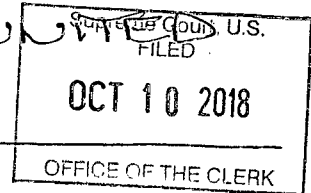


18-6562

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED
STATES



JASON PIERCE,

PETITIONER,

VS.

STATE OF GEORGIA,

RESPONDENT.

ON A PETITION FOR WRIT OF CERTIORARI
TO THE GEORGIA STATE SUPREME
COURT

PETITION FOR WRIT OF CERTIORARI

JASON PIERCE
TELFAR STATE PRISON
P.O. 549
HELENA, GA. 31037

QUESTIONS PRESENTED

1 - PURSUANT TO THIS COURT'S DECISION IN APPENDIX V, NEW JERSEY, 530 U.S. 466 (2000), AND THE SIXTH AMENDMENT OF THE U.S. CONSTITUTION, IS THE TRIAL COURT REQUIRED TO EXPLAIN ON THE RECORD AS CONCERNS A GUILTY PLEA THAT IF THE DEFENDANT PROCEEDED TO TRIAL AND WAS FOUND GUILTY AND THE SENTENCING WAS TO ^{BE} BASED ON THE FINDING OF AN AGGRAVATING CIRCUMSTANCE, THAT HE OR SHE IS ENTITLED TO HAVE A JURY DETERMINE THE SENTENCE AND THAT A JUDGE SITTING ALONE CANNOT MAKE THAT DETERMINATION?

2 - PURSUANT TO BOYKIN V. ALABAMA, 395 U.S. 238 (1969), I.E., "THE THREE BOYKIN RIGHTS", DOES THE SECOND RIGHT, "THE RIGHT TO TRIAL BY JURY", ONCE EXPLAINED BY THE TRIAL COURT DURING THE GUILTY PLEA COLLOQUY, EXTEND TO THE SENTENCING ENHANCEMENT IN

LIEU OF AN AGGRAVATED CIRCUM-
WHICH IS TO BE DETERMINED BY A
JURY DURING THE PUNISHMENT
PHASE? APPENDI, SUPRA.

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:

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
TABLE OF AUTHORITIES CITED	4-5
STATEMENT OF THE CASE	6-9
REASONS FOR GRANTING THE WRIT	10-22
CONCLUSION	23

INDEX TO APPENDICES

APPENDIX A - DECISION OF THE
GEORGIA SUPREME COURT

APPENDIX B - DECISION OF THE FULTON
COUNTY SUPERIOR COURT

APPENDIX C - DECISION OF THE
GEORGIA SUPREME COURT

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 2 AUG 2018.
A copy of that decision appears at Appendix A.

[] A timely petition for rehearing was thereafter denied on the following date: N/A, and a copy of the order denying rehearing appears at Appendix N/A.

[] 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

6TH AMENDMENT OF THE UNITED
STATES CONSTITUTION - RIGHT TO
TRIAL BY JURY.

TABLE OF AUTHORITIES CITED

CASES

PAGE NO.

APPENDIX V. NEW JERSEY,

530 U.S. 466 (2000) . . . 6, 8, 9, 10, 11, 12, 13, 15-22

PARBAGE V. STATE, 296 GA. 364 (2015) . 22

BLAKELY V. WASHINGTON,

542 U.S. 296 (2004) 11, 16, 19, 21

BOYKIN V. ALABAMA,

395 U.S. 238 (1969) 15, 18, 19, 21, 22

BURG V. STATE,

207 GA. APP. 118 (2009) 21

FARETTA V. CALIFORNIA,

422 U.S. 806 (1975) 8, 12, 13

HENRY V. STATE,

278 GA. 617 (2004) 21

JONES V. U.S.,

526 U.S. 227 (1999) 11, 16

CASES

PAGE NO.

