

No. 18-7279

IN THE  
SUPREME COURT OF THE UNITED STATES

ORIGINAL

Supreme Court, U.S.  
FILED

DEC 31 2018

OFFICE OF THE CLERK

Christian S. Thomas — PETITIONER  
(Your Name)

vs.

State of Pennsylvania, Lancaster County  
District Attorney. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THIRD Circuit Court of Appeals of Pennsylvania  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Christian S. Thomas  
(Your Name)

SC 1 COALTOWNSHIP  
1 Kelley Dr, Coal Township, Pa 17866-1020  
(Address)

Coal Township, Pa 17866-1020  
(City, State, Zip Code)

NA  
(Phone Number)

## QUESTIONS PERSISTED FOR REVIEW

- 1) Is a federal question raised by a claim that a state collateral review erroneously failed to find a Teague, Graham, and Grant case and Miller exception?
- 2) Does miller, Graham, and Grant or the SB850 apply to Mr. Thomas, which in one court the Third circuit of Pennsylvania declared, that it did in fact apply to Mr. Thomas,” or does it categorically bar a penalty, or “instead mandates only a certain process and or group of juveniles.
- 3) WHEREFORE, it is in question if the lower court and or the two state courts along with the Third Circuit court and the Third Circuit court of Appeals violated and or made a mistake when deciding on Mr. Thomas’s case in a whole, was Mr. Thomas’s right to his 6<sup>th</sup> Amendment and 8<sup>th</sup> Amendment as well his 14<sup>th</sup> Amendment violated when each court denied to re-sentence him under the same laws that was made for all juveniles even after the Third Circuit Courts rule that it was unconstitutional to sentence Mr. Thomas to what amounted to a life sentence, Pro Se Petitioner ask this court of the high land to look at the evident and re-evaluate the violations of Mr. Thomas Clams and they are as followed;

(a) On his 6<sup>th</sup> Amendment a right to counsel if the Defendant is clearly unable to help himself do to a mental condition and will rely on counsel more than a person without all the mental disability's that Mr. Thomas had, which was in all pass court documents for the courts to identify.

5) The 8<sup>th</sup> Amendment which is cruel and unusual punishment, for not sentencing Mr. Thomas under the SB 850 which the United States Supreme Court had ordered all states courts to do, after June 24, of 2012, as the 14<sup>th</sup> Amendment of Due Process was a violation because the court's failed to give Thomas his rights and apply the same standard and rules, laws, that has been made for all juveniles within the United States.

6) Whether Mr. Thomas's Sentence violated the sentencing code for juveniles or whether Mr. Thomas received a fair sentence as a juvenile without a homicide, in which his re-sentence of 40 year to life is still a Defacto Life Sentence that he hopes this high court of the land will remand back down to the lower court's to be fix's.

7) Thomas's ask this high court of the land, that if taken his age in to account and his mental capacity at the time of the crimes and a very low IQ and not really understanding at the time what he was doing was wrong and not understanding the consequences of his actions.

8) For Mr. Thomas the big question is if his 40 to life sentence was or is a tantamount to a life sentence to where he may never be free in his life time being that the court's made clear that, "No court don't have to guarantee a juvenile non-homicide a second chance in his or her life time, but this we clearly be going against the 8<sup>th</sup> Amendment of cruel and unusual punishment; As the same court that has denied Mr. Thomas which is the Third Circuit Court of Appeals has stated 'before and I "quote"

We hold that a sentencing judge must conduct an individualized evidentiary hearing to determine the non-incorrigible juvenile homicide offender's life expectancy before sentencing him or her to a term-of-years sentence that runs the risk of meeting or exceeding his or her mortality.

Such hearings are already a familiar exercise for lower courts, which routinely measure life expectancy in various tort, contract, and employment disputes. See, e.g. Anastasio v. Schering Corp., 838 F.2d 701, 709 (3d Cir. 1988) (“A claimant’s work and life expectancy are pertinent factors in calculating {887 F.d 150} front pay, Critically, in addition to actuarial tables, lower courts should consider any evidence made available by the parties that bear on the offender’s mortality, such as medical examinations, medical records, family medical history, and pertinent expert testimony. Our foregoing constitutional concerns are dispelled by consideration of such evidence at an individualized hearing, which affords lower courts substantial discretion to “make an individualized assessment based on the facts presented,” Gall v. United States, 552 U.S. 38, 50, 128 S. Ct. 586, 169 L. Ed 445 (2007), so that the punishment fit[s] the offender and not merely the crime,” Pepper v. United States, 542 U.S. 476-88, 131 S. Ct. 1229, 179 L.Ed 2d 196 (2011) (quoting Williams v. New York, 337 U.S. 241, 247, 69 S.Ct. 1079, 93 L. Ed. 1337 (1949)).

