18-7821 ORIGINAL

NO. ______

Supreme Court, U.S.
FILED
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IN THE

SUPREME COURT OF THE UNITED STATES

DARRYL MIXON - PETITIONER

VS.

JOE ERRINGTON - RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO

SUPREME COURT OF THE STATE OF MISSISSIPPI

PETITION FOR WRIT OF CERTIORARI

DARRYL MIXON, # 40415
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QUESTIONS PRESENTED

WHETHER THE TRIAL COURT LACKED JURISDICTION OVER THE PERSONS AND THE SUBJECT MATTER OF THIS CAUSE, IN ABSENCE OF A SIGNED FORMAL COMPLAINT?

WHETHER MIXON'S CONVICTION SHOULD BE VACATED AND HIS SENTENCE SET ASIDE, DUE TO HIS ACTUAL INNOCENCE?

WHETHER MIXON'S SENTENCE IS DISPROPORTIONATE TO THE SEVERITY OF THE OFFENSE, UNDER THE PROVISIONS OF THE EIGHT AMENDMENT?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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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

The opinion of the highest state court to review the merits appears at Appendix - A, to the petition, and is unpublished.

JURISDICTION

The date on which the highest state court decided my case was December 6, 2018. A copy of that decision appears at Appendix A. This petition is filed within ninety (90) days of said date, and the jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL/STATUTORY PROVISIONS INVOLVED

The Eight Amendment To The United States Constitution provides in pertinent part, as follows:

> "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted."

U.S. CONST. AM. 8.

The Fourteenth Amendment To The United States Constitution provides in pertinent part, as follows:

> "Nor shall any State deprive any person of life, liberty, or property without due process of law."

U.S. CONST. AM XIV.

STATEMENT OF THE CASE

That on/or about December 9, 2002, Mixon was arrested, along with Co-defendant Sidney Harper (not a party to this petition), and changed with the Criminal offense of Theft of an automobile, pursuant to Miss. Code Ann. § 97-17-42. IT was alleged that Mixon jumped into an occupied vehicle (Truck) at a Spur Gas Station on Bailey Avenue, in Jackson (Hinds County), Mississippi, and drove away without the owner's permission. The vehicle (work Truck) was recovered within a couple of hours.

Subsequently Thereafter, Mixon was arrested, charged, and convicted of 'auto theft' as charged in the indictment, following a Trial by jury.

That on/or about March 12, 2004, Mixon was sentenced to life imprisonment as a habitual offender, pursuant to Miss. Code Ann. § 99-19-83. A Timely appeal was perfected, with Mixon's conviction and sentence being affirmed. Mixon filed multiple other pleadings seeking relief from his unconstitutional conviction and harsh sentence, but to no avail.

REASONS FOR GRANTING THE PETITION

A.

THE TRIAL COURT LACKED JURISDICTION OVER THE PERSONS AND THE SUBJECT MATTER OF THIS CASE, IN ABSENCE OF A SIGNED FORMAL COMPLAINT.

In the case sub judice, Petitioner would assert that the Trial Court lacked jurisdiction over the persons and the subject matter, due to the fact that there was no formal complainant, and thus, no probable cause for Petitioner's arrest. As to this particular claim, there is no emphasis on the passage of time, because challenges to the Court's jurisdiction may be raised (brought) at any time; see, U.S. V. Vreeken, 803 F.2d 1085, 1088 (10th cir. 1986). See also, U.S. V. Gatewood, 173 F.3d 986 (6th cir. 1999) and U.S. V. Cotton, 535 U.S. 625, 630 (2002).

In the first place, there must be a complainant (signed complaint), to bring about an arrest and a criminal charge. It was denoted in the police report by Detective Steven Wansley, That The complainant was 'Smith, Lee' (as The name Typed in); see exhibit-A, attached hereto. However, during Trial, Detective Wansley Testified that Theodis Smith (not Lee Smith) was the complainant... (Trial Transcript, Page 276, Lines 18-22); even though Theodis Smith was not the owner of the vehicle in question. Lee Smith, the actual owner of the vehicle testified that he didn't give anyone permission to drive his truck; but, yet that he could not be the complainant, and that he had no knowledge of the alleged theft or alleged prepetrator(s). Thus, no complainant and no court jurisdiction; see, Frank v. Delaware, 438 U.S. 154 (1978) and U.S. v. Hardwick, 523 F.3d 94, 98 (2d Cir. 2008).