PIERCE V. STATE,

289 GA. 893 (2011) 7, 11

RING V. ARIZONA,

536 U.S. 504 (2002) 10, 16

U.S. BOOKER,

543 U.S. 220 (2005) 16

U.S. V. MORGAN,

386 F.3RD 376 (2ND CIR. 2004) 11

STATUTES AND RULES

OFFICIAL CODE GEORGIA ANNOTATED

(O.C.G.A.) SEC. 17-10-32.1 11

O.C.G.A. SEC. 17-10-30(b)(2) 16

STATEMENT OF CASE

THE RECORD WILL SHOW IN THE CASE AT BARTON ON 28 SEPTEMBER, 1999 THE PETITIONER WAS INDICTED ON TWO (2) COUNTS OF MURDER AS CONCERNS TWO (2) SEPERATE VICTIMS AND A LITANY OF OTHER OFFENSES; THE STATE FILED ITS NOTICE OF INTENT TO SEEK THE DEATH PENALTY. AFTER THE CASE WAS INDICTED AND PRIOR TO TRIAL PROCEEDINGS, THIS COURT ISSUED ITS OPINION IN APPENDIX, NEW JERSEY, 530 U.S. 466 (2000), AS CONCERNS A JURY DETERMINATION IN CERTAIN CASES INVOLVING ENHANCED PUNISHMENT APART FROM RECIDIVIST TYPE SENTENCING. SUBSEQUENTLY, THE PETITIONER ENTERED A GUILTY PLEA DURING DECEMBER, 2003 TO ONE (1) COUNT OF MURDER AND SEVERAL RELATED OFFENSES; IN A SECOND PORTION OF THE GUILTY PLEA, DURING JANUARY, 2004 THE PETITIONER PLED TO THE SECOND MURDER AND REMAINING OFFENSES FOR AN AGGREGATE SENTENCE OF TWO (2) CONSECUTIVE LIFE SENTENCES WITHOUT THE POSSIBILITY OF

OF PAROLE.

THE RECORD WILL THEN INDICATE THAT ON 16 APRIL, 2007 THE PETITIONER FILED A MOTION TO VACATE VOID AND ILLEGAL SENTENCES IN THE SUPERIOR COURT OF FULTON COUNTY, STATE OF GEORGIA. AFTER SEVERAL YEARS OF REQUESTS FOR RULING, THE TRIAL COURT ISSUED AN ORDER DENYING THE MOTION. ACCORDINGLY, THE PETITIONER FILED HIS APPEAL WITH THE GEORGIA SUPREME COURT, WHICH REVERSED THE TRIAL COURT'S DECISION, I.E., THE TRIAL JUDGE HAD FAILED TO FIND ON THE RECORD THE AGGRAVATING CIRCUMSTANCE REQUIRED TO SENTENCE THE PETITIONER TO LIFE WITHOUT THE POSSIBILITY OF PAROLE. SEE PIERCE V. STATE, 289 GA. 893 (2011). UPON REMAND, THE PETITIONER ORALLY WITHDREW HIS GUILTY PLEA PRIOR TO RESENTENCING WHICH WAS GRANTED BY THE HEARING JUDGE. IN A SERIES OF INTERESTING LEGAL POSTURING^S AND THE RE-CUSSAL OF THE ORIGINAL JUDGE, A

NEW JUDGE WAS ASSIGNED TO THE CASE WHO REVERSED THE ORIGINAL JUDGE'S RULING IN ALLOWING THE PETITIONER TO WITHDRAW HIS GUILTY PLEA. AS A RESULT, THE COURT REINSTATED THE ORIGINAL SENTENCE FINDING THAT THE INITIAL JUDGE DID NOT CONDUCT A FARETTA HEARING PRIOR TO ALLOWING THE PETITIONER TO WITHDRAW HIS GUILTY PLEA; THE PETITIONER WAS REPRESENTED BY COUNSEL AT THE HEARING.

