

No. \_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES

MUHAMMET AJVAZI — PETITIONER  
(Your Name)

vs.

LORIE DAVIS - DIRECTOR TDC RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. COURT OF APPEALS, FIFTH CIRCUIT  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

MUHAMMET AJVAZI-1732724  
(Your Name)

BC UNIT 9601 SPUR 591  
(Address)

AMARILLO, TX. 79107  
(City, State, Zip Code)

N/A  
(Phone Number)

**QUESTION(S) PRESENTED**

(I). WHETHER THE COURT SHOULD REVERSE AND REMAND DUE TO THE ADMISSION OF EVIDENCE OF PRIOR CONVICTION USED AS ENHANCEMENT THAT WAS NOT FINAL.

(II). WHETHER THE COURT SHOULD REVERSE AND REMAND DUE TO THE VIOLATION OF PETITIONERS CONSTITUTIONAL RIGHTS.

## **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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CASES	PAGE NUMBER
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SPIERS V. STATE 552 sw2d 851 (1977) . . . . .	(7)
U.S. V. McCANN 613 F.3d 486,502 (2010) . . . . .	(7)
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## STATUTES AND RULES

Texas Penal Code Section 12.42(d) . . . . .	(5)
VA CODE ANN 19.2-297.1 . . . . .	(5)

## 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 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 is unpublished.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 United States district court 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 is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits 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 is unpublished.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 \_\_\_\_\_ 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 OCTOBER 19 2018.

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

Texas Penal Code ~~section~~ section 12.412(d) chronological sequence of events must be proved as follows: (1) "First conviction becomes final"; (2) offense leading to a later conviction is committed; (3) The later conviction becomes final; (4) the offense for which offender presently stands accused is committed."

Amendment XIV of the U.S. constitution: [nor shall any state deprive any person of life liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws]

Amendment VIII of the U.S. constitution: [Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted]

## STATEMENT OF THE CASE

THE STATE OF TEXAS V. MUHAMET AJVAZI INCLUDES (1) CASE FROM THE 8TH JUDICIAL DISTRICT IN HOPKINS COUNTY TEXAS. TRIAL COURT NO. 1122010.

A GRAND JURY IN HOPKINS COUNTY TEXAS INDICTED MR. MUHAMET AJVAZI ON JANUARY 2011. FOR UNLAWFUL POSSESSION OF FIREARM BY FELON WHICH WAS FILED FEB. 10, 2011. THE STATE FILED AN ORDER AMENDING INDICTMENT ON JUL. 20, 2011. THE INDICTMENT INCLUDED ENHANCEMENTS FROM ALLEGED CONVICTIONS FROM THE STATE OF VIRGINIA.

A JURY TRIAL WAS HELD IN WHICH DEFENDANT AND CO-DEFENDANT WERE TRIED TOGETHER ON: AUG. 1, 8, 9, AND 10, 2011. DEFENDANT WAS FOUND GUILTY AND SENTENCED TO (40) YEARS. DEFENDANT FILED A MOTION FOR NEW TRIAL ON AUG. 22 2011, AND NOTICE OF APPEAL AUG. 24 2011.

A JUDGEMENT NUNC PRO TUNC WAS FILED BY THE STATE SEPTEMBER 15 2011. WHICH CORRECTED THE JUDGEMENT PLEAD NOT TRUE TO THE FIRST AND SECOND ENHANCEMENT PARAGRAPHS IN THE AMENDED INDICTMENT.

## REASONS FOR GRANTING THE PETITION

### ARGUMENT

#### I

TEXAS PENAL CODE SECTION 12.42(d) GOVERNS PUNISHMENT ENHANCEMENT FOR HABITUAL FELONY OFFENDERS: SECTION 12.42(d) CHRONOLOGICAL SEQUENCE OF EVENTS MUST BE PROVED AS FOLLOWS: (1) "FIRST CONVICTION BECOMES FINAL"; (2) OFFENSE LEADING TO A LATER CONVICTION IS COMMITTED; (3) THE LATER CONVICTION BECOMES FINAL; (4) THE OFFENSE FOR WHICH OFFENDER PRESENTLY STANDS ACCUSED IS COMMITTED!"

THE STATE CARRIES THE BURDEN OF PROVING BEYOND A REASONABLE DOUBT THAT THE DEFENDANT'S SECOND PREVIOUS FELONY CONVICTION BECAME FINAL. AND WHEN THERE IS NO EVIDENCE THAT THE OFFENSES WERE COMMITTED AND BECAME [FINAL] IN THE PROPER SEQUENCE, THE DEFENDANT'S SENTENCE MAY NOT BE ENHANCED UNDER THE STATE'S HABITUAL FELONY OFFENDER STATUTE.

DID THE STATE [PROVE] THAT MR. AJVAZI'S (APPELLANT) 2008 STATUTORY BURGLARY FROM VIRGINIA (STATES EXHIBIT 20) WAS A [FINAL] CONVICTION UNDER VIRGINIA LAW SO AS TO MAKE IT AVAILABLE FOR ENHANCEMENT PURPOSES UNDER 12.42(d).?