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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 A to the petition and is

reported at herein Appendix A; 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 A to the petition and is

reported at herein Appendix "A"; 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 lower courts denied motion for transcript; or,  
[ ] has been designated for publication but is not yet reported; or,  
[ ] is unpublished.

The opinion of the \_\_\_\_\_ 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.

## JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was herein Appendix A.

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 A.

An extension of time to file the petition for a writ of certiorari was granted to and including NA (No Answer) (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 NA denied transcripts. 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).

## JURISDICTION

Article III, Section 2 of the Constitution vests federal court with jurisdiction over "Cases, in Law and Equity, arising this constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority," U.S. Const. art. III, § 2, cl. 1; See also 28 U.S.C. (granting federal district courts original jurisdiction over "all cases should be clear but here in this case is not, For the facts, The federal court's had the chance to fix Mr. Thomas's sentence when they see for the second time he was sentence to a DeFacto Life Sentence, As stated herein before Thomas's ask this high Court of the Land to take control if any resentencing are to be ordered.

## CONSTITUTIONAL AND STATUORY PROVISION INVOLED

As Mr. Thomas has stated before a violation of his 8<sup>th</sup> Amendment 6<sup>th</sup>, and 14<sup>th</sup> Amendment as well as his Due Process rights has been violated and should be fixed hopefully by this court. Furthermore, This court may step in and make things and laws right if see, fit and herein this case the lower courts determined in the exercise of its own independent judgment whether the punishment in question violates the constitution, because this case implicates a particular type of sentence as it appears to an entire class of offenders who have committed a range of crimes, The application of this forgoing approach of Mr. Thomas's 80 year sentence which should convince this high court of the land that this sentencing practice at issue is and was unconstitutional, *See Criminal Law § 78*, it's Clare that while entitled to great weight, is not itself determinative of whether a punishment is cruel and unusual. In accordance with the constitutional design, the task of interpreting the Eighth Amendment remains the culpability of the offenders at issue in light of Mr. Thomas's crimes and his characteristics, along with the severity of the punishment in question.

In this sentencing inquiry, the court also considers whether the challenged sentencing practice serves legitimate penological goals, stated by, Justice (Kennedy, J. Stevens, Ginsburg, Breyer and, Sotomayor, JJ.). The violation of Thomas's 8<sup>th</sup> Amendment guarantees him against cruel and unusual punishment contained in the Pennsylvania Constitution that provides "no" broader protection than those extended by the United States Constitution. See. Commonwealth vs. Lucas, 424 Pa Super, 173 622 A.2d 325 (1995), The aggregated sentencing of 40 to 80 years was so manifestly excessive as to constitute cruel and unusual punishment under certain circumstances, a prisoners sentence may violate the 8<sup>th</sup> Amendment. Solem vs. Helm, 463 U.S. 277, 103 S.ct 3001, 77 L.3d 637 (1983). In conducting a proportionality analysis under the 8<sup>th</sup> Amendment, the court should be guided by objective criteria including; (1) The gravity of the offense and the harshness of its penalty; (ii) The sentence imposed on other criminals in the same jurisdiction; and (iii) The sentence imposed for commission of the same crime in other jurisdictions," Commonwealth vs. Hallock 412 Pa. Super. 340, 603 A.2d 612, 617 (1992); quoing from Solem vs. Helm, Supra.

10) Petitioner states that it is a violation under the 8<sup>th</sup> Amendment of cruel and unusual punishment because to state that Mr. Thomas has {NO} right to be paroled, remains unconstitutional for the fact that Thomas may die in prison regardless of him having good behavior in prison, As Pennsylvania's parole release statute states and provides "the parole Broad with broad discretion, stating only that it can get grant parole " whenever in its opinion the best interests of the convict justify or require his being paroled and it does not appear that the interests of the Commonwealth will be injured thereby." See. 61 Pa. Stat. Ann. § 331.21.