SUBSEQUENTLY, IT'S THEN INDICATED THAT AFTER A SERIES OF PRO SE MOTIONS ATTACKING THE CONVICTION, ON 26 FEBRUARY, 2018 THE PETITIONER FILED A MOTION TO VACATE VOID AND ILLEGAL SENTENCES PURSUANT TO THIS COURT'S DECISION IN APPENDI, SUPRA, I.E., THAT IN ACCORDANCE WITH THE SIXTH AMENDMENT UNDER THE U.S. CONSTITUTION, A DEFENDANT IS ENTITLED TO A JURY DETERMINATION OF ENHANCED PUNISHMENT IF THE SENTENCING DOES NOT ENTAIL RECIDIVIST TYPE ENHANCE-

MENT, I.E., THREE (3) STRIKE LAW, ETC...
ON 14 MARCH, 2018 THE TRIAL JUDGE
DENIED THE MOTION TO VACATE IN A
FINAL ORDER AND OPINION. SEE APPEN-
DIX B ATTACHED HERETO. THE PE-
TITIONER THEN FILED A TIMELY NO-
TICE OF APPEAL WITH THE CASE DOCK-
ETED IN THE GEORGIA SUPREME COURT,
CASE NO. S18A1492. ON 2 AUGUST, 2018
THE COURT DISMISSED THE APPEAL
CITING THAT THE PETITIONER HAD FAILED
TO RAISE A COLORABLE CLAIM WHICH WAS
THE APPENDIX ISSUE. SEE APPENDIX
A ATTACHED HERETO. THE PETITIONER
NOW BRINGS THIS PETITION FOR WRIT
OF CERTIORARI PRESENTING THE QUES-
TION TO THE COURT AS TO THE CONSTITU-
TIONAL APPLICATION OF APPENDIX IN
THE CONTEXT OF A GUILTY PLEA HEAR-
ING WHERE ENHANCED PUNISHMENT
WITH AGGRAVATING CIRCUMSTANCES
WOULD BE APPLICABLE IF THE DEFEN-
DANT PROCEEDED TO TRIAL AND WAS
CONVICTED, I.E., A JURY DETERMINA-
TION AS TO THE SENTENCE. SEE P. i OF
THE INSTANT PETITION, "QUESTION PRE-
SENTED."

REASONS FOR GRANTING THE WRIT

THIS COURT IN APPENDIX V. NEW JERSEY, 530 U.S. 466 (2000), CONCLUDED THAT, OTHER THAN A PRIOR CONVICTION WHICH MAY BE USED FOR RECIDIVIST PURPOSES TO INCREASE OR ENHANCE A CRIMINAL SENTENCE, ANY FACT SUCH AS AN AGGRAVATING CIRCUMSTANCE WHICH MAY INCREASE THE PUNISHMENT FOR A CRIME BEYOND THE MANDATED STATUTORY MAXIMUM MUST BE SUBMITTED TO A JURY FOR A DETERMINATION BEYOND A REASONABLE DOUBT. IN OTHER WORDS, A JUDGE SITTING ALONE IN THE SENTENCING / PUNISHMENT PHASE OF THE BIFURCATED TRIAL CANNOT FIND THE AGGRAVATING CIRCUMSTANCES NECESSARY FOR SENTENCE ENHANCEMENT; THAT IS THE SOLE PROVINCE OF THE JURY AND TO DO OTHERWISE WOULD BE A VIOLATION OF THE DEFENDANT'S SIXTH AMENDMENT RIGHT TO A TRIAL BY JURY. SEE RING V. ARIZONA, 536 U.S. 584 (2002) AND

JONES V. U.S., 526 U.S. 227 (1999). IN ADDITION, IT APPEARS THAT IN ORDER FOR THE "APPENDI RIGHTS" TO BE CIRCUMVENTED THAT THE DEFENDANT MUST MAKE A KNOWING WAIVER ON THE RECORD, I.E., ALLOW THE TRIAL JUDGE TO DETERMINE THE AGGRAVATING CIRCUMSTANCES TO ENHANCE THE PUNISHMENT. SEE BLAKELY V. WASHINGTON, 542 U.S. 296 (2004), U.S. V. MORGAN, 386 F.3D 376 (2ND CIR. 2004) AND HENRY V. STATE, 278 GA. 617 (2004).

