

ORIGINAL

No. **18-7119**

Supreme Court, U.S. FILED JUL 16 2018 OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

STANLEY GRIGSBY -- PETITIONER

vs.

STATE OF LOUISIANA -- RESPONDENT(S)
ON PETITION FOR A WRIT OF CERTIORARI TO

.....**LOUISIANA SUPREME COURT**.....
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR CERTIORARI

**STANLEY GRIGSBY #559960
CAMP "C" - BEAR 3
LOUISIANA STATE PRISON
ANGOLA, LOUISIANA 70712**

RECEIVED JUL 19 2018 OFFICE OF THE CLERK SUPREME COURT, U.S.

QUESTION(S) PRESENTED

1. Whether the Louisiana Court's have erred in determining that the sentence was not excessive?
2. Whether the Louisiana Court's have erred in failing to note the District Court did not have subject-matter jurisdiction to prosecute the case-in-chief?
3. Did the State of Louisiana have subject-matter jurisdiction to prosecute in accords with the law?

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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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☐ is unpublished.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☐ is unpublished.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 "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☒ is unpublished.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 Louisiana Court of Appeal, First Circuit 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☒ is unpublished.

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
A copy of that decision appears at Appendix

☐ 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

8th and 14th Amendment rights to the United States Constitution

Article I, § 20 of the Louisiana Constitution

La. R.S. 14:27; La. R.S. 14:30.1.

La. R.S. 15:529.1

STATEMENT OF THE CASE

The Defendant, Stanley Grigsby, was charged by Bill of Information with attempted second degree murder in violation of La. R.S. 14:27 and La. R.S. 14:30.1 and possession of a firearm by a convicted felon in violation of La. R.S. 14:95.1. He pled *not guilty*. Following a jury trial, Mr. Grigsby was found guilty of both counts. After a post trial motion hearing, the State filed a habitual offender bill against him and he was adjudicated a second felony offender as to count one only. The trial court sentenced him to 70 years at hard labor, without the benefit of probation, or suspension of sentence. As to count two, Mr. Grigsby was sentenced to 20 years at hard labor to be served concurrently with the sentence on count one. (R.p. 6)

In his prior appeal to this Appellate Court, the Court pretermitted discussion of Mr. Grigsby's assigned error as to excessive sentence and found as patent error that the sentence on Count One should have restricted the benefit of parole and sentence on Count Two also failed to restrict the benefit of parole and should have imposed the mandatory fine associated with the offense. (R.p. 7).

Pursuant to the order of the Appellate Court, on March 31, 2016, the lower court resentenced Mr. Grigsby restricting both sentences as to parole and imposed the mandatory fine, suspending it. (R.p. 18)

REASONS FOR GRANTING THE PETITION

ARGUMENT

COUNSELED ASSIGNMENT OF ERROR NO. 1:

The Sentence Imposed Herein Is Excessive.

An attempt to commit a second degree murder is punishable by not less than ten years, nor more than fifty years. *La. R.S. 14:27; La. R.S. 14:30.1*. Pursuant to the provision of *La. R.S. 15:529.1*, punishment as a second felony offender for attempted second degree murder carries a sentencing exposure of a minimum of twenty-five years and a maximum of one-hundred years, all to be served without benefit of probation, parole or suspension of sentence. Stanley Grigsby was sentenced to seventy years of imprisonment with no possibility of parole.

The evidence in this case, from the mouth of the victim, was that Mr. Grigsby was staggering as he walked across the street, as if he was drunk. This extreme level of intoxication immediately preceded the shooting. This was not a cold calculated act committed with a clear mind. Instead, it was conceived by a brain greatly impaired by alcohol, to the point that Mr. Grigsby's ability to walk was noticeably compromised. It was evident to Mr. Nicholas that the person approaching him from across the street was "drunk."

