

NO: _____

IN THE
SUPREME COURT OF THE UNITED STATES

WILLIAM BOLDEN

VS.

COMMONWEALTH OF PENNSYLVANIA

Petition For Writ Of Certiorari from the November 7, 2017 order of the Supreme court of Pennsylvania NO: 165-EAL-2017 denying petitioner's Application For Reconsideration Of October 2, 2017, in the Supreme court of Pennsylvania NO: 52-ET-2017/NO: CP#51-CR-000-5958-2008-(Trial court docket).

PETITION FOR WRIT OF CERTIORARI

WILLIAM BOLDEN #JM-7066

Petitioner Pro-se
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SUPREME COURT, U.S.

QUESTION PRESENTED:

A). WAS PETITIONER SENTENCED UNDER A STATUTE THAT VIOLATE DUE PROCESS OF LAW UNDER THE UNITED STATES CONSTITUTION BY PERMITTING A TRIAL COURT TO ~~IMPOSE~~ AN ENHANCED SENTENCE WELL BEYOND THE STATUTORY MAXIMUM BASED ON A PRIOR CONVICTION, A FACT THAT WAS NOT ESTABLISHED BY A JURY OR PROOF BEYOND A REASONABLE DOUBT ? – (This issue was raised in petitioner's direct appeal in the Superior court at NO: 2605-EDA-2010, by petitioner's direct appeal attorney, prior to petitioner's filing of a PCRA petition). SEE: attached- EXHIBIT (N)- Superior court document's of NO: 2605-EDA-2010, listed as page's, (29), (30), and (31)).

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LIST OF PARTIES to the proceeding in the court whose judgment is the subject of this petition is as follows:

Superior court of Pennsylvania **OPINION** by HON: Lazarus, Mundy, and Freedberg, JJ, decision of August 22, 2011, at NO: 2605-EDA-2010. SEE: attached- EXHIBIT (F)- Superior court **OPINION** at NO: 2605-EDA-2010 of August 22, 2011.

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INDEX OF APPENDICES:- In Support of this petition petitioner have attached as exhibit's and opinions:

APPENDIX- **EXHIBIT (F)**- Decision of the Superior court OPINION at NO: 2605-EDA-2010 of August 22, 2011.

APPENDIX- **EXHIBIT (G)**- Decision of the Supreme court ORDER at NO: 165-EAL-2017 of September 21, 2017.

APPENDIX- **EXHIBIT (M)**- Decision of the Supreme court ORDER at NO: 165-EAL-2017, of November 7, 2017.

APPENDIX- **EXHIBIT (N)**- Superior court document's of NO: 2605-EDA-2010, mandatory sentence issue that was raised in petitioner's direct appeal to Superior court, by petitioner's direct appeal attorney, listed as page's- 29, 30, and 31. - **(The reason petitioner request for granting the writ of certiorari)**.

APPENDIX- **EXHIBIT (E)**- Decision of the trial court's HON: Harold M Kane OPINION document of- 11/16/2010.

APPENDIX- **EXHIBIT (D)**- Defense attorney's **Post-Sentence Motion** of April 30, 2010, filed in behalf of petitioner to set aside the verdict as being based on Insufficient evidence and against the weight of the evidence. - (This evidence also indicate that the **element's** of the crime of- Unlawful Contact With A Minor- 18 Pa. C.S.A. 6318, which was "**CONTACT** and **COMMUNICATION**," it was not found beyond a reasonable doubt in petitioner's instant case of- CP#51-CR-000-5958-2008). **QUESTION:** Was it error that the trial court denied this Post-Sentence Motion ?

APPENDIX- **EXHIBIT (K)**- **INFORMATION** document of- 6/4/2008.

APPENDIX- **EXHIBIT (X)**- Trial Transcript document of 10/8/2009.

APPENDIX- **EXHIBIT (A)**- Trial Transcript document of 10/8/2009.

APPENDIX- **EXHIBIT (B)**- Decision of the Superior court opinion at NO: **3709-EDA-2015** of March 8, 2017.

TABLE OF AUTHORITIES CITED

FEDERAL CASES:

<u>Alleyne V. United States</u> , 133 S. C.t. 2151, 2163 (2013)-----	Page 10
<u>Almendarez-Torres V. Unites States</u> , 523 U.S. 224 (1998)-----	Page 10
<u>Apprendi V. New Jersey</u> , 530 U.S. 466 (2000)-----	Page 9, 10
<u>Johnson V. United States</u> - 544 U.S. 295 (2005)-----	Page 10
<u>McKeiver V. Pennsylvania</u> , 403 U.S. 528 (1971)-----	Page 10
<u>Shepard V. United States</u> , 544 U.S. 13 (2005)-----	Page 10
<u>In Re Winship</u> , 397 U.S. 358 (1970)-----	Page 9

STATE CASE

<u>Com. V. Munday</u> , 2013 Pa. Super. 273 (2013)-----	Page 11
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CONSTITUTIONAL AMENDMENTS:

CONST.AMEND. 6th. Ruled that: Any fact that, by law, increases the penalty for a crime is an "element" that must be submitted to the jury and found beyond a reasonable doubt. ----- Page 9