Unlike the statutes considered in Greenholtz and Allen, Pennsylvania's parole release statutes contains; (1) {NO} substantives in predicates or criteria to guide parole authorities in deciding whether to grant parole; and (2) {NO} Mandatory language requiring that parole "shall" be granted "unless" specified conditions exist to deny release. Every court that has considered this issue has agreed the Pennsylvania's parole release statute does not create an expectation or entitlement to parole sufficient to trigger due process. See Rauso v. Vaughn, 79 F. Supp. 2d 550, 552 (E.D. Pa. 2000) ("parole is not a protected liberty interest in Pennsylvania"); Rodgers v. Parole Agent SCI Frackville, Wech, 916 F. Supp. 474,

477 (E. D. Pa. 1996) ("under Pennsylvania law, the granting of parole is not a constitutionally protected liberty interest") McCrery v Mack, 823 F. Supp. 288, 294. For all of these reasons on why Mr. Thomas is arguing this is because the state of Pennsylvania clearly states in pass motions of Thomas that they do not have to get Thomas a second chance at freedom but in hindsight Thomas's case was remanded for re-sentence on back in 2012 and Thomas was re-sentenced on October 2, 2013 at Lancaster County Courthouse and was given 40 years to life what most would label as a Defacto Life Sentence, which Thomas may die in prison before even reaching 40 years {NO} one person can't tell when someone would die and the court of Lancaster County, refused to give Thomas a Life Expectancy hearing to reach any kind of outcome to even see if Thomas could have a second chance, As the Third Circuit of the Court of Appeals stated in the case of Corey Grant, and I quote, "Once a non-incorrigible juvenile offender's life expectancy has been determined, the next step is for a sentencing court to shape a sentence that properly accounts for a meaningful opportunity for release. As discussed, a "meaningful opportunity for release" must provide "hope" and a chance for "fulfillment outside prison walls," "reconciliation with society," and

“The opportunity to achieve maturity of judgment and self-recognition of human worth and potential.” Graham, 560 U.S. at 79. This mandates, therefore, raises a challenging question for this court: at what age is one still able to meaningful reenter society after release from prison? Is there a principled reason for why, say, a juvenile offender can properly reenter society at age forty or forty-five but not at fifty, and or at fifty-five? Unlike in Roper, where the Supreme Court relied on scientific and social scientific scholarship to proscribe the death penalty for anyone who commits a crime before the age of eighteen, see 543 U.S. At 569-70, we are not aware of any widely accepted studies to support such precise line drawing on a principled basis in the prison release context. However, what is clear is that society accepts the age of retirement as a transitional life stage where an individual permanently leaves the work force after having contributed to society over the course of his or her working life. See, e.g., Retirement, Black’s Law Dictionary (10<sup>th</sup> ed. 2014) (“Termination of one’s own employment or career, esp. Upon reaching a certain age. . .”). It is indisputable that retirement is widely acknowledged as an earned inflection point in one’s life, marking the

Simultaneous end of a career that contributed to society in some capacity and birth of an opportunity for the retiree to attend endeavors in life. As I stated in the above, a non-incorrigible juvenile offender is not guaranteed an opportunity to live a meaningful life, and certainly not to a meaningful opportunity for release. Nevertheless, in order to effectuate the Eighth Amendment's requirement of meaningful for release, a juvenile that is found to be capable of reform should presumptively be afforded an opportunity for release, at some point before the age the of retirement. *Ct. Graham, 560 U.S. at 58* ("To determine whether a punishment is cruel and unusual, court must look beyond historical conception to the evolving standards of decency that mark the progress of a maturing society," (Internal quotation marks omitted) (*Quoting Estelle, 429 U.S. at 102*)). As the violations goes on from the Pennsylvania Court's violating Mr. Thomas's rights and they are as followed;

1) Excessive Bail, Fines, and the large amount of time giving to Mr. Thomas, as

Excessive bail shall not be required, nor excessive fines, nor shall any one juvenile be treated in a cruel and unusual punishment way, and or inflected any kind of cruel and unusual punishment. U.S Cont. Amend, VIII.

U.S. Const. art. III, § 2, cl. 1.

Jurisdiction of courts, the judicial power shall extend to all cases, in the Law and equity, arising under this constitution, the laws of the United States should be followed and know favors should be made to any kind of group and, or persons.

