

ORIGINAL

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

AKINLABI COLEMAN

— PETITIONER

(Your Name)

vs.

THE STATE OF COLORADO

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Court of Appeals, State of Colorado, 2 East 14th Ave., Denver, CO. 80203
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Akinlabi Coleman, #99517

(Your Name)

Arkansas Valley Correctional Facility
12750 State Highway 96, Lane 13
Ordway, CO. 81034

(Address)

(City, State, Zip Code)

(Phone number is unknown)

(Phone Number)

QUESTION(S) PRESENTED

- 1) Were Mr. Coleman's Sixth Amendment rights to a jury determination of every element of an offense violated when he was only allowed a bench trial to determine his habitual criminality?

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:

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OTHER

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 _____ 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☐ is unpublished.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 _____ 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☐ is unpublished.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 B 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☒ is unpublished.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 Colorado Supreme Court court 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☒ is unpublished.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

☐ 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 July 30, 2018.
A copy of that decision appears at Appendix A.

☐ 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

United States Constitution, Amendment VI

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have previously been ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence."

Colorado Revised Statute, § 18-1.3-803(4)(b)

"(b) If the verdict is that the defendant is guilty of the substantive offense charged, the trial judge, or a replacement judge as provided in subsection (1) of this section, shall proceed to try the issues of whether the defendant has previously been convicted as alleged. The prosecuting attorney has the burden of proving beyond a reasonable doubt that the defendant has been previously convicted as alleged."

STATEMENT OF THE CASE

In 2010, a woman who worked for a medical marijuana store in the Denver metro area was alleged to have been robbed of some \$6,000.00 dollars in cash and 5 pounds of medical marijuana in a Target parking lot. The alleged victim's story was that she was responsible for depositing daily receipts from the store and because the owner was worried about burglaries, she was to take whatever marijuana there was home with her at the end of the day.

The victim took the money and the marijuana from the store on the day of the alleged robbery and met with a man, initially in a T.G.I.F. parking lot, but because it was crowded, they moved to a nearby Target parking lot. In that parking lot, as alleged by the victim, Mr. Coleman blocked her car in, pulled open the door of the car, struck her in the face and then took the money and marijuana. In an attempt to stop Mr. Coleman (and two others), she backed into their vehicle and then followed them down the street at a high rate of speed. The victim was eventually stopped by the police, where she explained that she had been robbed. The police eventually located Mr. Coleman's vehicle, which had damage to it that matched the victim's car, a small amount of marijuana and the victim's purse was in the car.

As relevant to this case. Mr. Coleman was charged with aggravated robbery under § 18-4-302(1) C.R.S. and conspiracy to commit aggravated robbery under §§ 18-4-302(1), 18-2-201 C.R.S. Mr. Coleman's theory of the case was that there was not a robbery, but rather a theft, as the alleged victim was a willing participant. Proof of this theory was submitted through the following facts: A) the victim initially identified a white man as the person who had struck her and taken the money/marijuana; B) the victim initially stated that she met with the other man in the parking lot for a date and then changed her story to saying she was meeting with him for the very first time to discuss other potential jobs in the medical marijuana industry (the idea that this was her

initial visit with the other man was refuted by phone records showing that she had texted and phoned the other man multiple times, i.e., at least thirty on the day of the alleged robbery alone); C) the alleged victim claimed that this was her last day to work at the job she had, however her boss knew nothing of this; and D) the victim had travel plans to go to Brazil and was very concerned about obtaining her passport from the police (a fact she later omitted, begging the question as to why she would be discussing other job possibilities if she was leaving to go to Brazil?)

The theory was that the alleged victim had stolen the money and drugs (rather than deposit the money as was required of her job duties), and that Mr. Coleman and the others had merely cut her out of the deal once she had shown up with said and they obtained control over it. The alleged victim's plan, as suggested was to keep the money and sell the marijuana to Mr. Coleman and the others at a greatly reduced rate. However, once the men obtained control over the marijuana they left with it, taking the victim's purse as well, which contained the \$6000 dollars. This theory was rejected by the jury and Mr. Coleman was convicted of the substantive offenses, plus two misdemeanor offenses.