IN THE
SUPREME COURT OF THE UNITED STATE
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below:

OPINIONS BELOW

FOR CASES FROM STATE COURTS:

- 1). The opinion of the highest state court to review the merits appears at appendix- EXHIBIT (G) and EXHIBIT (M) Supreme court order at NO: 165-EAL-2017 of Sept. 21, 2017 and Nov. 7, 2017 to the petition and is Unpublished.-
- 2). The opinion of the Superior court at NO: 2605-EDA-2010 of August 22, 2011. Appears at Appendix- EXHIBIT (F) to the petition and is cited at:- 32 A. 3d 839- COM. V. William Bolden- Unpublished

JURISDICTION- For cases from state courts:

The date on which the highest state court decided my case was: The November 7, 2017 ORDER of the Supreme court of Pennsylvania NO: 165-EAL-2017 denying petitioner's Application For Reconsideration of October 2, 2017, in the Supreme court of Pennsylvania NO: 52-ET-2017/NO: CP#51-CR-000-5958-2008-(Trial court docket). SEE: attached- EXHIBIT (M)- Supreme court of Pennsylvania's ORDER of November 7, 2017, NO: 165-EAL-2017, denying petitioner's Application For Reconsideration of October 2, 2017. The jurisdiction of this court is invoked under- 28 U.S.C. 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED:

Count 4: Unlawful **Contact** With A Minor 18 Pa. C.S.A. section 6318(A)(1)-(relating to sexual offenses)-(F-3) is defined as: A person commits this offense if he is intentionally in **contact** with a minor for the purpose of engaging in an activity prohibited under any of the offenses enumerated in chapter 31-(relating to sexual offenses). [These offenses include: Indecent Assault.] SEE: **18 Pa. C.S.A. section 6318(A)(1)**.

Furthermore, pursuant to- 18 Pa. C.S.A. section 6318(b)-(Grading) rule that: a violation of the foregoing subsection of- 18 Pa. C.S.A. section 6318(A)(1)- Unlawful **Contact** With A Minor is: (1) an offense of the same grade and degree as the most serious underlying offense in subsection 18 Pa. C.S.A. section 6318(A)(1) for which the defendant contacted the minor: or (2) a felony of the third degree-(F-3). SEE: 18 Pa. C.S.A. section 6318(b)-(Grading).

STATEMENT OF THE CASE:

According to the information, on March 28, 2008, petitioner was charged with this specific citation of statute and section of- 18 Pa. C.S.A. 6318(a)(1)- Unlawful Contact With A Minor-(relating to sexual offenses)-(F-3)). According to the information, the one **element** of the crime of Unlawful Contact With A Minor IS: “**CONTACTING**” a minor for the purpose of engaging in an Indecent Assault. SEE: attached EXHIBIT (K), INFORMATION document, at page’s (1),(2),(3), and (4).---- I, William Bolden-(petitioner) was tried and found guilty before the HON: Harold M. Kane, on October 8, 2009 and was convicted of the crime of- Unlawful Contact With A Minor- 18 Pa. C.S.A. 6318. Petitioner was accused of having in March of 2008 of “**CONTACTING**” a minor for the purpose of engaging in an Indecent Assault. SEE: attached- EXHIBIT (E), Trial Court OPINION document of- 11/16/2010, at page (1), and (4).---- On the record at the trial proceeding, it also indicate that petitioner’s trial attorney argued that, the one **element** of the crime of- Unlawful Contact With A Minor was/is, “**CONTACTING**” a minor for the purpose of engaging in an Indecent Assault, which was not found beyond a reasonable doubt, because the trial court did not find petitioner guilty of the crime **[element]** of “**CONTACTING**” the said minor. Instead, the trial court found petitioner guilty of the crime **[element]** of “**COMMUNICATING**” with the said minor, which was an entirely different **new** crime **[element]** of- Unlawful Contact With A Minor. SEE: attached- EXHIBIT (X), and EXHIBIT (A)- Trial Transcript document’s, N.T. of 10/8/2009, at page’s 141, lines-(19 to 25), page, 142, lines-(2 to 25), page, 143, lines-(2 to 6), page, 149, lines-(5 to 7), page 149, lines-(20 to 24), and page, 150, lines-(4 to 13).---- However, the trial court’s Opinion document indicated that, on April 26, 2010, the trial court had still sentenced petitioner to a mandatory minimum sentence pursuant to- 42 Pa. C.S.A. 9718.2(A) to 25 years imprisonment for the crime of- Unlawful Contact With A Minor- 18 Pa. C.S.A. 6318, without the appropriate factors having been determined as an **element** of the underlying offense beyond a reasonable doubt. SEE: attached- EXHIBIT (E), Trial Court’s OPINION document of- 11/16/2010, at page (1), and (4).

