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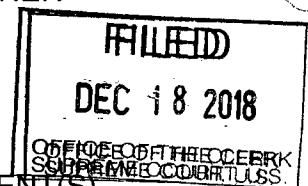
18-7968

IN THE
SUPREME COURT OF THE UNITED STATES

JOSEPH K. RAGLAND — PETITIONER
(Your Name)

vs.

NORTH CAROLINA — RESPONDENT(S)



ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

JOSEPH K. RAGLAND
(Your Name)

NASH CORRECTIONAL INST.
2869 U.S. HWY 64-A
(Address)

NASHVILLE, NC 27856
(City, State, Zip Code)

(252) 459-4455
(Phone Number)

QUESTION(S) PRESENTED

WHETHER A STATE STATUTE THAT GIVES SENTENCING JUDGES UNLIMITED, UNCHALLENGEABLE AND UNREVIEWABLE DISCRETION TO IMPOSE CONSECUTIVE SENTENCES, VIOLATE THE EQUAL PROTECTION AND DUE PROCESS CLAUSES OF THE FOURTEENTH AMENDMENT, AND THE SIXTH AMENDMENT RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL AT SENTENCING.

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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OTHER

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR A WRIT OF CERTIORARI

PETITIONER RESPECTFULLY PRAYS THE WRIT OF
CERTIORARI WILL BE GRANTED.

OPINION IS BELOW
THE DECISION OF THE NORTH CAROLINA SUPREME
COURT, THE STATE'S HIGHEST COURT TO REVIEW
THE MERITS OF PETITIONER'S CONSTITUTIONAL
CLAIM, APPEARS AT APPENDIX-A, TO THE
PETITION, AND IS UNPUBLISHED.

JURISDICTION
THE ORDER ENTERED BY THE NORTH CAROLINA
SUPREME COURT, DENYING PETITIONER'S STATE
HABEAS CORPUS, WAS ENTERED ON OCTOBER 5,
2018. A COPY OF THAT ORDER APPEARS AT
APPENDIX-A. JURISDICTION INVOKED UNDER
28 U.S.C. 1257 (a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

UNITED STATES CONSTITUTIONAL AMENDMENT VI:

IN ALL CRIMINAL PROSECUTIONS THE ACCUSED SHALL ENJOY THE RIGHT TO A SPEEDY AND PUBLIC TRIAL, BY AN IMPARTIAL JURY OF THE STATE AND DISTRICT WHEREIN THE CRIME SHALL HAVE BEEN COMMITTED, WHICH DISTRICT SHALL HAVE BEEN PREVIOUSLY ASCERTAINED BY LAW, AND TO BE INFORMED OF THE NATURE AND CAUSE OF THE ACCUSATION; TO BE CONFRONTED WITH THE WITNESSES AGAINST HIM; TO HAVE COMPULSORY PROCESS FOR OBTAINING WITNESSES IN HIS FAVOR; AND TO HAVE THE ASSISTANCE OF COUNSEL FOR HIS DEFENSE.

UNITED STATES CONSTITUTIONAL AMENDMENT XIV:

SEC. 1. ALL PERSONS BORN OR NATURALIZED IN THE UNITED STATES, AND SUBJECT TO THE JURISDICTION THEREOF ARE CITIZENS OF THE UNITED STATES AND OF THE STATE WHEREIN THEY RESIDE. NO STATE SHALL MAKE OR ENFORCE ANY LAW WHICH SHALL ABRIDGE THE PRIVILEGES OR IMMUNITIES OF CITIZENS OF THE UNITED STATES; NOR SHALL ANY STATE DEPRIVE ANY PERSON OF LIFE, LIBERTY, OR PROPERTY, WITHOUT DUE

PROCESS OF LAW; NOR DENY ANY PERSON WITHIN ITS JURISDICTION THE EQUAL PROTECTION OF THE LAWS.

NORTH CAROLINA GENERAL STATUTE § 15A-134D.15.(a).

CONSECUTIVE SENTENCES- THIS ARTICLE DOES NOT PROHIBIT THE IMPOSITION OF CONSECUTIVE SENTENCES. UNLESS OTHERWISE SPECIFIED BY THE COURT, ALL SENTENCES OF IMPRISONMENT RUN CONCURRENTLY WITH ANY OTHER SENTENCES OF IMPRISONMENT.

