

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Harold Hall — PETITIONER
(Your Name)

vs.

State of Alabama — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Alabama Court of Criminal Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Harold Hall # 209369
(Your Name)

200 Wallace Drive
(Address)

Clio, Alabama 36017
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

- 1) Whether Mr. Hall was denied effective assistance of counsel required by the federal constitution's Sixth Amendment when his trial counsel refused to participate in the trial proceedings, thereby allowing a complete breakdown in the adversarial process, and denying Mr. Hall a fair trial?
- 2) Whether the State Court's findings are contrary to the United States Supreme Court's holdings in United States v Cronic?
- 3) Whether the sentencing court erred when it departed from the presumptive sentencing guideline range by using the sentencing enhancements codified at § 13A-12-250 and § 13A-12-270 as aggravating factors although the Alabama Legislature prescribed that no additional punishment pursuant to any sentence enhancement statutes shall apply.

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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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TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
<u>United States v. Cronic</u> , 466 U.S. 648, 104 S.Ct. 2039, 80 L.Ed.2d 657 (1984)	
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STATUTES AND RULES

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 _____ 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[] is unpublished.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[] is unpublished.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 2016 Ala. Criminal Appeals LEXIS 12; 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 _____.

[] 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 June 15, 2018.
A copy of that decision appears at Appendix C.

[] 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

United States Constitution

Sixth Amendment

Fourteenth Amendment

Fifth Amendment

Alabama Statutes

§ 12-25-30

§ 12-25-32

§ 12-25-34

§ 12-25-34.2

§ 13A-5-9

§ 13A-12-211

§ 13A-12-250

§ 13A-12-270

Other Authorities

2013 Alabama Sentencing Commission Sentencing Standards Manual

Alabama Sentencing Commission 2013 Annual Report

1975. The State of Alabama filed a notice of intent to seek sentence enhancement based upon two aggravating factors. The two aggravating factors were that the distribution offense accrued within three(3) miles of a public or private school and within a three(3) mile radius of a public housing project owned by a housing authority. These two aggravating factors are actually sentencing enhancement provisions codified at §313A-1a-250 and 13A-1a-270 respectively. Although the notice of aggravating factors was filed more than a week before trial, the defendant was never notified of either factor at the beginning of trial and the trial court found him to be voluntarily absent. Appointed counsel repeatedly objected to the proceedings going forward without Mr. Hall and repeatedly requested a continuance. Mr. Hall was not ultimately absent from the proceedings and explained his absence and repeated his sentencing hearing to the trial court during his sentencing hearing.

Mr. Hall was tried and convicted in abstention on December 11, 2013 after failing to appear at the beginning of trial and the trial court found him to be voluntarily absent. Appointed counsel repeatedly objected to the proceedings going forward without Mr. Hall and repeated a continuance. Mr. Hall was not present for the trial and the trial court found him to be voluntarily absent. Appointed counsel and repeat offenders will be sentenced without Mr. Hall being there.

The Retitiation, Harrold Hall was indicted by the grand jury of Butte County, Alameda on March 11, 2013 on one count of unlawful distribution of cocaine, a violation of 313A-1a-311, Alameda Code

STATEMENT OF THE CASE

Counsel repeated these objections throughout trial. Despite these objections, the trial court ordered the trial to proceed. Trial counsel refused to participate in the trial before the jury. Attorney Gibson did not give an opening statement, did not cross examine any of the State's witnesses as inculpable evidence was presented, did not present a defense case, and failed to offer a closing statement. Mr. Hall was convicted of one count of unlawful distribution of a controlled substance as charged in the indictment. The jury also determined that the State had proved that Mr. Hall's offense occurred within a 3-mile radius of a public or private school, college, university, or any other educational institution, in violation of §13A-12-250, Ala. Code 1975, and within a 3-mile radius of a public housing project owned by a housing authority, in violation of §13A-12-270, Ala. Code 1975.

After authorities located and arrested Mr. Hall on February 7, 2014, sentencing was held on February 20, 2014. The trial court sentenced Mr. Hall to life imprisonment for unlawful distribution of a controlled substance and to two consecutive five year sentences pursuant to the enhancements under §13A-12-250 and §13A-12-270, Code of Alabama 1975. Hall objected to his sentence being enhanced and challenged the legality of the sentence imposed upon him as well as arguing that he was entitled to a new trial on the grounds that he was denied his Sixth Amendment right to effective counsel in motions for new trial and sentence reconsideration. These motions were denied by operation of law and timely notice of appeal was given.

On appeal, Hall argued that he was denied his Sixth Amendment right to effective assistance of counsel and that he was illegally sentenced pursuant to the Alabama Habitual Felony Offender Act, §13A-5-9, Ala. Code 1975 rather than pursuant to presumptive sentencing guidelines, §12-25-34.2.

On May 18, 2015, the Alabama Court of Criminal Appeals remanded the cause back to the trial court for an evidentiary hearing on the ineffective assistance of counsel issue only. The presiding judge of the court of appeals specifically stated in her order that "evidence supporting Hall's specific allegation of ineffective assistance of counsel is found in the record." Judge Windom further stated that "an allegation of ineffective assistance of counsel supported by evidence in the record is sufficient to entitle a defendant to a new trial."