THE RECORD WILL SHOW IN PIERCE, SUPRA, (SEE APPENDIX C ATTACHED), THAT THE GEORGIA SUPREME COURT STATED IN ITS REMAND ORDER THAT THE TRIAL COURT COULD RESENTENCE THE PETITIONER TO LIFE WITHOUT THE POSSIBILITY OF PAROLE CONTINGENT UPON THE PREREQUISITE THAT THE COURT ADHERES TO THE STATUTORY REQUIREMENTS PURSUANT TO O.C.G.A. SEC. 17-10-32.1, I.E., THAT THE COURT FINDS AT LEAST ONE (1) AGGRAVATING CIR-

CUMSTANCE, IT MAY IN ITS DISCRETION SENTENCE THE PETITIONER TO A LIFE SENTENCE WITHOUT PAROLE UNDER O.C.G.A. SEC. 17-10-30; A SENTENCE ENHANCEMENT AS TRACKED UNDER THE LANGUAGE IN APPEND. THE RECORD WILL INDICATE THAT UPON THE INITIAL REMAND ORDER, ON 16 APRIL, 2012 THE TRIAL COURT HELD A HEARING WHERE THE PETITIONER WHILE REPRESENTED BY COUNSEL WITHDREW HIS GUILTY PLEA WHICH THE COURT GRANTED. SUBSEQUENTLY, AFTER A CHANGE OF JUDGES AND NEW COUNSEL APPOINTED, A MOTION BY DEFENSE COUNSEL WAS FILED MOVING TO REINSTATE THE ORIGINAL GUILTY PLEA BASED ON A FARETTA VIOLATION, I.E., COUNSEL MAINTAINED THAT THE PETITIONER HAD WITHDRAWN HIS GUILTY PLEA AS A PRO SE LITIGANT AND THAT THE ORIGINAL JUDGE HAD FAILED TO HOLD A FARETTA HEARING AS REQUIRED BY THIS COURT'S HOLDING IN FARETTA V. CALIFORNIA, 422 U.S. 806 (1975). ACCORD-

INGLY, ON 4 JANUARY, 2013, IN WHAT CAN ONLY BE LIBERALLY CONSTRUED AS A MOTIONS / POSSIBLE RESENTENCING HEARING, WAS HELD BEFORE JUDGE KELLY LEE IN THE SUPERIOR COURT OF FULTON COUNTY. THE RECORD OF THIS HEARING SHOWS THAT THE HEARING JUDGE GRANTED COUNSEL'S MARETTA MOTION WHICH HAD THE EFFECT OF VACATING THE ORIGINAL ORDER GRANTING THE WITHDRAWAL OF THE GUILTY PLEA WHICH IN TURN REINSTATED THE GUILTY PLEAS ON 18 DECEMBER, 2003 AND 13 JANUARY, 2004 RESPECTIVELY; POST APPENDI. AS A RESULT OF THE CONVOLUTED SEQUENCE OF EVENTS, A RESENTENCING HEARING EVOLVED WHERE THE FOLLOWING ^{WAS} ~~WAS~~ OCCURRED AS CONCERNS SENTENCE ENHANCEMENT AND AGGRAVATING CIRCUMSTANCES;

(4 JAN, 2013 HEARING, W.T. 72-73);

THE COURT, "OKAY. WITH THAT, THE ONLY THING THAT THE

COURT NEEDS TO DO AT THIS POINT IS TO MAKE A DETERMINATION ON THE AGGRAVATING CIRCUMSTANCES.

I DO FIND BEYOND A REASONABLE DOUBT THE EXISTENCE OF AT LEAST ONE STATUTORY AGGRAVATING CIRCUMSTANCE... COMMITTED BY DEFENDANT PIERCE WHILE ENGAGED IN THE COMMISSION OF ANOTHER CAPITAL FELONY... I FIND AN AGGRAVATING CIRCUMSTANCE FOR THE THIRD GROUND RAISED BY THE STATE'S NOTICE... I FIND THAT THIS FOURTH GROUND OF AGGRAVATING CIRCUMSTANCE HAS BEEN MET BEYOND A REASONABLE DOUBT..."