STATEMENT OF THE CASE :

FOLLOWING A JURY TRIAL IN THE SUPERIOR COURT OF JOHNSTON COUNTY, NORTH CAROLINA, PETITIONER WAS CONVICTED OF TWO COUNTS OF SECOND DEGREE SEX OFFENSE, ONE COUNT OF SECOND DEGREE RAPE, AND ONE COUNT OF SEXUAL SERVITUDE. HE WAS SENTENCED TO THREE CONSECUTIVE TERMS OF IMPRISONMENT OF 72 MONTHS MINIMUM, TO 96 MONTHS MAXIMUM. PETITIONER HAS EXHAUSTED ALL AVAILABLE STATE COURT REMEDIES. THE NORTH CAROLINA SUPREME

COURT, THE STATE'S HIGHEST COURT WITH JURISDICTION TO HEAR AND DECIDE CONSTITUTIONAL CLAIMS, SUMMARILY DENIED PETITIONER'S STATE HABEAS CORPUS RAISING THE CONSTITUTIONAL QUESTION OF WHETHER NORTH CAROLINA GENERAL STATUTE §15A-134D.15.(a), THAT GIVES THE SENTENCING JUDGE UNLIMITED DISCRETION TO IMPOSE CONSECUTIVE SENTENCES, VIOLATES THE FIFTH, SIXTH AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION. SEE ORDER OF NORTH CAROLINA SUPREME COURT AT APPENDIX-A. PETITIONER HAS RAISED THIS CONSTITUTIONAL CLAIM IN EVERY COURT THROUGH THE STATE POST-CONVICTION PROCEDURES PRIOR TO FILING A HABEAS CORPUS TO THE NORTH CAROLINA SUPREME COURT, ONLY TO HAVE HIS CONSTITUTIONAL CLAIM SUMMARILY DENIED. THE STATE COURTS ALL REFUSE TO ADJUDICATE THIS CONSTITUTIONAL CLAIM. PETITIONER COULD NOT HAVE DISCOVERED AND RAISED THIS CLAIM AT AN EARLIER TIME, BECAUSE THE STATE STATUTE THAT GIVES SENTENCING

JUDGES UNLIMITED AND UNCHALLENGEABLE DISCRETION TO IMPOSE CONSECUTIVE SENTENCES, DOES NOT APPEAR ON ANY OF THE PETITIONER'S COURT DOCUMENTS, OR JUDGMENTS. THE NORTH CAROLINA STATE PRISON SYSTEM DOES NOT PROVIDE A LAW LIBRARY OR ANY LEGAL RESOURCES, OR ANY LEGAL MATERIAL WHATSOEVER, FOR INDIANT PRO SE PRISONERS USE AND RESEARCH. THE STATE PRISON SYSTEM HAS A CONTRACT WITH PRISONERS LEGAL SERVICES, INC., BUT THEY, AS A PART OF THEIR CONTRACT DO NOT PROVIDE ANY PHOTOCOPYING, CASE CITES, OR LEGAL RESEARCH FOR INDIANT PRO SE PRISONERS, WHICH REDUCED PETITIONER TO HAVING TO RELY UPON THE FEW PRISONERS HE ENCOUNTERED OVER THE YEARS OF HIS INCARCERATION WHO POSSESSED VERY LIMITED LEGAL MATERIAL, AND VERY LIMITED LEGAL KNOWLEDGE, AND TO THAT WAS ADDED THE IMPEDIMENT OF STATE PRISON SYSTEM THREAT AND POLICY, AND A WRITE-UP, DISCIPLINARY ACTION FOR ANY PRISONER WHO PROVIDES OR ASSIST ANOTHER PRISONER IN ANY LEGAL MATTERS. UNDER THESE