Detective Wansley's affidavit for a bench warrant for Petitioner's arrest was based on false information--being without probable cause, which robbed the Trial court of any jurisdiction over this case. As the theft's eyewitness, Theodis Smith related several different versions as to how he came to identify Petitioner as one of the prepetrators of this crime. As related to Detective Wansley; Smith left the keys in the vehicle's ignition, and went into the Spur's gas station to pay for gas... while inside, Two (2) subjects pulled into the gas station parking lot in a white Honda Accord. They exited the car and entered the store... They walked out of the store, one of the subject got into the truck, and the other one got back into the Honda Accord, and they drove off in the same direction; see exhibit-B, attached hereto.

For a change of events, T. Smith also testified as follows: "I pulled up to the gas pump, filled the truck with gas, and went into the store to pay for the gas... As I entered the store, I passed by a guy on my left-hand side going into the store. So, when I turned to pay for the gas, the store clerk asked me, is that your truck pulling off; and, I looked around, and saw the truck pulling off..." (Trial Transcript, Page 241, Lines 14-22). From this account, T. Smith could not have seen who got into the truck and drove it away for identification purpose; see, Bolin v. State, 489 So.2d 1091 (Miss. 1986), and U.S. v. Kimbrough, 69 F.3d 723 (5th Cir. 1995).

Still further, with a third version, T. Smith testified that:

> "When the store clerk, when she called it to my attention, and I ran out there, he was in the door of my truck fixing to pull off."

Again, T. Smith could not identify the prepetrator that got into the Truck and drove away. When T. Smith was alerted by the store clerk, the Truck was already pulling out of the parking lot. At any rate, notwithstanding the inconsistencies of T. Smith's sworn testimony, his identification of Petitioner as the prepetrator of this crime -- is misleading at best -- and not sufficient information to have established probable cause for Petitioner's arrest, to provide the Trial Court with jurisdiction; (Trial Transcript, Page 243, Lines 14-17). See, Neil v. Biggers, 409 U.S. 188, 198 (1972). See also, U.S. v. Emanuele, 51 F.3d 1123, 1132 (3d Cir. 1995) and Abdur-Raheem v. Kelly, 257 F.3d 122, 142 (2d Cir. 2001).

In regards to this alleged identification of Petitioner as the prepetrator; Detective Wansley testified at intervals, as follows:

Q. Okay. It's not stated in here that he can testify to the identification of Mr. Mixon, is it?

A. No.

Q. Thank you. And this is another report you did. Is it stated in here that there was an identification by Mr. Smith of Mr. Mixon?

A. IT'S not STated That he identified him. (Trial TranscripT, Page 305, Lines 2-24).

There can be no doubT That upon The false and misleading information provided by Mr. Smith, That iT was not sufficienT basis for DeTecTive Wansley To obTain a proper arresT warranT for PeTiTioner's arresT; see, Brown v. Illinois, 422 U.S. 590 (1975). See also, Hall v. STaTe, 427 So.2d 957, 959 (Miss. 1983) and Henry v. STaTe, 486 So.2d 1209, 1212 (Miss. 1986).

The general affidaviT prepared by DeTecTive Wansley To obTain The 'Bench WarranT' for PeTiTioner's arresT was no more Than a bare-bone affidaviT, insufficienT To bring abouT PeTiTioner's arresT, or To provide The Trial CourT with jurisdicTion in This Cause. The affidaviT iTself was lacking in reliable informaTion; see exhibiT-C, aTTached hereTo... The 'Bench WarranT' iTself; lacking sufficienT informaTion, did noT fair much beTTer Than The general barebone affadiviT; see, exhibiT-D, aTTached hereTo... NeiTher amounTing To probable cause To arresT PeTiTioner for This crime, nor To provide The Trial CourT with jurisdicTion To Try This case; See, Powe v. STaTe, 235 So.2d 920 (Miss. 1970). See also, Penick v. STaTe, 440 So.2d 547, 554 (Miss. 1983) and HesTer v. STaTe, 463 So.2d 1087 (Miss. 1985).

The most elemental aspect of due process is a meaningful, just, and fair hearing in a court of competent jurisdiction. Because of the general improprieties surrounding the identification and arrest (without probable cause) of Petitioner, the trial court lacked jurisdiction in this case... thus, creating fundamental unfairness, which violated Petitioner's due process rights; See, Brecht v. Abrahamson, 507 U.S. 619, 623 (1993) and Fry v. Pliler, 551 U.S. 112, 119 (2007).