THE ABOVE- STATED HEARING IN CONCERT WITH THE ORIGINAL GUILTY PLEAS FROM 18 DECEMBER, 2003 AND 13 JANUARY, 2004 FOR THE BASIS OF THE INSTANT PETITION, THE TWO GUILTY PLEA HEARINGS SHOW THAT THE COURT ONLY INFORMED THE PETITIONER OF HIS RIGHT TO A JURY TRIAL DURING THE PLEA COLLOQUY AS

CONTEMPLATED IN THIS COURT'S HOLD-
ING IN BOYKIN V. ALABAMA, 395 U.S. 238
(1969), I.E., THE THREE "BOYKIN RIGHTS"
HOWEVER, BOYKIN ONLY STOOD FOR THE
PREMISE THAT A DEFENDANT HAS A
SIXTH AMENDMENT RIGHT TO BE
TRIED BY A JURY, I.E., GUILT AND IN-
NOCENCE; THE SEMANTICS OF APPRENDI
WERE 31 YEARS IN THE FUTURE.
HERE, THE REALITY OF THE SITUATION
IS THAT THE INITIAL TRIAL COURT IN
2003 AND 2004 DID NOT INFORM THE
PETITIONER OF HIS APPRENDI RIGHTS
DURING THE GUILTY PLEA COLLOQUY
AND THEN AFTER WHAT AMOUNTED TO
A 10-YEAR DELAY IN SENTENCING, A
SECOND JUDGE WHILE SITTING ALONE
AND WITHOUT A KNOWING WAIVER ON
THE RECORD BY THE PETITIONER AS
TO HIS 6TH AMENDMENT RIGHT TO A
JURY DETERMINATION AS TO THE FIND-
ING OF AGGRAVATING CIRCUMSTANCES
FOR SENTENCE ENHANCEMENT, PRO-
CEEDED TO FIND AGGRAVATING CIR-
CUMSTANCES WHICH ARE REQUIRED
TO ENHANCE THE SENTENCE TO LIFE

WITHOUT PAROLE UNDER O.C.G.A. SEC. 17-10-30 (D)(2) WHICH IS OUTSIDE THE STANDARDIZED LIFE SENTENCE WITH PAROLE; THE STATE'S NOTICE OF INTENT TO SEEK AGGRAVATING CIRCUMSTANCES TO ENHANCE SENTENCING TRIGGERED THE PETITIONER'S 6TH AMENDMENT RIGHT TO A JURY DETERMINATION ON PUNISHMENT, I.E., APPENDI RIGHTS, SEE U.S.V. BOOKER, 543 U.S. 220 (2005); BLAKLEY, KING, AND JONES, SUPRAS. (EMPHASIS ADDED BY PETITIONER).

IN LIEU OF APPENDI AND ITS PROGENY COUPLED WITH TWO (2) SEPERATE TRIAL BY JURY RIGHTS UNDER THE 6TH AMENDMENT OF THE U.S. CONSTITUTION, I.E., GUILT AND INNOCENCE; PUNISHMENT WITH AGGRAVATING CIRCUMSTANCES, THE PETITIONER FILED HIS MOTION TO VACATE VOID AND ILLEGAL SENTENCES BASED ON THE TRIAL COURT'S FAILURE TO OBTAIN A KNOWING WAIVER ON THE RECORD BY THE PETITIONER AS TO HIS RIGHT TO A JURY DETERMINATION AS TO

THE SENTENCE ITSELF. IN THE TRIAL COURT'S FINAL ORDER, (SEE APPENDIX B, P. 8, PAR. 2+3), IN DENIAL OF THE PETITIONER'S MOTION IT STATES AS FOLLOWS:

" SECOND, DEFENDANT ARGUES HIS SENTENCE IS VOID BECAUSE COUNSEL FAILED TO ADVISE HIM OF HIS APPENDI RIGHTS DURING SENTENCING. DEFENDANT LATER CLARIFIED THAT NOWHERE IN THE RECORD DOES COUNSEL IMPLY TO OR FACTUALLY MAKES KNOWN TO DEFENDANT THAT HE WAS A RIGHT TO HAVE A JURY DETERMINATION UNDER APPENDI AS TO WHETHER STATUTORY AGGRAVATING CIRCUMSTANCES ACTUALLY EXISTS¹. THE COURT FINDS DEFENDANT WAS WELL AWARE HE HAD THE RIGHT TO A JURY TRIAL IN HIS CASE (EMPHASIS ADDED BY PETITIONER).