CONDITIONS, PETITIONER COULD NOT HAVE DISCOVERED THIS CONSTITUTIONAL CLAIM THROUGH THE EXERCISE OF REASONABLE DILIGENCE IN TIME TO PRESENT THE CLAIM ON A PRIOR STATE OR FEDERAL POSTCONVICTION REVIEW. IN MARCH 2018, PETITIONER ENCOUNTERED ANOTHER PRISONER WHO ACTUALLY HAD LAW BOOKS, AND WHO WAS ABLE TO INFORM HIM THAT N.C. GEN. STAT. §15A-1340.15.(a), WAS THE STATE STATUTE THAT GIVES SENTENCING JUDGES UNLIMITED AND UNCHALLENGEABLE DISCRETION TO IMPOSE CONSECUTIVE SENTENCES, AND HOW THE STATUTE IS UNCONSTITUTIONAL. PETITIONER'S CHARGES ALL DERIVE FROM ONE ALLEGED INCIDENT. THE SENTENCING JUDGE FOUND NO AGGRAVATING FACTORS IN THE PETITIONER'S CASE. YET, IN HIS DISCRETION, IMPOSED THREE CONSECUTIVE SENTENCES AGAINST PETITIONER. UNDER STATE LAW THE JUDGE'S DISCRETION IS UNLIMITED, UNCHALLENGEABLE, AND NOT REVIEWABLE. THEREFORE, ADEQUATE RELIEF CANNOT BE OBTAINED IN ANY OTHER FORM, FROM ANY OTHER COURT.

REASONS FOR GRANTING THE PETITION

A. THE QUESTION PRESENTED WARRANTS THIS COURT'S REVIEW.

THE QUESTION WHETHER A STATE STATUTE THAT GIVES THE SENTENCING JUDGE UNLIMITED, UNCHALLENGEABLE, AND UNREVIEWABLE DISCRETION TO IMPOSE CONSECUTIVE SENTENCES AGAINST A CRIMINAL DEFENDANT, VIOLATES THE EQUAL PROTECTION AND DUE PROCESS CLAUSES OF THE FOURTEENTH AMENDMENT, AND THE SIXTH AMENDMENT RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL AT SENTENCING. WARRANTS THIS COURT'S REVIEW. THE STATE COURTS WILL NOT GIVE ATTENTION TO THE QUESTION WHICH NEED TO BE RESOLVED. THE PETITIONER CONTENDS THAT THE MANNER IN WHICH THE THREE CONSECUTIVE SENTENCES WERE IMPOSED AGAINST HIM IS UNCONSTITUTIONAL, IN THAT THE STATUTE 15A-134D.15.(a),

- 1) GIVES THE TRIAL COURT UNLIMITED DISCRETION, THAT'S NOT REVIEWABLE, TO IMPOSE CONSECUTIVE SENTENCES AGAINST PETITIONER
- 2) DOES NOT PROVIDE ANY PROCESS OR PROCEDURE FOR PETITIONER TO CHALLENGE THE IMPOSITION OF CONSECUTIVE SENTENCES.
- 3) DOES NOT REQUIRE THE TRIAL COURT TO BASE ITS DECISIONS TO IMPOSE CONSECUTIVE SENTENCE AGAINST PETITIONER ON ANY PARTICULAR FINDINGS, CRITERIA, OR ANALYSIS OF ANY KIND.
- 4) DOES NOT REQUIRE THE TRIAL COURT TO MAKE KNOWN TO PETITIONER, NOR TO INCLUDE IN THE RECORD ITS REASONS FOR IMPOSING CONSECUTIVE SENTENCES.
- 5) ALLOWS THE TRIAL COURT'S BASIS FOR IMPOSING CONSECUTIVE SENTENCES AGAINST PETITIONER TO BE ARBITRARY AND CAPRICIOUS, BECAUSE THE TRIAL COURT DOES NOT HAVE TO DISCLOSE ITS REASONS.
- 6) ALLOWS THE TRIAL COURT TO DISCRIMINATE AGAINST PETITIONER ON THE BASIS OF THE

PETITIONER'S RACE, CLASS AND GENDER, IN DECIDING WHETHER TO IMPOSE CONSECUTIVE SENTENCES, AND/OR HOW MANY CONSECUTIVE SENTENCES TO IMPOSE UPON PETITIONER, BECAUSE THE TRIAL COURT DOES NOT HAVE TO DISCLOSE ITS REASONS.