Article I, § 20 of the Louisiana Constitution provides that no law shall subject any person to excessive punishment. In upholding this mandate, the Louisiana Supreme Court has decreed that although a sentence is within statutory limits, it can be reviewed for constitutional excessiveness. *State v. Sepulvado*, 367 So.2d 762 (La. 1979). In giving guidance to a review for excessiveness, the Louisiana Supreme Court has explained that when a sentence constitutes nothing more than needless infliction of pain and suffering, it is unconstitutionally excessive.

State v. Bonanno, 384 So.2d 355 (La. 1980); *State v. Smith*, 2001-2574 (La. 01/14/03), 839 So.2d 1 (La. 2003).

The sentencing record should reflect that the trial judge considered not only the seriousness of the crime and the past criminal history of the defendant, but also the defendant's personal history (including age, mental status, dependents, family ties, employment record, and health) and the potential for rehabilitation. *State v. Quebedeaux*, 424 So.2d 1009 (La. 1982). It does not appear that these factors were given due consideration in this case. Although the trial court ordered a presentence investigation, there was no discussion regarding the aforementioned areas of Mr. Grigsby's personal history, nor did the court make any inquiries of Mr. Grigsby in this regard prior to sentencing. The uncontroverted fact that this crime appears to have been committed under extreme intoxication should have been given consideration in mitigation.

A presentence investigation is a valuable tool for ascertaining an appropriate sentence which is tailored to the circumstances of the particular defendant being sentenced. In *State v. Lockwood*, 439 So.2d 394 (La. 1983), the Louisiana Supreme Court recognized the importance of the PSI investigation and report to both the defendant and the integrity of the judicial system. The integrity of the judicial system requires that any sentence must not be based merely on unsupported impression or opinion, but on conclusions rationally derived from identifiable sources. *State v. Alexander*, 42,957 (La. App. 2nd Cir. 2/13/08), 976 So.2d 287. Absent a PSI or any identifiable basis for the sentencing court's observations, the reviewing court lacks the appropriate criteria by which to measure the sentence imposed was excessive. In order for a PSI to have any meaningful purpose, all of the relevant factors should be considered, such as whether the crime was committed while the person was intoxicated.

In recapping the reasons for sentencing Mr. Grigsby to seventy years, the trial court made clear what it was focusing on by stating the following: "In determining the length of the sentence imposed by the court, this court considered, in addition to the sentencing guidelines, this defendant's extensive history of violence both as a juvenile and as an adult, the egregious facts of this case. The defendant's clear lack of remorse - - of - - lack of remorse whatsoever in this case."¹ Sentencing Mr. Grigsby to seventy years without possibility of parole for the actions constituting the crime in this case was excessive, as it was made without proper consideration of the extreme level of intoxication which Mr. Grigsby was laboring under when he committed the crime. Accordingly, the trial court should have granted Mr. Grigsby's motion to reconsider his sentence as to the attempted second degree murder conviction.

PRO SE ASSIGNMENT OF ERROR NO. 1:

ARGUMENT AND AUTHORITIES

Title 2. Offense Against the Person Chapter 1 Homicide In Pertinent Part:

Article 29. Homicide is the killing of a human being by the act. Procurement or culpable omission of another. Criminal homicide is of three (3) grades:

1. Murder
2. Manslaughter
3. Negligent Homicide

Responsive verdict:

Murder, manslaughter and negligent homicide are specifically designated as different grades of homicide. Under an indictment for murder verdicts of the lesser offenses of manslaughter and negligent homicide will be proper.

¹ R., Vol. IV, p. 831.

A negligent homicide will be responsive to a manslaughter indictment. Also, a conviction for any basic offense a conviction of the lesser crime of an attempt to commit such an offense should be proper.

The *La. R.S. 14:27/14:30.1* in regards to homicide was not designated as one of the three homicide grades mentioned. Therefore, the responsive verdict being attempted second degree murder against the Appellant is void and the trial court lacked subject-matter jurisdiction where the above homicide statute is unconstitutional and Appellant stands falsely imprisoned, violative of his 8th and 14th Amendment rights to the United States Constitution. The cause of action should be dismissed and release ordered.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 7/13/18