IN ADDRESSING THE ABOVE-

¹ THE PETITIONER ALSO RAISED THE FACT THAT THE COURT DID NOT EXPLAIN THE APPENDI RIGHTS ON THE RECORD IN 2003, 2004 OR 2013.

STATED ORDER, THE OPINION IN BOYKIN MAKES IT PATENTLY CLEAR THAT A DEFENDANT'S RIGHTS ARE NOT TO BE ASSUMED, HENCE, THE RIGHTS AN INDIVIDUAL IS CEDING BY ENTERING A GUILTY PLEA MUST BE EXPLAINED ON THE RECORD. THE TRIAL JUDGE IN THE CASE SUB JUDICE CANNOT POINT TO ANY SECTION OF THE HEARING TRANSCRIPTS FROM 2003, 2004 OR 2013 WHERE THE COURT EXPLAINED THAT THE PETITIONER HAD A RIGHT TO A JURY TRIAL AS TO A DETERMINATION OF WHETHER AGGRAVATING CIRCUMSTANCES EXIST IN ORDER TO ENHANCE THE SENTENCE, I.E., APPENDI RIGHTS. HOWEVER, THERE- IN THE QUANDRY EXISTS, THE COURT IN FULTON COUNTY IS USING THE LANGUAGE IN BOYKIN TO BLANKET AND/OR RETARD THE RECORD BY TRUMPETING THE AXIOM THAT, "THE DEFENDANT WAS WELL AWARE HE HAD THE RIGHT TO A JURY TRIAL IN HIS CASE". WHILE THIS IS A TRUISM AS THE HEARING JUDGE IN THE 2003 AND 2004 GUILTY PLEA COLLOQUYS INFORMED THE PETITIONER

THAT HE HAD A RIGHT TO A JURY TRIAL TO DETERMINE HIS GUILT OR INNOCENCE, IT CANNOT BE ASSUMED THAT THE PETITIONER KNEW HE HAD A RIGHT UNDER THE SIXTH AMENDMENT TO A JURY DETERMINATION AS CONCERNS AGGRAVATING CIRCUMSTANCES AND SENTENCE ENHANCEMENT, OTHERWISE, BOYKIN, APPENDI, AND ALL OF THEIR PROGENY WOULD SIMPLY BE SURPLUSAGE AND UNNECESSARY; THE COURT COULD ADOPT THE APPROACH USED IN FULTON COUNTY SUPERIOR COURT BY JUDGE KELLY LEE WHEREBY IT USES AUTOCRATIC LAW AND JUST MAKES IT SO THAT AN INDIVIDUAL KNOWS THEY HAVE A CERTAIN RIGHT WITHOUT EXPLAINING SAME ON THE RECORD. THE RECORD ON THIS ISSUE IS SILENT AND COMPLETELY DEVOID OF ANYTHING EVEN REMOTELY APPROACHING THE DICTATES OF APPENDI WHICH FALLS DIRECTLY IN THE CROSSHAIRS OF BLAKELY, SUPRA; ASSUMPTIONS WILL NOT SUFFICE WHERE AN INDIVIDUAL'S LIFE IS ESSENTIALLY HANGING IN THE BALANCE

AS WAS THE SITUATION IN THE CASE AT BAR.