In the case at bar, the inconsistent and apparent false testimony (along with statements to law-enforcement officers), by Mr. T. Smith was inadequate to establish probable cause for Petitioner's arrest, or to give the trial court subject matter jurisdiction over this case -- which adversely affects Petitioner's substantial rights; See, O'Neal v. McAninch, 513 U.S. 432, 435 (1995) and Robertson v. Cain, 324 F.3d 297, 309 (5th Cir. 2003).

Furthermore, the errors set forth, inter alia; the criminal prosecution of Petitioner in a trial court lacking jurisdiction, seriously affects the fairness, integrity, and/or public reputation of judicial proceedings; See, U.S. v. Brown, 450 F.3d 76, 79 (1st cir. 2006). See also, U.S. v. Reid, 523 F.3d 310, 315 (4th Cir. 2008) and

U.S. V. Gonzalez-Terrazas, 529 F.3d 293, 296 (5th Cir. 2008).

Petitioner's arrest without probable cause and resulting Trial, in a Court lacking jurisdiction (no formal Complainant), was solely at the hands of State witness Theodis Smith, who clearly falsified information (unworthy of belief), To accomplish same; see, U.S. V. Cuffie, 80 F.3d 514, 519 (D.C. Cir. 1996). See also, U.S. V. Gamache, 156 F.3d 1, 8 (1st Cir. 1998) and Conley V. U.S., 415 F.3d 183 (5th Cir. 2005).

The errors/violations set forth herein rises To a level of fundamental defect; was inconsistent with The rudimentary demands of fair procedure, and inherently resulted in a complete miscarriage of justice, that should not be allowed To stand; see, Hill V. U.S., 368 U.S. 424, 428 (1962). See also, Reed V. Farley, 512 U.S. 339, 348 (1994) and U.S. V. Wolfe, 245 F.3d 257, 261 (3d Cir. 2001).

B.

MIXON'S CONVICTION SHOULD BE VACATED AND SENTENCE SET ASIDE, DUE TO HIS ACTUAL INNOCENCE.

Petitioner contends That because of his

actual innocence, and the fact that he is now serving a life sentence (no possibility of parole), without committing a felony criminal offense -- and, notwithstanding the passage of time -- the failure of the court to review and decide this claim(s) set forth herein, would result in an ongoing fundamental miscarriage of justice. In this regard, the Court stated that, any procedural default would be excused, even in the absence of cause, when a constitutional violation(s) has probably resulted in the conviction of one whom is actually innocent. Petitioner is confident that, as a result of a new trial (absent noted errors/violations), he would receive a more favorable end result that now exist; see, Murray v. Carrier, 477 U.S. 478, 496 (1986). See also, Sawyer v. Whitley, 505 U.S. 333, 346 (1992) and Schlup v. Delo, 513 U.S. 298, 329 (1995).

The police report composed by officer Catchings (after-the-fact), was overblown with inconsistencies -- and, as well, factual information pointing towards Petitioner's actual innocence (for inferences); see exhibit-E, attached hereto. It was ascertained that the white Honda Accord was the property of Sidney Harper, and that the alleged stolen truck herein, was drove to to the residence of some of Harper's relatives, where items (unidentified or unrecorded) were unloaded. The question presented here-- who was in the car with Harper when the alleged crime occurred. It was not Petitioner, because it was revealed that Petitioner had just recently gotten into the Honda Accord with Harper, moments before they were accosted by law-enforcement officers. There was no evidence to show that Petitioner had been in the vehicle with Harper earlier that morning (before or at the time of the alleged crime)--which also supports Petitioner's claim herein of actual innocence; (Trial Transcript, Page 283, Lines 22-26). See, In Re Broom, 168 So. 2d 44 (Miss. 1964) and King v. Cook, 287 F.Supp. 269 (N.D. Miss. 1968).

Further in Police Officer Catchings' report (as well as Detective Wansky's report), it states that, a Mr. Mannie advises he followed the two (2) to an address on Sunray Drive, where suspect one rejoined suspect two in the white Honda Accord. However, Mr. Mannie Trial Testimony was as follows: "I kept tailing it (Honda Accord), and then I flashed my lights when he got on California Avenue, and he (the passenger in the Honda alleged to have been Petitioner), jumped out and ran behind some apartments; (Trial Transcript, Page 265, Lines 15-28). Mr. Mannie also testified that, at the scene, or thereafter, police officers never asked him any questions, and nor did he volunteer any information as alleged he did herein; (Trial Transcript, Page 267, Lines 13-20). This feeble attempt by the State to bolster its case-in-chief, and to justify Petitioner's unlawful arrest -- where there is no such justification -- should not sway the Court's attention from the facts supporting Petitioner's actual innocence; no probable cause to arrest Petitioner; and no jurisdiction of the Court to try, convict, and sentence Petitioner; See, Bush v. State, 895 So.2d 836, 843 (Miss. 2005) and Harris v. State, 172 So. 3d 191, 192 (Miss. 2014).

