

No. _____

In The
Supreme Court of the United States

◆
OMARI ROBINSON,

Petitioner,

v.

THE STATE OF ILLINOIS,

Respondent.

◆
On Petition For Writ Of Certiorari
To The Supreme Court Of Illinois

◆
PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

1. Is the mandatory 25-year-to-life weapon enhancement imposed by Illinois courts unconstitutionally vague?

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Omari Robinson respectfully petitions for a writ of certiorari to review the judgment of the Illinois Supreme Court in this case.



OPINIONS BELOW

The order of the Supreme Court of Illinois denying review was entered on September 26, 2018

The order of the Illinois Appellate Court, First District, affirming judgment was entered on March 28, 2018.



JURISDICTION

On September 26, 2018, the Supreme Court of Illinois denied Omari Robinson Petition for Leave to Appeal the Illinois Appellate Court's decision in this case. This petition for writ of certiorari has been timely filed within 90 days of that order. SUP.CT R. 13.1. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254 (1).



CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment to the United States Constitution provides in relevant part that "no State shall... deprive any person of life, liberty, or property without due process of law..." U.S. Const.amend XIV.

730 ILCS 5/5-8-1 (a)(1)(d)(i)- Sentence of Imprisonment for Felony:

(d)(1) if the person committed the offense while armed with a firearm, 15 years shall be added to the terms of imprisonment imposed by the court;

(d)(ii) if during the commission of the offense, the person personally discharged a firearm, 20 years shall be added to the term of imprisonment;

(d)(iii) if, during the commission of the offense, the person personally discharged a firearm that proximately caused great bodily harm, permanent disability, permanent disfigurement, or death to another person, 25 years or up to natural life shall be added to the term of imprisonment imposed by the court.

◆

STATEMENT OF CASE

On December 10, 2011, at about 12:30 a.m., Contrell Lester was shot by a man he did not recognize, who was sitting in the front passenger seat of a black van on Homan avenue near Jackson avenue in Chicago, Illinois. The van took off and drove to Belmont and Lake Shore Drive (LSD), where two police cars tried to curb it. The van sped away and led the police on a chase through the north side and back on LSD. The chase ended when the van made a u-turn in the southbound lanes of LSD and attempted to exit the drive from the on-ramp at Fullerton, crashing into a police car. As a result Robinson, who had been sitting in the passenger seat of the van, and was identified by Contrell as the person who shot him, was charged with attempt murder, aggravated battery with a firearm aggravated battery of peace officer, criminal damage to government supported property, resisting arrest, and aggravated fleeing or attempting to elude a peace officer.

Robinson was subsequently found guilty by the court of two counts of attempt murder and one count of aggravated battery with a firearm of Contrell Lester. Robinson was acquitted of the other charges.

During the sentencing hearing, the State, in aggravation, argued that despite the fact that Robinson had a good childhood and an older brother who is a teacher and served as a good role model, he chose the wrong path. The prosecutor pointed out that Robinson always had a problem with authority because he was expelled from school in his senior year for arguing with the principle about a cell phone. He has never been employed. The prosecutor pointed out that Robinson claimed to have been depressed earlier in 2011 because a good friend died in his arms after being shot, yet he went out and did the same thing. The prosecutor also pointed out Robinson's record which included drug offenses, that his conduct caused or threatened harm not only to Contrell, but to others on the street. Finally, the judge considered that Robinson attempted to destroy GSR evidence by spitting.

In mitigation, defense counsel argued that defendant had family support and no violent criminal history.

In deciding on a sentence, the judge considered the severity of Contrell's injuries and the fact that he has suffered permanent damage to his leg. The court also considered in mitigation that Robinson's background was largely non-violent and that he was in the process of obtaining his GED. The judge sentenced Robinson to 45 years, 15 for the attempt murder and 30 for the discharge of the weapon causing great bodily harm, with 1348 days of pre-sentence credit.



REASONS FOR GRANTING THE PETITION

The Illinois legislature has mandated that all offenses where a firearm is possessed or used are subject to an enhancement. The enhancement at issue in this matter, in pertinent part states:

“if, during the commission of the offense, the person personally discharged a firearm that proximately caused great bodily harm, permanent disability, permanent disfigurement, or death to another person, 25 years or up to a term of natural life shall be added to the term of imprisonment imposed by the court.” 730 ILCS 5/5-8-1(a)(1)(d)(iii)

This statute has become known as the gun enhancement. The court has no discretion in imposing the enhancement. It has withstood unconstitutionally vague challenges and has been upheld by the Illinois Appellate courts. See: People v. Sharp, 216 Ill.2d 481, 839 N.E.2d 492, 298 Ill.Dec.169 (2005); People v. Butler, 2013 IL App (1st) 120923, 994 N.E.2d 89, 373 Ill.Dec. 604, appeal denied, 996 N.E.2d 17, 374 Ill.Dec. 570 (2013); People v. Thompson, 2013 IL App (1st) 113105, 997 N.E.2d 681, 375 Ill.Dec. 326 (2014); People v. Sharp, 2015 IL App (1st) 130438, 26 N.E.3d 460, 389 Ill.Dec. 370.

