

No. 18-8187

ORIGINAL

Supreme Court, U.S.
FILED

FEB 21 2019

OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

KELLEY TONEY — PETITIONER
(Your Name)

vs.

WARDEN DAVID STOCK — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

KELLEY TONEY, #K83822
(Your Name)

CENTRALIA CORRECTIONAL CENTER - P.O.B. # 7711
(Address)

CENTRALIA, ILLINOIS - 62801
(City, State, Zip Code)

(618) 533-4111
(Phone Number)

QUESTION(S) PRESENTED

- 1) Should a convicted person be fully admonished at sentencing?
- 2) Is a sentence not authorized by statute void?
- 3) Is an improper sentence in violation of United States and Illinois statutes?
- 4) In Illinois statute, is mandatory supervised release applied within the sentence?
- 5) Does the Illinois Department of Corrections have the same authority as a magistrate to increase a prison sentence?
- 6) Is the petitioner serving more than one hundred percent of his sentence because of sentencing statute, mandatory supervised release statute, and Illinois Department of Corrections' increase of sentence?
- 7) Is serving more time than sentenced to, violating one's constitutional rights?
- 8) By the Illinois Supreme Court ruling a case for a petitioner

(i)

AGAINST THE CIRCUIT COURT AND APPELLATE COURT, BUT RULED AGAINST
THE PETITIONER ON SIMILAR ISSUES, WERE THE PETITIONERS UNITED STATES, AND
ILLINOIS CONSTITUTIONAL RIGHTS VIOLATED?

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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STATUTES

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☐ is unpublished.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 C 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 APPELLATE, FIFTH DISTRICT court 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.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was DNA.

☐ 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 NOVEMBER 28TH 2017.
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

"IF A DEFENDANT IS SENTENCED TO PRISON OTHER THAN NATURAL LIFE, THE JUDGE IMPOSING THE SENTENCE SHALL STATE ON RECORD IN OPEN COURT THE APPROXIMATE PERIOD OF TIME DEFENDANT WILL SERVE IN CUSTODY, ANY RESTRICTIONS INVOLVED (IF ANY) AND THE AMOUNT OF MANDATORY SUPERVISED RELEASE (PAROLE) TO SERVE"

730 ILC 5/5-4-1 (A), AND SECTION C-2 ADMONISHMENT.

2) "A SENTENCE NOT AUTHORIZED BY STATUTE IS VOID," PEOPLE V. THOMPSON, 209 ILL. 2D, 19, 282 ILL. DEC. 183, 805 N.E. 2D 1200 (2004).

3) MANDATORY SUPERVISED RELEASE IS A PART OF THE DEFENDANT'S SENTENCE, REGARDLESS OF PLEA AGREEMENT, PEOPLE V. WHITFIELD, 217 ILL. 2D 177 (2005), 840 N.E. 2D 658, 298 ILL. DEC. 545, IT IS INCLUDED WITHIN THE SENTENCE.

THIS IS THE 'GIST' OF MANDATORY SUPERVISED RELEASE.

4) "THE FAILURE TO REQUIRE THE COURT TO INCLUDE MANDATORY SUPERVISED RELEASE DURING PRONOUNCEMENT OF SENTENCE BY INCLUDING IT BY OPERATION

OF LAW VIOLATES THE DEFENDANTS RIGHT TO DUE PROCESS OF LAW. "EARLEY V. MURRAY, 451 F.3d. 71, 75 (2ND CIRCUIT 2006); UNITED STATES EX REL. CARROLL V. HATHAWAY, 2012 UNITED STATES DISTRICT LEXIS 6746 (N.D. ILL. 2012).

5) BECAUSE MANDATORY SUPERVISED RELEASE IMPOSES RESTRICTIONS ON THE DEFENDANTS LIBERTY THE NORTHERN DISTRICT OF ILLINOIS RECENTLY HELD THAT A FAILURE TO MENTION MANDATORY SUPERVISED RELEASE AT THE SENTENCING HEARING OR IN THE WRITTEN ORDER VIOLATED A DEFENDANTS RIGHT TO DUE PROCESS, HATHAWAY SUPRA.

6) THE LEGISLATURE IN STATING THAT MANDATORY SUPERVISED RELEASE WAS PART OF THE SENTENCE BY OPERATION OF LAW IMPINGES ON THE POWERS OF THE JUDICIAL BRANCH, IF IT GRANTS AN ADMINISTRATIVE AGENCY (ILLINOIS DEPARTMENT OF CORRECTIONS) THE ABILITY TO ADD A SENTENCE, PEOPLE V. FOWLER, 14 ILL. 3d. 252 (1958).

7) "ONLY A JUDGE MAY SET A SENTENCE", PEOPLE V. RINEHART, 2012 ILL. 111719 AT P25; PEOPLE V. KERNS, 2012 ILL. APP. (3d) 100375 AT P17.