Notwithstanding the inconsistencies of Mr. Mannie (as well as other State witnesses), let's consider/examine the allegations of Petitioner allegedly jumping out of the Honda Accord, and running behind some apartments version -- this person running could not have been (and was not) Petitioner, because Petitioner could not (can not) run at the time of this crime... MIXON-DIRECT Testimony, as follows:

Q. Okay. Now Mr. Mixon, Mr. Mannie says that the person driving the truck got out and ran behind some apartments. Can you run?

A. No, Ma'am.

Q. Why can't you run?
A. I'm legally paraplegic. I had got -- in 93, I got shot, and I still got a bullet on my spine.
Q. Okay. And you say you were a paralegic?
A. Yeah. Everything came back except from the knee down on this side and the knee up on this side.
Q. Okay. And how many years were you a paraplegic?
A. I'm considered one now, but I got up and around two and a half years with rehab and all that.

Trial Transcript, Page 339, Lines 12-28.

This testimony is consistent with Petitioner's claim of actual innocence. The eyewitness testified that the passenger of the Honda Accord jumped out of the vehicle and ran behind some apartments -- on the other hand -- the record shows that it is medically impossible for Petitioner to run. Petitioner is actually innocent; see, Edwards v. State, 496 So.2d 68, 70 (Miss. 1985). See also, Fairman v. Anderson, 200 F.3d 813 (5th Cir. 1999) and U.S. v. Patterson, 576 F.3d 431, 442 (7th Cir. 2009).

The rule-of-thumb is that most, if not all courts holds the view that, it is better

To set a guilty man free than to confine an innocent one. In this instance, Petitioner is actually innocent, and should be released from his unconstitutional confinement, to call a halt to an unconscionable injustice; see, Wetz v. State, 503 So.2d 803 (Miss. 1987). See also, Herring v. State, 691 So.2d 948 (Miss. 1997) and U.S. v. Bryant, 523 F.3d 349, 354 (D.C. cir. 2008).

C.

MIXON'S SENTENCE IS DISPROPORTIONATE TO THE SEVERITY OF THE OFFENSE, UNDER THE PROVISIONS OF THE EIGHTH AMENDMENT.

Petitioner contends that he is incarcerated on a life sentence for the non-violent crime of auto theft... As such, and as frown upon by the cruel and unusual punishment doctrine of the Eighth Amendment, Petitioner's sentence of life imprisonment without the possibility of parole is disproportionate to the severity of the offense (auto theft).

The Eighth Amendment prohibits the infliction of cruel and unusual punishment upon persons convicted of a crime. The cruel and unusual punishment clause limits criminal punishment in three (3) ways: (1) it imposes substantive limits on what can be made criminal and punished as such; (2) it prohibit certain kinds of punishment; and (3) it prohibit punishment grossly disproportionate to the severity of the offense; see, Robinson v. Cal., 370 U.S. 660, 666 (1962). See also, Ingraham v. Wright, 430 U.S. 651, 671 (1977) and U.S. v. Martinez, 434 F.3'd 1318, 1322 (11th Cir. 2006).

The Eighth Amendment's concern is with punishment imposed after the state has secored formal adjudication of guilt; See, Powell v. Texas, 392 U.S. 514, 532 (1968). See also, U.S. v. Tovias-Marroquin, 218 F.3d 455, 456 (5th Cir. 2000), and Wilkerson v. Utah, 99 U.S. 130, 136 (1879).

In Solem v. Helm, 463 U.S. 277, 292 (1983), the Supreme Court of the United States established three (3) criteria for analyzing the proportionality of sentences: (1) a comparison of the gravity of the offense with the harshness of the penalty; (2) a comparison of the sentence with those imposed for various offenses in the same jurisdiction; and (3) a comparison of the sentence with those imposed for the same or similar offenses in other jurisdictions; see, U.S. V. Organek, 65 F.3d 60, 63 (6th Cir. 1995) and U.S. V. Thomas, 49 F.3d 253, 261 (6th Cir. 1995).

