

No. 18-7491

GENERAL
SERIAL

IN THE
SUPREME COURT OF THE UNITED STATES

FILED
JUL 03 2018
OFFICE OF THE CLERK
SUPREME COURT, U.S.

SCOTT CROW — PETITIONER
(Your Name)

vs.

LORIE DAVIS - TDCJ — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals - 5th Circuit

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

SCOTT CROW
(Your Name)

Neal Unit - 9055 Spur 591
(Address)

Amarillo, Texas 79109
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

Q) Did the Federal Judges in the 5th Cir. fail to review my newly discovered claims, that I only discovered AFTER Federal District Judge Junell (Midland), "Errorously," ruled that I am incarcerated for Habitual DWI - 25-99 yrs, received only 20 yrs as part of my plea deal, when I'm not in prison on Habitual Charges, and I Am not even in prison on my plea deal!?

Q) Are my Equal Protections under the 14th Amend., and Due Process rights violated when: 6th Amendment Rights;

① I was arrested and charged with the Crime of Driving While Intoxicated (F3), but the State charged me with the Higher Offense of Driving While Intoxicated (F2), which now includes "Intoxication - Assault", which is not a lesser included offense, and for which I was never admonished by the Judge? (In their 2nd Information)

② If I did not have any accident(s), how then can the State in their 2nd Information, after I exercised my Constitutional right, now charge me with a form of "Intoxication Assault", and NOT tell me of the elements, nor admonish me of the elements?

③ The State, after forcing me to Plead to the New-Higher "Intox - Assault" charges, (then) "lowers" the charges to the (1st) Information's F³ DWI charges, and submits those charges to TDCJ for my "Final" Judgment of Conviction? (Breach of Plea Agreement)

④ When trial Counsel fails to tell me I now face "Intoxication Assault", fails to challenge "why" or "how" the State can charge me for a Crime I was never charged or arrested for?

⑤ When the State's Attorney General says "I" Plead to F³ DWI, enhanced to F² DWI, 20 yr. MAX sentence, and the Fed. Dist. Judge argues "I" Plead to a F² DWI, enhanced to Habitual 25-99 yrs, (by now), a Habitual Paragraph (nonexistent), and received only 20 yrs, on a 25 yr. minimum? Both are completely wrong about my charges?

I Am in prison on F³ DWI, enhanced to F² DWI 20 years - NOT in my plea deal, I did NOT plea to these charges.

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.....	
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	
STATEMENT OF THE CASE	
REASONS FOR GRANTING THE WRIT	
CONCLUSION.....	

INDEX TO APPENDICES

APPENDIX A	Federal Cases (No. 18-50639), (No. 18-50429)
APPENDIX B	Ex. 1 , STATE Trial records, ATTN. Gen. Response, Fed. Dist. Court response
APPENDIX C	2nd Information, Judgement of Conviction papers, TX. penal Code 63.09
APPENDIX D	Def. Ex. to Discovery, Crim. Doctet, Arrest Report records, Blood warrants.
APPENDIX E	(2008 Indictment) Judgement of Conviction papers 15yrs TDCJ F3 DWI
APPENDIX F	N/A

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Taylor v. Whitley, 933 F.2d 325, 329 (5th Cir. 1991)	7
U.S. v. Ruiz, 536 U.S. 622, 629 (2002) - quoting Brady v. United States, 397 U.S. 742, 748 (1970)	7
United States v. Washington, 480 F.3d 309, 315 (5th Cir. 2007)	7
U.S. v. Wilson, 639 F.2d 500, 502 (9th Cir. 1981)	9
U.S. v. Stroud, 673 F.3d 854, 859 (8th Cir. 2012)	9
N. Carolina v. Alford, 400 U.S. 25, 32, 91 S.Ct. 160, 164, 27 L.Ed 2d 162 (1970)	10
U.S. v. DiIano, 507 U.S. 725, 732 (1993) see also Jones 527 U.S. at 388-89	12
U.S. v. Snipe, 441 F.3d 119, 138 (2nd Cir. 2006), U.S. v. Leahy, 445 F.3d 434, 435 (3rd Cir. 2006)	12
U.S. v. Gray, 581 3d. 749, 753-55 (8th Cir. 2009)	12
U.S. v. CASTRO, 704 F.3d 125, 137-41 (3rd Cir. 2013)	12
Strickland v. Washington, 416 U.S. 688, 687 (1984)	13
U.S. v. Broce, 480 U.S. 543, 570 (1989) (at 569)	18
STATUTES AND RULES	
Fed. Rules Cr. proc. 11, 18 U.S.C.A.	10
Crim. Law 273.3, 273.4 (1)	10
Crim. LAW 273.1 (4)	10
Crim. LAW 273.1 (3)	10
TX. penal Code 49.09 Enhanced offenses and penalties	11
TX. pen. Code 49.09(b)(b1)	11
TX. pen. Code 49.07	11
TX. pen. Code 49.09(b)(b4)	11
Fed. Crim. P. 52(b)	12
Fed. R. Crim P. 11 H(c)(1)	13

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 B 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 N/A court appears at Appendix N/A to the petition and is

reported at N/A; 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 September 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 NOV. 2015.
A copy of that decision appears at Appendix N/A. NOT ALLOWED A COPY.