Federal Question

The district courts shall have original jurisdiction of all civil action arising under the Constitutional, laws, or treaties of the United States. 28 U.S.A. § 1331.

### STATEMENT OF THE CASE

This case involves a decision under the Graham vs. Florida case of juveniles with non-homicide crimes which the courts ruled that it was and is cruel and unusual punishment of the Eighth Amendment to sentence a juvenile to a life sentence and, or what amounts to a life sentence imprisonment without any meaningful opportunity to obtain release in his or her life time. Lancaster County Court of Pennsylvania did imply that Thomas did fit the criteria of the Graham case about the court's giving him so much time in prison that it would amount to a life sentence in which Thomas was re-sentenced on Oct 2. Of 2013 and was only re-sentenced to what amounted to a life sentence still, which was a 40 to 80 year sentence without the Court of Lancaster County PA, did not follow any of the rules that were stated for the courts to follow when re-sentencing a juveniles and I should quote this same court when it made clear as stated, ("We hold that a sentencing judge must conduct an individualized evidentiary hearing to determine the non-incorrigible juveniles who did not intend to kill, that the offender's life expectancy before sentencing him or her to a term-of-years sentence that runs the risk of meeting or exceeding his or her mortality). Such hearings are already

Familiar exercise for lower courts, which routinely measure life expectancy in various tort, contract, and employment disputes, See. E.g., Anastasio v. Schering Corp., 838 F.2d 701 (3<sup>rd</sup> Cir. 1988) ("A claimant's work and life expectancy are pertinent factors in calculating the time when to release a juvenile and or how much time one should spend in prison, as the court's also stated that it is critically, in addition to actuarial table, lower courts should consider any evidence made available by the parties that bears on the offenders mortality, such as medical records examinations, medical records, and of family medical records history, and pertinent expert testimony. The foregoing constitutional concerns are dispelled by consideration of such evidences at an individualized hearing, which affords lower courts substantial discretion to "make an individualized assessment based on the facts presented," Gall v. United States, 552 U.S. 38, 50, 128 S. Ct. 586, 169 L. Ed 2d 445 (2007), So that the punishment fit[s] the offender and not merely the crimes," Pepper v. United States, 562 U.S. 467, 487-88, 131 S. Ct. 1229, 179 L. Ed. 2d 196 (2011) ( quoting Williams v. New York, 337 U.S. 241, 247, 69 S. Ct. 1079 93 L. Ed. 1337 (1947))).

## REASONS FOR GRANTING THE PETITION

For the following reasons the "Defendant Thomas "who at the time of all charges was a 13<sup>th</sup> year old juvenile and was certified as an adult and giving 65 to 150 years imprisonment to which was overturned and re-sentenced on October 2, 0f 2013 in Lancaster County Pennsylvania, Mr. Thomas was re-sentence to 40 years to 80 years which he fills was still a life sentence, making it a "Defacto Life Sentence" once more. Now for the following reasons stated herein Thomas states that he was not protected against cruel and unusual punishment that is contained in the Pennsylvania Constitution. Commonwealth vs. Lucas, 424 Pa. Super. 173 622 A. 2d 325 (1995). The aggregated sentence of 40 to 80 years was so manifestly excessive as to constitute cruel and unusual punishment. Under certain circumstances, a prison sentence may violate the 8<sup>th</sup> Amendment. Solem v. Helm, 463 U.S. 277, 103 S.Ct. 3001, 77 L.Ed 2d 637 (1083). In conducting a proportionality analysis under the 8<sup>th</sup> Amendment, the court should be guided by objective criteria including: "(i) The gravity of the offense and the harshness of its penalty; (ii) the sentences imposed on other juveniles in the same state and or Jurisdiction; (iii) the sentence imposed for the commission of the same crime in other jurisdictions." See. Commonwealth v. Hallock, 412 Pa. Super. 340, 603 A.2d 612, 617 (1992); quoting from Solem v. Helm, supra.

Defendant concedes that there is no constitutional guarantee of special treatment for juvenile offenders. See, Lucas, supra at 622 A.2d 328. Defendant's argument is not a pure Solem v. Helm claim. Defendant claims that given the totality of the circumstances, including Thomas's age and mental capacity, the imposition of such a sentence was as excessive and disproportionate as to violate the Constitution.