THE GEORGIA SUPREME COURT IN ITS ABORTED OPINION (SEE APPENDIX A), STATES THAT THE APPEAL ISSUE IS NOT A COLORABLE CLAIM AND THAT THE APPEAL IS DISMISSED. IN OTHER WORDS, GEORGIA ESSENTIALLY DOES NOT RECOGNIZE THE TENETS AS OPINED BY THIS COURT IN APPENDI, I.E., THAT THE SENTENCING FALLS WITHIN THE STATUTORY REQUIREMENTS AS PROVIDED IN FORMER O.C.G.A. SEC. 17-10-32, 1 AND IN CONCERT WITH O.C.G.A. SEC. 17-10-30, TO SENTENCE AN INDIVIDUAL TO LIFE WITHOUT PAROLE IF AN AGGRAVATING CIRCUMSTANCE^{EXISTS}. THERE'S NO DEBATE OR QUESTION AS TO WHAT DOES OR DOES NOT FALL WITHIN THE SENTENCING STATUTES AS THEY APPLY TO THE CASE AT BAR, ON THE CONTRARY; THE ARGUMENT RESIDES IN THE FACT THAT NOWHERE IN THE RECORD WHICH BASICALLY COVERS 3 HEARINGS SPANNING 13 YEARS, DOES THE COURT

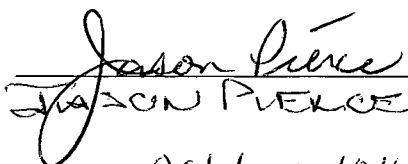
EXPLAIN THAT THE PETITIONER WAS A RIGHT TO A JURY TRIAL FOR DETERMINATION OF AGGRAVATING CIRCUMSTANCES TO TRIGGER SENTENCE ENHANCEMENT, I.E., THE "APPENDI^N RIGHTS. THE STATE OF GEORGIA ANSWERED THIS CLAIM BY THE IMPOSITION OF A TWO-PRONGED ATTACK, STATING THAT THE SENTENCE FALLS WITHIN THE STATUTORY GUIDELINES AND THAT THE PETITIONER "^UKNEW HE HAD A RIGHT TO A JURY TRIAL"; THIS DOES NOT SUFFICE TO COVER THE ORIGINAL INTENT IN BOYKIN AND THE SUBSEQUENT LOGIC IN APPENDI WHERE A DEFENDANT MAKES A KNOWING WAIVER ON THE RECORD AS TO THESE VALUABLE RIGHTS; THE WAIVER THAT THE RESPONDENT MAINTAINS THE PETITIONER MADE BY SOME TYPE OF CONJURING METHOD SIMPLY DID NOT OCCUR HERE. SEE BURG V. STATE, 297 GA. APP, 118 (2009) AND HENRY, SUPRA. AS IN BLAKELY, SUPRA, THE PETITIONER IN THE CASE AT BAR WAS AT NO TIME ADMITTED ON

ON THE RECORD AS TO THE AGGRA-
VATING CIRCUMSTANCES RELIED UP-
ON TO ENHANCE THE SENTENCE TO
LIFE WITHOUT THE POSSIBILITY OF
PAROLE WHICH COULD ONLY HAVE BEEN
ACCOMPLISHED BY A KNOWING^{WANTER} OF
THIS PARTICULAR 6TH AMENDMENT
RIGHT TO A TRIAL BY JURY. MORE-
OVER, A TRIAL COURT'S ABILITY TO
SENTENCE AN INDIVIDUAL TO LIFE
WITHOUT PAROLE, I.E., A JUDGE SIT-
TING ALONE WITHOUT A JURY DETER-
MINATION, IN GEORGIA DID NOT COME
INTO EXISTENCE UNTIL 29 APRIL, 2009
FOR CRIMES COMMITTED ON OR AFTER
THAT DATE, THUS THERE IS NO RETRO-
APPLICATION HERE. SEE BABBAGE V.
STATE, 296 GA. 364 (2015). IN LIEU OF
THE FACT THAT THERE IS NO "BRIGHT
LINE" RULE IN GEORGIA AS TO THE AP-
PLICATION OF APPENDI, AS IS EVIDENCED
BY THE COURT'S RULINGS IN APPENDIX
A+B, THIS COURT SHOULD GRANT THE
WRIT AND INSTALL A STEADFAST GUIDE
LINE AS IN BOYKIN, SUPRA.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,


JASON PIERCE - PETITIONER PRO SE

Date: October 10th, 2018