The Illinois Courts have opined that: “Although the enhancement allows for a wide range of sentences, the scope of the sentencing range is clear and definite... Likewise, the standards for imposing the sentence enhancement are clearly defined... Depending on the injury caused by the firearm used by the defendant, the trial court has discretion to impose a sentence in the range of 25 years to life... The wise range of sentence enhancement is appropriate because it is impossible to predict every type of situation that may fall under the purview of the statute. By defining the types

of injuries that trigger the sentence enhancement, the legislative has provided the trier of fact with guidelines to apply when determining what sentence to impose within the boundaries of the statute. Therefore, the scope and standard of the 25-years-to-life sentence enhancement are not vague.” Butler, at [*P41.]

The statute is nowhere near as straightforward as the court claims. Furthermore its vagueness is what Petitioner believes is unconstitutional thus requiring it to be struck down by this Court.

The *Fourteenth Amendment* provides that “[n]o person shall... be deprived of life, liberty, or property, without due process of law.” Supreme Court law established that the Government violates this guarantee by taking someone’s life, liberty, or property under a criminal law so vague that it fails to give ordinary people fair notice of the conduct it punishes, or so standardless that it invites arbitrary enforcement. *Kolender v. Lawson*, 461 U.S. 352, 357-358, 103 S.CT. 1855, 75 L. Ed. 2d 903 (1983). The prohibition of vagueness in criminal statutes “is a well-recognized requirement, consonant alike with ordinary notion of fair play and the settled rules of law,” and a statute that flouts it “violates the first essential of due process.” *Connally, v. General Constr. Co.*, 269 U.S. 385, 391, 46 S. Ct. 126, 70 L. Ed. 322 (1926). These principles apply not only to statutes defining elements of crimes, but also to statutes fixing sentences. *Unites States v. Batchelder*, 442 U.S. 114, 123, 99 S.Ct. 2198, 60 L. Ed. 2d 755 (1979).

³The gun enhancement at issue here fails to appropriately guide judges and encourages arbitrary and discriminatory sentences. The statute does not provide an objective criteria as to where with the 25-year-to-life range a sentence should fall in.

There is one feature that conspires to make the sentencing enhancement unconstitutionally vague. The statute leaves grave uncertainty as to which injury in the statute warrants a higher sentence. The state in responding to the argument in defendants brief simply referred to the previous decisions by the Illinois Appellate Court. Therefore, it is necessary in this matter to see what argument the State replied with in other “void for vagueness” challenges and whether the court found the arguments persuasive. In Butler, the state argues that “logically it follows that the low range of the 25-year-to-life sentence enhancement addresses the situations with lesser harm or injury. While the higher range of the sentence enhancement is designed for the most serious situations such as where a death occurred.” Butler, at 26. The court agreed with the State and rules: *Depending* on the injury caused by the firearm... the trial court has discretion to impose a sentence in the range of 25-years-to-life.” However, Petitioner contends that the statute does not read as the state and Illinois Courts interpret it.

If the legislature meant to separate great bodily harm, permanent disfigurement, permanent disability and death as a sliding scale, it could have done so. It is noteworthy that in the same statute, possessing a weapon (d)(i) and firing a weapon (d)(ii), have their own subsections and corresponding sentences. The courts seek to use the order of appearance of the injuries in 5/5-8-1(a)(1)(d)(iii) as an indicator and answer of the legislature’s intent. This line of reasoning fails because of the conjunction “or.” In this situation, “or” makes great bodily harm, permanent disfigurement, permanent disability and death equal for the purposes of sentencing, of course. Lastly, nothing in the statute precludes the giving of

lengthier sentences on great bodily (opposite of the state's theory in *Butler*) if the court so chooses.

The application of this statute in cases have produced "arbitrary [and] freakish sentence[s.] Wainwright v. Goode, 464 U.S. 78, 86, 104 S.Ct 378, 78 L.Ed.2d 187. In this matter, Petitioner's initial sentence (attempted murder in Illinois carries a sentence of 6-30 years), has been tripled due to the gun enhancement This Court has ruled "[W]here discretion is afforded to a sentencing body... that discretion must be suitably directed and limited so as to minimize the risk of wholly arbitrary and capricious actions." Gregg v. Georgia, 428 U.S.153, at 189, 96 S.Ct. 2909, at 2932.) This means that if a state wishes to enact a sentencing statute, it has a constitutional responsibility to tailor and apply its law in a manner that affords a defendant due process. It must channel the sentencer's discretion by clear and convincing standards that provide specific and detailed guidance and that make rationally reviewable the process for the importance of such sentence. There is nothing in 5/5-8-1(a)(1)(d)(iii) to indicate this necessary guidance.

Even the Illinois Appellate Court has spoken of the confusion arising from the application of this statute:

"Confusion could be avoided if the legislature provide more explicit guidance regarding the imposition of the 25 years-to-life sentence enhancement." *Butler*.

Yet, the same Court which has upheld this statute have failed to ensure that the legislature has effectively discharged its duties. The perfunctory affirmance of this statute without any true, in-depth analysis offers unpredictability and uncertainty. Decisions under this statute have proved to be inconsistent and without true "vagueness evaluation." Citing so

shapeless a provision to condemn someone to prison for 25 years-to-life does not comport with the Constitution's guarantee of due process.



CONCLUSION

Upon the above-mentioned grounds fundamental fairness and due process requires this request to be granted.

Respectfully submitted,

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