker* (2005), 543 U.S. 220, 125 S.Ct. 738, 160 L.Ed.2d 621. that trial courts should not engage in judicial fact finding to enhance a defendants sentence(s). The Supreme Court of Ohio followed that ruling in *State v. Foster*, 109 Ohio St. 3d 1, 2006-Ohio-856, 845 N.E.2d 470, 2006 Ohio LEXIS 516. This Honorable Court denied Certiorari, at 549 U.S. 979, 127 S. Ct. 442, 166 L. Ed. 2d 314, (2006). In doing so, The Supreme Court of Ohio severed several portions of Ohio Sentencing Statues, R.C. 2929.14(B), (C), R.C. 2929.19(B)(2), R.C. 2929.14(D)(2),(3) and R.C. 2929.14(E)(4).

This case presents a violation of the Sixth Amendment right to trial by jury under the United States Constitution. If this Honorable Court upholds the Fourth District Court of Appeals and The Supreme Court of Ohio decisions in the instant case, this would overturn this Courts precedents cases in *Blakely v. Washington* (2004), 542 U.S. 296, 124 S.Ct. 2531, 159 L.Ed.2d 403, *Apprendi v. New Jersey*, 530 US 466, 147 Led2d 435, 120 Sct 2348 (2000) and *United States v. Booker* (2005), 543 U.S. 220, 125 S.Ct. 738, 160 L.Ed.2d 621. This court must accept jurisdiction of this case to prevent the rules of law from being subverted. (emphasis added)

CONCLUSION

The petition for writ of certiorari should be granted because if this Honorable Court does not grant the petitioner's writ of certiorari. The Ohio Court's will overrules several of this Court's precedent cases cited above.

Moreover, this creates a miscarriage of justice for the petitioner simply because it

took the petitioner several years to discover that the State of Ohio violated his constitutional right. It does not change the fact that his sentences are void and he is being illegally held upon those void sentences.

Respectfully submitted,

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Done this 11th day of September 2018.