- 8) The Illinois DEPARTMENT OF CORRECTIONS has BEEN Adding
MANDATORY SUPERVISED RELEASED TERMS WITHOUT PROPER AUTHORITY to do so.
The UNITED STATES SUPREME COURT has RULED that only the COURT MAY
PRONOUNCE SENTENCE, PEOPLE V. MUNOZ, 2011 ILL. APP. (3d) 100193, 962 N.E. 2d, 632,
356 ILL. DEC. 947
- 9) Hill V. UNITED STATES EX REL. WAMPLER, 298 U.S. 460, 464 (1936)
- 10) PEOPLE V. RINEHART, 406 ILL. APP. 3d. At 281, 348 ILL. DEC. 90, 943 N.E. 2d. 698

STATEMENT OF THE CASE

- 1.) IN JULY OF 2000, THE PETITIONER WAS CONVICTED OF FIRST DEGREE MURDER.
- 2.) IN AUGUST OF 2000, THE PETITIONER WAS SENTENCED TO 30 YEARS INCARCERATION ONLY AT ONE HUNDRED PERCENT OF HIS SENTENCE UNDER THE TRUTH IN SENTENCING LEGISLATION, 730 ILCS 5/3-6-3. NO MANDATORY SUPERVISED RELEASE TERM (OR PAROLE) WAS GIVEN BY THE SENTENCING JUDGE.
- 3.) ON APRIL 14TH 2017, ABOUT ONE MONTH AFTER TRANSFERRING HERE, THE PETITIONER MET WITH STACY BURTON, AN ILLINOIS DEPARTMENT OF CORRECTIONS EMPLOYEE IN THE RECORDS OFFICE HERE AT THE CENTRALIA CORRECTIONAL CENTER, WHOM INFORMED HIM THAT HE WOULD HAVE TO SERVE AND COMPLETE HIS THIRTY YEARS OF INCARCERATION BEFORE STARTING HIS MANDATORY SUPERVISED RELEASE (MSR). THIS IS A ONE HUNDRED AND THREE PERCENT SENTENCE GIVEN BY THE ILLINOIS DEPARTMENT OF CORRECTIONS

Not the SENTENCING JUDGE.

4) ON APRIL 15TH 2017, THE PETITIONER WROTE TWO GRIEVANCES PERTAINING TO THE ISSUES ABOVE, HE ALSO SENT TWO REQUESTS TO THE GRIEVANCE OFFICIAL HERE ON THE STATUS REPORT OF THESE GRIEVANCES THAT WERE NOT RETURNED.

5) THE PETITIONER WROTE AND MAILED HIS "MOTION TO VOID JUDGEMENT" PETITION, ON THE ILLINOIS DEPARTMENT OF CORRECTIONS ADDING AN ADDITIONAL THREE YEARS TO HIS SENTENCE, TO THE FOURTH JUDICIAL CIRCUIT COURT IN CARLYLE, ILLINOIS ON FEBRUARY 27TH 2018.

6) ON MARCH 7TH 2018, THE FOURTH JUDICIAL CIRCUIT COURT DISMISSED THE PETITIONER'S PETITION, CLAIMING HE DID NOT STATE A CLAIM UPON WHICH RELIEF MAY BE GRANTED.

7) ON MARCH 20TH 2018, THE PETITIONER MAILED A NOTICE OF APPEAL TO THE 4TH JUDICIAL CIRCUIT COURT.

8) ON MARCH 28TH 2018, THE PETITIONER MAILED A COPY OF HIS

NOTICE OF APPEAL, AND TWO FULL COPIES OF HIS PETITION TO THE APPELLATE COURT, FIFTH DISTRICT, IN MOUNT VERNON, ILLINOIS.

9) ON APRIL 3RD 2018, THE PETITIONER MAILED REQUESTS TO THE CLERK OF THE FOURTH JUDICIAL CIRCUIT COURT, TO PLEASE PREPARE THE RECORD ON APPEAL, TO THE COURT REPORTING PERSONNEL TO PREPARE THE TRANSCRIPTS, AND TO THE FIFTH DISTRICT APPELLATE COURT, INFORMING THEM THAT HE IS INDIGENT AND TO PLEASE WAIVE ALL FEES CONCERNING HIS APPEAL.

10) ON APRIL 9TH 2018, THE PETITIONER RECEIVED AN ORDER FROM THE FIFTH DISTRICT APPELLATE COURT GRANTING HIS REQUEST TO PROCEED AS AN INDIGENT PERSON, BUT STATING I STILL HAVE TO PAY THE FILING FEES TO THE FOURTH JUDICIAL CIRCUIT COURT.