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

The Fifth Circuit held me to the same standards of learned counsel refused to review my claims in which Fed. Judge Junell erroneously ruled I'm incarcerated on Habitual 25-life DWI, received only 20yrs, and my claims that I newly discovered evidence (due to his erroneous ruling)

Due Process and Equal Protections of the law, as well as a basic 14th amend. right to competent counsel for my defense.

Charged with a 1st DWI Intoxication Assault Charges in the States 2nd Information Plea offer, I never committed, nor ever told of by the State, Def. Counsel or Trial Court. Never admonished of said crimes, admonished(?) for Habitual DWI, that I was never charged under?

violations of due process, equal protections, and 14th amendment.

The Statutory Provisions were, and could never have been proven, when the law (Texas) says that I had to have caused serious bodily injury to a paramedic, fire fighter or officer while in the actual discharge of duty (OR:) Serious bodily injury to another in the nature of a traumatic brain injury that results in a persistent vegetative state. (I had NO Accident!)

The 1st DWI charge of DWI which incorporates "Intox. Assault" under the Texas Statute, is NOT what I was actually charged and sent to prison under. The State says 49.09(b).

They charged me in the 2nd Information with 49.09(b) (b-1) an offense Under Section 49.01 is (b-1) Intox. assault 1st degree, OR, (b-4) Intox. Assault - brain trauma. Which one am I accused of?

"A defendant has a 'due process' legitimate expectation that the sentence he heard (orally) pronounced in the courtroom, is the same sentence he will be required to serve." Ex Parte Maddox, 70 S.W. 3d 131, 136 (TX.CCA 2002)

Procedural due process is due when a protectable liberty interests are created,

STATEMENT OF THE CASE

The Fifth Circuit Failed to allow my "New Evidence" per se, when Fed. Dist. Judge Junell "erroneously" ruled that I am incarcerated on a Habitual 25-life, I am not, which I researched "why" he ruled this way only to find out, Newly, that I was charged with Intox. Assault.

After exercising my right to Jury trial, by saying "NO" to the State's (F3) DWI Charges, (20 yr.) Plea Offer on their 1st Informations Charges,

29 min. later, the State presents a 2nd Information now charging me with a new, Higher charge of Felony 2 DWI, then now adds an (1) enhancement Paragraph. The Court reads the NEW Charges into the records, and then proceeds to admonishing me for a (3rd) Charge now, Habitual 25-99 years DWI (as understood) by Federal Judge Junell (District Court, Midland, TX.).

No one, Def. Counsel, D.A. nor trial Court ever tell me I now face "Intoxication Assault" charges, only that I face "life". (3) different charges, admonished on (1) charge in the 1st Information F3 DWI, with no enhancement Paragraph, admonished for F2 DWI, 20 yr. \$10,000 fine. SAID "NO" to Plea deal.

2nd Information produced charging me with crime I never committed, never informed I faced, never admonished for in trial court.

Defense Counsel failed to question these new higher charges, failed to view discovery to even "know", I never committed this crime.

The trial judge enters the plea negotiations by telling me the "State" is trying to indicate to "me" and this court, they "could" increase my charges a (2nd) time to Habitual 25-99 yrs, (IF) they could prove up priors under 12:42(d). All before I've Plead, understood, waived anything. I was "overwhelmed"; I had no idea what I actually faced in charges, but "feared" longer incarceration (again). The (3) different charges, confused the Federal district Judge so much, he finds that I Plead and understood (knowingly) to "Habitual" 25-99 yrs, admonished, and received 20 yrs in TDCJ as per my Plea.

REASONS FOR GRANTING THE PETITION

- ① I was never told I faced Felony² DWI / Intox. Assault charges, moreover I never committed any such crime.
- ② My def. Counsel never viewed the (4) hours of video, (4) videos, to know the state "couldn't" charge me with F² DWI - Intox. Assault.
- ③ Trial Court never admonished me of Intox. Assault elements, nor did he tell me I now faced F¹ charges once enhanced by "true" Paragraph in the States 2nd Information Plea deal.
- ④ Trial Court never tells me min. or max. sentencing range under the Statutes Penal Code of 5yrs min. 99yrs. maximum.
- ⑤ The D.A. of Tolar Co. Vindictively brought "Higher" Intox. Assault charges against me, after I said "NO" to their 1st Informations Plea deal, a crime they know I never committed, and they could never prove. Such false charges.
- ⑥ The D.A. then changed the charges (back) down to the 1st Informations F³ DWI enh. F² DWI charges, said I plead to that charge, and submitted "Final" Judgement of Conviction Papers to TDCS for my incarceration, saying that I now plead to these charges, (falsely), and completely proving "breach" of Plea agreement, and actual vindictive prosecution by their clearly 'false' intentions.
- ⑦ The A.G. of Texas fraudulently argues for (2) years that my Plea deal was in fact for a F³ DWI enh. to F² DWI charges under the States (2nd) Informations charges. When she knew full well the (2nd) Informations charges "started" with F² charges of DWI, with an enhancement Paragraph below the charge, making this a Felony one DWI. She completely "covered up" for the County D.A.
- ⑧ Fed. Judge Junell "so Confused", he thinks and argues I am in prison for Habitual 25-99 yrs DWI charges, when I'm here on F³ DWI enhanced to F² DWI charges, I said NO to.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Scott A. Crow

Date: 10-18-18