Following the trial on the substantive offenses, the jury was dismissed and Mr. Coleman was tried for being an habitual criminal in front of the court who conducted the trial. See §§ 18-1.3-801, 18-1.3-803 C.R.S. He was convicted, resulting in his sentence exposures being multiplied to three (3) times that he would have otherwise normally been exposed to (48 years on the aggravated robbery charge and 24 years on the conspiracy to commit aggravated robbery charge resulting in an aggregate sentence of 72 years upon which he must serve 75% of prior to becoming parole eligible).

Mr. Coleman appealed, arguing in relevant part that his Sixth Amendment right to a jury determination of sentence enhancing elements was violated when he was given a bench trial versus a jury trial concerning the elements of his habitual criminality. This issue was denied by the State courts of Colorado.

REASONS FOR GRANTING THE PETITION

- 1) Were Mr. Coleman's Sixth Amendment rights to a jury determination of every element on an offense violated when he was only allowed a bench trial to determine his habitual criminality?

This Court first held in Apprendi v. New Jersey, 530 U.S. 466, 490 (2000), that other than the fact of a prior criminal conviction, any fact which increases the penalty for a crime beyond the prescribed statutory maximum must be charged, tried and proven beyond a reasonable doubt prior to it becoming available to increase the range of penalties to which the defendant is exposed. Id. In other words, this Court held that the Sixth Amendment provides a defendant the right to have a jury determine sentence enhancing fact, as such facts are elements of an offense.

The prior criminal conviction exception stated in Apprendi, was first addressed in Almendarez-Torres v. U.S., 523 U.S. 224 (1998). The validity of which has been questioned continuously given this Court's statements in Apprendi, that a logical application of the decision rendered therein would also apply to the recidivist issue if properly presented. Id., 530 U.S. at 489-90. That said, this Court has steadfastly refused to revisit the prior criminal conviction exception, despite myriads of petitions requesting that it do so. As a result, Mr. Coleman moves this Court to grant his petition and put this issue to bed once and for all.

Mr. Coleman's case is unique given that in Colorado, § 18-1.3-803(4)(b) C.R.S., requires that the prosecution prove a defendant's habitual criminality "beyond a reasonable doubt." Id., see also, People v. Wilson, 2013 COA 75, ¶ 47; 318 P.3d 538, 547 (finding that Colorado's habitual criminal statute expressly dictates that the burden of proof on an

allegation that a defendant is an habitual criminal is proof beyond a reasonable doubt); People v. Struck, 252 P.3d 1148, 1155 (Colo. App. 2010) (same). Nonetheless, even though this burden of proof is mandated by state statute, Mr. Coleman was only allowed a bench trial as to his habitual criminality following his convictions on substantive offenses by a jury of his peers.

Mr. Coleman's sentence was trebled under § 18-1.3-801 C.R.S., following the bench trial on his habitual criminality, resulting in what he respectfully submits is a violation of his Sixth Amendment rights. Consequently, he again moves this Court to grant certiorari on this issue and reverse the prior criminal conviction exception stated in Apprendi. This in turn will allow uniform application of the jury trial standards set forth in the U.S. Constitution, regardless of where they reside. See e.g., People v. Lockridge, 492 Mich 358, 870 N.W.2d 502 (Mich. 2015) (finding that the prior criminal conviction exception established in Apprendi is no longer valid in light of this Court's ruling in Alleyne v. U.S., 133 S.Ct. 2151 (2013)).

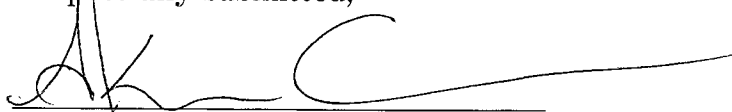
Equal and fair application of this Court's findings is of paramount importance to the citizen's of the United States of America, rendering the viable issue presented herein of sufficient significance to warrant the granting of certiorari by this Court. Moreover, as already noted, reaching a final conclusion on the issue presented herein will end the plethora of litigation presented to this and other courts, thereby serving the interests of judicial economy and efficiency.

CONCLUSION

All facts are attested to under the penalty of perjury pursuant to the provisions set forth in 28 U.S.C. § 1746.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'AKC' with a long horizontal flourish extending to the right.

Akinlabi Coleman, #99517

Date: 10-4-2018

Akinlabi Coleman, #99517
Arkansas Valley Correctional Facility
12750 State Highway 96, Lane 13
Ordway, CO. 81034