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REASON FOR GRANTING THE WRIT OF CERTIORARI

A). PETITIONER WAS SENTENCED UNDER A STATUTE THAT VIOLATE DUE PROCESS OF LAW UNDER THE UNITED STATES CONSTITUTION BY PERMITTING A TRIAL COURT TO IMPOSE AN ENHANCED SENTENCE WELL BEYOND THE STATUTORY MAXIMUM BASED ON A PRIOR CONVICTION, A FACT THAT WAS NOT ESTABLISHED BY A JURY OR BY PROOF BEYOND A REASONABLE DOUBT.

Petitioner was convicted of- Unlawful Contact With A Minor, 18 Pa. C.S.A. 6318. That offense is graded as a third degree felony-(F-3), which carries a statutory maximum sentence of three and one half to seven years incarceration. Pursuant to 42 Pa. C.S.A. 9718.2, petitioner was sentenced on that charge to a mandatory minimum sentence of twenty five to fifty years incarceration. 9718.2 applies to individuals who are convicted of any offense enumerated in 9795.1(a), which includes Unlawful Contact With A Minor, and requires that, if the individual has a prior conviction for any of the same enumerated offenses, the current conviction is deemed a “second strike,” subjecting him to a sentence of twenty-five to fifty years incarceration.

Subsection (C) of 9718.2, entitled “proof of sentencing,” states that “the court shall then determine by a preponderance of the evidence, the previous convictions of the offender.”- This statute, and the resulting sentence, is unconstitutional because it permits a judge to impose an enhanced sentence that exceeds the statutory maximum based on his or her finding of a prior conviction by a preponderance of the evidence, rather than requiring that a jury determine that fact beyond a reasonable doubt.

In Apprendi v. New Jersey, 530 U.S. 466 (2000), and its progeny, the United States Supreme court has held that any “sentencing” that increases the maximum sentence for an offense in effect is an **element** of the offense, entitling a defendant to proof beyond a reasonable doubt and a jury determination. Long before Apprendi, the court had already recognized that the label of a proceeding is constitutionally irrelevant, holding in In Re Winship, 397 U.S. 358 (1970), that non criminal juvenile adjudications require proof beyond a reasonable doubt of each charged **element** of the misconduct.

Even when there is no right to a jury trial, as with juvenile adjudications, SEE McKeiver V. Pennsylvania, 403 U.S. 528, 543 (1971), there is still a constitutional requirement of proof beyond a reasonable doubt for all critical factual determinations that result in stigma and punishment.

Petitioner acknowledges that in a pre-Apprendi case, Almendarez-Torres V. United States, 523 U.S. 224 (1998), the court rejected the arguments presented here, and, in dictum, the court has repeatedly noted that Apprendi's holding applies only to facts other than a conviction. Apprendi, 530 U.S. at 487-490. However, the court has noted recently that "a claim of such a fact (proof of a prior conviction, or an order vacating one) is subject to proof or disproof like any other factual issue." Johnson V. United States, 544 U.S. 295 (2005).- Further, Justice Thomas has observed that "Almendarez-Torres... has been eroded by this court's subsequent Sixth Amendment jurisprudence, and a majority of the court now recognize that Almendarez-Torres was wrongly decided." Shepard V. United States, 544 U.S. 13, 27-28 (2005) (Thomas, J., Concurring).

Petitioner further contends that: In Apprendi V. New Jersey, 530 U.S. 466 (2000) the Supreme court found that any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury and proven beyond a reasonable doubt.- In its August 22, 2011 opinion, the Superior court specifically found that the principles in Apprendi did not apply to this case. It did not have the benefit. SEE: attached- EXHIBIT (F)- Superior court's OPINION, at NO: 2605-EDA-2010, of August 22, 2011, at page- (12), however of the U.S. Supreme court's more recent decision in Alleyne V. United States, 133 S. Ct. 2151, 2163 (2013). Alleyne takes the reasoning in Apprendi further, finding that any fact that increases the mandatory minimum sentence for a crime "**is an element**" that must be submitted to the jury and found beyond a reasonable doubt.

IN Com V. Munday, 2013 Pa. Super 273 (2013) The Superior court applied Alleyne to Pennsylvania's mandatory sentencing laws, ruling that the factors that are considered in imposing a mandatory minimum sentence must be determined to be an **element** of the underlying drug charge and determined beyond a reasonable doubt. That was not done in this matter and a new sentencing is required.-(This foregoing issue was raised in petitioner's direct appeal in the Superior court at NO: 2605-EDA-2010, by petitioner's direct appeal attorney. **Additional legal argument was added by petitioner**). SEE: attached- EXHIBIT (N)- Superior court document's of- NO: 2605-EDA-2010, at pages, (29), (30), and (31).

CONCLUSION:

WHEREFORE, it is respectfully requested that this Honorable U.S. Supreme court vacate petitioner's judgment of sentence and grant him a new trial at which evidence of petitioner's prior acts will be inadmissible. If a new trial is not granted, petitioner ask this court to declare 42 Pa. C.S.A 9718.2 unconstitutional and remand this matter for the imposition of a discretionary sentence under 18 Pa. C.S.A. 1103 without application of 9718.2.

DATE: January 28, 2018

C.c. File.

*Resubmitted on
4/27/2018.*

Respectfully Submitted:

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