The sentence upon this Defendant was tantamount to a sentence of life imprisonment. This sentence was imposed notwithstanding the fact that the pre-sentence investigation detailed significant mitigating circumstances which were presented to a certain extent "meaning that Thomas's health records was not presented in "NO" way nor was Thomas's mental health records. In particular, the Defendant had serious psychological issues and had a borderline intellectual capacity. He came from a horrendous family background and was lacking structure in his home at the time when he committed the crimes at the age of 13<sup>th</sup> years old and was apprehended at the age of 14<sup>th</sup> years old. Thomas had a very limited prior involvement with the criminal justice system.

It is apparent that the defendant's age was a substantial mitigating factor that needed to be evaluated by the lower court's when Thomas was re-sentenced. He had gone through the educational system and only passed the 8<sup>th</sup> grade as Thomas continued his schooling why in prison he has taken college classes and still he continues to strive to educate himself to the foulest.

Under Pennsylvania's System of Parole, the Aggregate Sentence of 40 to life as in 80 years which was Imposed by the Pennsylvania Trial Court is an Effective Life Sentence and or Defacto Life Sentence with a Possibility of Parole when Thomas turns 55 or 56 years. In Pennsylvania, once a sentencing court imposes a consecutive sentence, aggregation with other consecutive sentences it becomes and automatic and mandatory under the Pennsylvania Sentencing Code. Gillespie v. Dept. of Corrections, 527 A.2d 1061, 1065 (1987). Under the Pennsylvania Parole Act, 61 Pa. C.S. § 6137 (g) (6).

The Parole Act provides in part:

§ 6137. Parole power

- (a) General criteria for Parole.-
- (b) The power to parole granted under this section to the board may not be exercised in the board's discretion at any time before, but only after, the

expiration of the minimum term of imprisonment fixed by the court in its sentence or by the Board of Pardons in sentence which has been reduced by commutation.

61 Pa. C.S. § 6137 (a) (3). See Martin v. Pennsylvania Bd. Of Probation and Parole, 840 A.2d 299, 302 (Pa. 2003) ("Pursuant to Pennsylvania Law, the maximum term represents the sentence imposed for a criminal offense, with the minimum term merely setting the date after which a prisoner may be paroled. {But not guaranteed}. As Thomas stated before there is, to be a colorable argument that the terms setforth herein this motion should be heard be this high court of the land, Because Thomas has been denied review for his sentence and really without reasons, Thomas argues the purposes of determining the constitutionality of his 80 year sentence, there is "no" meaningful distinction between a "LWOP" sentence and Thomas's terms of years sentence which does not guarantee that Thomas's 40 years minimum sentence would be guaranteed that he will be released but it is guaranteed that Thomas will be released on his 80<sup>th</sup> year if he is still living at the time, As Pennsylvania rules will not be changed for one person but as the courts did not re-sentence Thomas under know sentencing scheme because they only had one sentencing scheme out in 2013 which was any juvenile

Who was locked up from the age of 14 years old and should receive 20 to life but this was related to juvenile with homicides, and No sentencing schemes was made for people like Thomas as juveniles without homicides who did not attend to kill or foresee that anyone would be killed.

Moreover, Thomas states that the Court of Lancaster County, still deprived him of the most basic liberties without giving hope of any restoration, the court did not mitigate the harshness by sentencing, Thomas to a Defacto Life Sentence of 80 years, with "No guarantee that Thomas would be released in or on his 40<sup>th</sup> year". See, Solem v. Helm, 463 U.S 277, 300-301 (1983) also See, Martin v. Probation and Parole. However, this deference paid to the trial court does not necessitate a rubber stamped approval of the sentence imposed on October 2, 2013, it would be a shame and mockery of the constitution of the United States, and a shame if all juveniles without a homicide was re-sentence to what amount to a Defacto Life Sentence and not guaranteeing to be released on his or her minimum term, So petitioner respectfully prays that this high Court of the land reconsiders this petition and remands it back to Lancaster County, Pennsylvania courts for re-sentencing, mostly because Lancaster County refused to be consistent with the Graham case as the Third Circuit Court Of Pennsylvania order the lower courts to do. See Appendix (E).

CONCLUSION

Based on the foregoing, Petitioner motion that is compelling with compelling reasons, Thomas prays that this court to remand for re-sentencing, and with the respect of this high court to order Lancaster County of Pennsylvania to remand and re-sentence.

RESPECTFULLY SUBMITTED BY,

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CHRISTIAN S. THOMAS FK-2566