7) ALLOWS THE TRIAL COURT TO BE PARTIAL AND SHOW FAVORITISM TO THE STATE AT SENTENCING, BY IMPOSING CONSECUTIVE SENTENCES UPON THE STATE'S REQUEST, AND FOR NO OTHER REASON, BECAUSE THE TRIAL COURT DOES NOT HAVE TO DISCLOSE ITS REASONS.

8) DEPRIVED THE PETITIONER OF HIS RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL DUE TO THE IMPEDIMENT CREATED BY GIVING THE TRIAL COURT UNLIMITED DISCRETION THAT CANNOT BE CHALLENGED BY PETITIONER, NOR REVIEWED BY ANY PROCESS OR PROCEDURE. COUNSEL IS RENDERED TOTALLY IMPOWERS IN HIS

REPRESENTATION OF PETITIONER DURING THIS PHASE OF PETITIONER'S SENTENCING, AND CANNOT IN ANY WAY BE OF ANY ASSISTANCE TO PETITIONER EVEN THOUGH THE SIXTH AMENDMENT RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL APPLIES ALSO DURING SENTENCING. GLOVER V. UNITED STATES, 531 U.S. 198, 203-204 (2001); MEMPA V. RHAY, 389 U.S. 128 (1967).

AS SHOWN ABOVE, NORTH CAROLINA GENERAL STATUTE §15A-134D.15.(a), DOES NOT COMPORT WITH THE DEMANDS OF THE DUE PROCESS AND EQUAL PROTECT-
IONAL CLAUSES OF THE FOURTEENTH AMENDMENT, AND DENIES ALL CRIMINAL DEFENDANTS SUBSTANTIVE AND PROCEDURAL DUE PROCESS, WHO HAVE BEEN CONVICTED OF MORE THAN ONE CRIMINAL OFFENSE, IN THE SAME SESSIONS OF COURT, AND HAD CONSECUTIVE SENTENCES IMPOSED UPON THEM FOR ANY REASON, LEGITIMATE OR

NOT, OR FOR NO REASON AT ALL, BECAUSE THE COURT DOES NOT HAVE TO DISCLOSE ANY REASON FOR IMPOSING CONSECUTIVE SENTENCES. A CRIMINAL DEFENDANT MUST BE AFFORDED DUE PROCESS BEFORE DEPRIVATION OF LIFE, LIBERTY, OR PROPERTY. *ARMSTRONG V. MD.* (20, 380 U.S. 545, 552 (1965)); *ADAMSON V. CALIFORNIA*, 332 U.S. 46 (1947). THE FOURTEENTH AMENDMENT'S DUE PROCESS CLAUSE IS DESIGNED TO PROTECT AN INDIVIDUAL AGAINST ARBITRARY GOVERNMENT ACTION. *WOLFF V. MCDONWELL*, 418 U.S. 539 (1974); *MOORE V. ILLINOIS*, 408 U.S. 786 (1972). WHETHER OR NOT TO IMPOSE CONSECUTIVE SENTENCES AGAINST A CRIMINAL DEFENDANT CANNOT JUST BE GIVEN TO THE UNLIMITED DISCRETION OF THE SENTENCING JUDGE, FOR THE EXACT SAME REASON THAT WHETHER OR NOT TO IMPOSE AN AGGRAVATED SENTENCE AGAINST A CRIMINAL DEFENDANT CANNOT BE GIVEN TO THE UNLIMITED DISCR-

ETION OF A SENTENCING JUDGE. CRIMINAL DEFENDANTS MUST BE AFFORDED EFFECTIVE ASSISTANCE OF COUNSEL, DUE PROCESS AND EQUAL PROTECTION OF THE LAW AT THIS PHASE OF SENTENCING.

PETITIONER ASKS THAT THIS COURT FIND N.C. GEN. STAT. 15A-134D.15.(a), TO BE VAGUE, UNCONSTITUTIONAL ON ITS FACE, AND AS APPLIED TO HIM, AND THAT THE CONSECUTIVE SENTENCES WERE UNCONSTITUTIONALLY IMPOSED UPON HIM, AND MUST BE REVERSED AND ORDERED TO RUN CONCURRENTLY.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Joseph K Ragland

Date: JANUARY 24, 2019