THE STATE'S ARGUMENT OF VIRGINIA LAW WAS MISPLACED. ITS RELIANCE UPON VA CODE ANN 19.2-297.1 ENTITLED (SENTENCE OF PERSON TWICE PREVIOUSLY CONVICTED OF CERTAIN VIOLENT FELONIES) WAS NOT APPLICABLE TO AJVAZI'S VIRGINIA CASES. THAT IS THE STATE ARGUED THAT CERTAIN TYPES OF CASES EVEN IF SUCCESSFULLY PROBATED COULD BE USED FOR ENHANCEMENT PURPOSES UNDER VIRGINIA LAW FOR CERTAIN TYPES OF NEWLY COMMITTED TYPES OF OFFENSES.

## ARGUMENT

### II

ONE OF THE ERRORS OF THE STATE IS THAT NONE OF AJVAZI'S OFFENSES— HIS PRIOR CONVICTIONS OR HIS NEWLY COMMITTED OFFENSE — WERE "VIOLENT FELONIES" AS DEFINED BY VIRGINIA STATUTE.

THE STATE FAILED TO MAKE [PRIMA FACIE] SHOWING THAT PRIOR VIRGINIA CONVICTION ALLEGED IN STATES EXHIBIT 20 WAS A FINAL CONVICTION UNDER VIRGINIA LAW SO AS TO MAKE IT AVAILABLE FOR ENHANCEMENT PURPOSE UNDER TEXAS LAW. *See Dzhimigov v. State* 637 SW2d 926 (1982).

IN RESPONDENTS REPLY BRIEF FOR U.S.D.C NO 4:14 CV 764. THE STATE ATTEMPTED TO CHANGE THE LANGUAGE OF SECTION 12.42D AND SUBSTITUTE A PRIOR CONVICTION THAT MUST BE [FINAL] WITH [EXECUTED] THAT CONSTRUCTION GOES AGAINST THE PLAIN LANGUAGE OF THE TEXAS PENAL CODE SECTION 12.42(d) *see* respondents BRIEF P. 13

## ARGUMENT

### III

IN SPIERS V. STATE 552 SW 2d (1977) 851. THE COURT CONFRONTED A MISSISSIPPI CONVICTION INTRODUCED FOR ENHANCEMENT WHICH REFLECTED ON ITS FACE THAT THE SENTENCE WAS SUSPENDED. IT WAS THERE HELD: THERE IS NO SHOWING THAT THIS SUSPENDED SENTENCE WAS EVER REVOKED. ACCORDINGLY THERE IS NO PROOF THAT THE CONVICTION WAS A FINAL CONVICTION. ABSENT SUCH PROOF SUCH CONVICTION CANNOT BE USED FOR ENHANCEMENT.

IN U.S. V. McCANN 613 F.3d 486,502 (2010) ERROR CLEAR AND OBVIOUS WHEN SENTENCING BASED ON INSUFFICIENT RECORD.

AS IN SPIERS V. STATE. AJVAZI'S PRIOR CONVICTION(S) FROM THE STATE OF VIRGINIA AS DEPICTED IN STATES EXHIBIT WAS A SUSPENDED SENTENCE, AND WAS NOT REVOKED.

## ARGUMENT

### IV

U.S. V. WILSON 614 F.3d 219,226(2010) ERROR AFFECTED DEFENDANTS SUBSTANTIAL RIGHTS WHEN REASONABLE PROBABILITY THAT, BUT FOR ERROR, DEFENDANT WOULD HAVE RECEIVED MORE FAVORABLE SENTENCE. (IN AJVAZI'S CASE THE ERROR IN QUESTION CAUSED THE PUNISHMENT RANGE TO CHANGE FROM 2-20 TO 5-99).

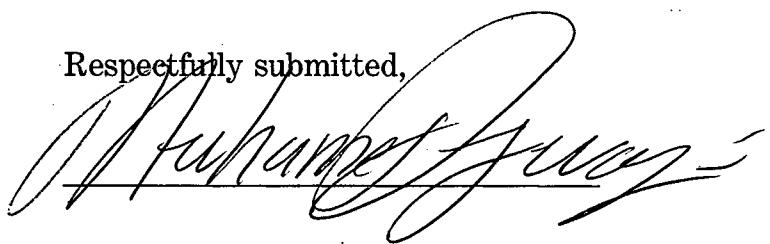
U.S. V. CASTRO-DAVIS 612 F.3d 53,69(2010) PLAIN ERROR REQUIRED REMAND WHEN ERROR IN SENTENCING HEARING RESULTED IN INCORRECT SENTENCING.

MR. AJVAZI CLAIMS [PLAIN ERROR], THAT THE STATE FAILED TO ESTABLISH THAT THE 2008 STATUTORY BURGLARY OFFERED IN STATES EXHIBIT 20 WAS FINAL BEFORE THE COMMISSION OF THE PRIMARY OFFENSE; THAT THE TRIAL COURT ADMITTED SUCH EVIDENCE OVER AJVAZI'S OBJECTION ON THAT GROUND THEREBY COMMITTED PLAIN ERROR WHICH AFFECTED AJVAZI'S SUBSTANTIAL RIGHTS, DUE PROCESS RIGHTS, AND THE OUTCOME OF AJVAZI'S CASE.

## **CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Richard J. Guay". The signature is fluid and cursive, with a prominent 'J' at the beginning.

Date: December 02 2018