An evidentiary hearing was held on June 18, 2015 and the trial court issued an order on June 19, 2015 denying Mr. Hall's claim of ineffective assistance counsel, stating that Hall had failed to present any evidence to support his claim and satisfy his burden as set out in Strickland. The trial court further stated that trial counsel's failure to participate in the trial was reasonable trial strategy. The trial court's Order made no reference to Cronic and the presumption of prejudice.

The Court of Criminal Appeals affirmed Mr. Hall's conviction and sentence on March 18, 2016 stating in their decision that it was

no error to deny defendant's new trial motion claiming he was denied effective assistance of counsel when counsel did not participate in his trial because he presented no supporting evidence, as his motion was unverified and no supporting affidavits were attached, and that the trial court did not abuse its discretion when it departed from the presumptive sentencing guidelines and sentenced Hall pursuant to the Habitual Felony Offender Act, §13A-5-9(c)(2).

Application for Rehearing to the Court of Criminal Appeals was overruled on May 27, 2016.

Petition for Writ of Certiorari was filed in the Alabama Supreme Court on June 9, 2016. Petition for Writ of Certiorari was Granted as to Ground 2 (sentence) and denied as to all other grounds on September 15, 2016. On June 15, 2018, the Writ of Certiorari was Quashed by the Alabama Supreme Court with no opinion.

The Courts of Alabama do not believe that the Federal Constitution's Sixth Amendment right to counsel guaranty requires trial counsel to be an advocate for his client and to provide meaningful adversarial testing to the State's case. Without an advocate to test the State's case, there can be no fair trial. This occurred in Mr. Hall's case as he had no advocate to test the prosecution's case and did not receive a fair trial as required by the Sixth Amendment.

Additionally, Mr. Hall was denied his rights under the United States Constitution's 5th and 14th Amendments due process clauses during his sentencing proceeding.

The sentencing court did not follow new law prescribed by the Alabama Legislature. Alabama has been reforming its sentencing laws since 2003 when the Legislature passed "Alabama Sentencing Reform Act of 2003" §§12-25-30, et. seq., which created voluntary sentencing guidelines for most felony offenses, including drug offenses. These initial guidelines came into effect on October 1, 2006 and the sentencing judge had the discretion to sentence a defendant pursuant to the voluntary guidelines, §12-25-34(c) or the Habitual Felony Offender Act, §13A-5-9, et.al. In developing the sentencing ranges for covered offenses, the legislature gave the Alabama Sentencing Commission a mandate that the voluntary sentencing standards shall take into account and include statewide historically based sentencing ranges, including all applicable statutory minimums and sentence enhancement provisions, including the Habitual Felony Offender Act, with adjustments made to reflect current sentencing policies. No additional penalties pursuant to any sentence enhancement statute shall apply to sentences imposed based on the voluntary sentencing standards. §12-25-34(c), Ala. Code 1975. In 2012, the legislature passed another sentencing reform bill, §12-25-34.2, which ordered that the voluntary sentencing guidelines would become presumptive sentencing guidelines for nonviolent offenses beginning October 1, 2013. The sentence enhancements codified by the Alabama Legislature at §13A-12-250 and §13A-12-270 have existed since 1987 and 1989 respectively, therefore, they were considered by the Alabama

Sentencing Commission in calculating sentencing ranges for the voluntary and presumptive sentencing guidelines for drug offenses. The Alabama Legislature specifically intended §§ 13A-12-250 and 270 as sentence enhancements. Because these enhancements were considered in formulating the presumptive guideline ranges, these enhancements cannot be used as aggravating factors to depart from the presumptive guidelines. Mr. Hall was convicted of one count of unlawful distribution of a controlled substance which subjected him to a sentencing range of 45 months - 110 months pursuant to the sentencing guidelines. The sentencing court used the enumerated sentence enhancements to depart from the presumptive sentencing guideline range and sentence Hall to LIFE imprisonment plus ten additional years pursuant to the sentence enhancements § 13A-12-250 and § 13A-12-270. This sentence is improper and the sentencing court abused its discretion when it sentenced Hall pursuant to these enhancements where the Alabama Legislature did not prescribe this punishment.

The Alabama Court of Criminal Appeals allowed a blatant violation of the Sixth Amendment to stand and allowed Mr. Hall to remain illegally sentenced in violation of his 5th and 14th Constitutional Amendment Due Process guarantees.

REASONS FOR GRANTING THE PETITION

- 1) The Petition should be granted to allow Harold Hall to receive a new trial because he was denied a fair trial when his trial attorney refused to participate in the initial trial and there was a complete breakdown in the adversarial process. This was a clear violation of Mr. Hall's Sixth Amendment right to effective assistance of counsel. Counsel's silence was not trial strategy as ruled by the trial court and affirmed by the Alabama Court of Criminal Appeals.
- 2) Alternatively, the petition should be granted to allow Mr. Hall to be resentenced pursuant to the presumptive sentencing guidelines, §12-25-34.2, Ala. Code 1975 and not pursuant to the Alabama Habitual Felony Offender Act, §13A-5-9(c)(2), as the trial court improperly sentenced Hall.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Harold Hall #209369

Harold Hall #209369

Date: September 10, 2018