Petitioner was convicted of auto-theft, and sentence to life imprisonment as a habitual offender without possibility of parole (§99-19-83), because he had at least one prior violent felony conviction, not solely because of the auto theft conviction. However, current statutory provisions allows for review of sentences within and outside the guideline range, because any unreasonable sentence is imposed in violation of the law; see, U.S. V. Mickelson, 433 F.3d 1050, 1053 (8th Cir. 2006). See also, U.S. V. Sanchez-Juarez, 446 F.3d 1109, 1114 (10th Cir. 2006) and U.S. V. Colson, 573 F.3d 915, 916 (9th Cir. 2009).

As to the Three-way protection of the Eighth Amendment's cruel and unusual punishment clause, Petitioner emphasize and highlight the third protection; which prohibits punishment grossly disproportionate to the severity of the offense--in support of this particular claim of sentence disproportionality. In this regard, the court(s) has held that the second and third factors should be considered to validate an initial judgment that a sentence is grossly disproportionate to a crime; see, Seritt v. Alabama, 731 F.2d 728, 732 (11th cir. 1984). See also, U.S. v. Whyte, 892 F.2d 1170, 1176 (3d cir. 1989) and U.S. v. Meirovitz, 918 F.2d 1376, 1381 (8th cir. 1990).

As for analyzing the proportionality of a sentence, petitioner is cognizant of the fact that, the reviewing court might reasonably conclude that a different sentence would be appropriate, is insufficient to justify a reversal. Nonetheless, the extent of a disproportionate sentence is relevant to the court(s)' review of the sentence. A major disproportionate sentence should be supported by a more significant justification than a minor one. A punishment once considered constitutional, may be later considered excessive in violation of the Eighth Amendment, if it contravenes the evolving standards of decency that mark the progress of a maturing society; see, Trop v. Dulles, 356 U.S. 86, 101 (1958). See also, Ramirez v. Castro, 365 F.3d 755, 767 (9th cir. 2004) and Gall v. U.S., 552 U.S. 38, 50 (2007).

Following a criminal prosecution, the defendant/petitioner is at liberty to challenge a sentence believed to be unreasonable. In Rita v. U.S., 551 U.S. 338, 340 (2007), The Supreme Court of the United States held that trial courts may establish a presumption of reasonableness for sentences within the range recommended by the sentencing guidelines. Yet, regardless of whether the sentence is within the guidelines, it is deferentially reviewed by the court(s) under the abuse-of-discretion standard; See, U.S. v. Booker, 543 U.S. 220, 261 (2005) and Nelson v. U.S., 129 S.Ct. 890, 892 (2009).

As a result, if the reviewing court finds a sentence unreasonable, and not the result of harmless error; the court must/should remand the case with any instructions it deems appropriate; See, U.S. v. Wallace, 573 F.3d 82, 92 (1st Cir. 2009). See also, U.S. v. Douglas, 569 F.3d 523, 526 (5th Cir. 2009) and U.S. v. Shafer, 573 F.3d 267, 272 (6th Cir. 2009). Challenges of imposition of sentence can be litigated at any time, as being excepted from any procedural bars; See, Ivy v. State, 731 So.2d 601, 603 (Miss. 1999). See also, Kennedy v. State, 732 So.2d 184, 186 (Miss. 1999) and Rowland v. State, 98 So.3d 1032, 1037 (Miss. 2012).

CONCLUSION

In this prisoner's pro se litigation, Petitioner would hope and pray that this court would hold him to less stringent standards than formal pleadings drafted by attorneys -- so that his meritorious claims may not be loss because of inartfully drafting; see, Haines v. Kerber, 404 U.S. 519 (1972) and Moore v. Ruth, 556 So.2d 1059 (Miss. 1990). Furthermore, whereas a single error/violation may not suffice to warrant a new trial, multiple errors/violations considered together may be sufficient; see LaTiolais v. Whitley, 93 F.3d 205 (5th Cir. 1996).

The petition for a writ of certiorari should be granted.

Respectfully Submitted,

Darryl Mixon

DARRYL MIXON

SWORN TO AND SUBSCRIBED BEFORE ME, this the 24 day of January 2019.

STATE OF MISSISSIPPI
NOTARY PUBLIC
ID # 119550
MICHEL BOLGER
Commission Expires
March 19, 2021
STONE COUNTY

"NOTARY PUBLIC"

MY COMMISSION EXPIRES: 03.19.21.