11) ON APRIL 11TH 2018, THE PETITIONER WROTE THE FIFTH DISTRICT APPELLATE COURT CLERK, ASKING FOR CLARIFICATION AS TO WHY HIS INDIGENCY STATUS DOES NOT APPLY TO FEES CONCERNING THE FOURTH JUDICIAL CIRCUIT COURT.

THEY HAVE ALREADY ALLOWED HIM TO PROCEED IN FORMA PAUPERIS.

12) NINETEEN DAYS AFTER RECEIVING NO REPLY FROM THE FIFTH DISTRICT APPELLATE COURT, THE PETITIONER WROTE A MOTION TO THEM ASKING THEM TO HELP HIM PROCURE THE REPORT OF PROCEEDINGS, AND THE RECORD ON APPEAL, ON APRIL 30TH 2018.

13) ON MAY 11TH 2018, THE PETITIONER RECEIVED AN ORDER FROM THE FIFTH DISTRICT APPELLATE COURT, DENYING HIM HIS MOTION IN ITEM NUMBER 12 ABOVE.

14) ON JUNE 7TH 2018, THE PETITIONER RECEIVED AN ORDER TO SHOW CAUSE WHY HIS APPEAL SHOULD CONTINUE, BECAUSE THE FOURTH JUDICIAL CIRCUIT COURT WOULD NOT SEND THEM THE NECESSARY RECORDS REQUESTED.

15) ON JUNE 18TH 2018, THE PETITIONER MAILED HIS REPLY TO SHOW CAUSE FOR CONTINUING HIS APPEAL, AND POINTING OUT SUPREME COURT RULE NUMBER 607.

16) ON JUNE 26TH 2018, THE PETITIONER RECEIVED AN ORDER DISMISSING HIS APPEAL.

17) ON JULY 6TH 2018, THE PETITIONER MAILED HIS INTENT TO FILE A PETITION FOR LEAVE TO FILE AN APPEAL WITH THE ILLINOIS SUPREME COURT, AND THE

ILLINOIS ATTORNEY GENERALS OFFICE. EVERY MOTION FILED IN THE FIFTH DISTRICT APPELLATE COURT, A COPY WAS SENT TO THE ILLINOIS ATTORNEY GENERALS OFFICE AFTER ADMONISHMENT. MOTIONS BEFORE THE ADMONISHMENT WERE SENT TO THE ATTORNEY FOR THE DEPARTMENT OF CORRECTIONS.

18) ON JULY 25TH 2018, PETITIONER MAILED HIS PETITION FOR LEAVE TO FILE APPEAL TO THE ILLINOIS SUPREME COURT, AND ILLINOIS ATTORNEY GENERAL.

19) ON NOVEMBER 28TH 2018, THE ILLINOIS SUPREME COURT DENIED THE PETITION FOR LEAVE TO FILE AN APPEAL.

AT THE CIRCUIT AND APPELLATE COURT LEVEL, AND IN THE PETITIONER'S MOTION TO VOID JUDGEMENT PETITION, IN THE ARGUMENT SECTION ON PAGE NUMBER THREE, 1-F, THE FACT WAS RAISED THAT ACCORDING TO 730 ILCS 5/5-8-1(d) THAT MANDATORY SUPERVISED RELEASE IS APPLIED WITHIN THE SENTENCE, BUT IT WAS NOT GIVEN BY THE SENTENCING JUDGE.

Other Factors ARE: ① With determinate sentences mandatory supervised release is already applied within the sentences, but under 730 ILCS 5/5-4-1, Article 4(A) and C(2) the sentencing judge shall state on the record the length of the sentence, any mandatory supervised release (parole) to serve, and any special stipulations; ② Only a magistrate can pronounce and/or increase a sentence, not an agency (Department of Corrections, etc.); ③ by the Illinois Department of Corrections adding an mandatory supervised release (parole) term, not only increases his sentence to one hundred and three percent, it is also in violation of the petitioners United States Constitution Fifth and Fourteenth Amendment, and Article One Section Two of the Illinois Constitution and Equal Protection of laws. Also on page number three 1-F, petitioner demonstrated the fact how the Department of Corrections of Illinois misapplies statute 730 ILCS 5/5-8-1(d), "the plain language of a statute is the best indicator of legislative intent," PEOPLE V. WADE

260 Ill. Dec. 74, 760 N.E.2d. 491.

He also submitted proof that after its original draft, the syntax in statute 730 ILCS 5/5-8-1 (d) the one he should have been sentenced under in the year 2000, was re-written twice since being photo copied in the year 2005, from Illinois West Lawbook. The re-written version was photo copied in 2013, and another version photo copied in 20 , both from Illinois West Lawbook.

The petitioner mailed his Motion to Void Judgement Petition to the Fourth Judicial Circuit Court, and the 5th District Appellate Court raising the same issues in the same manner, as well as in his Petition for Leave to file an Appeal to the Illinois Supreme Court.

REASONS FOR GRANTING THE PETITION

IN the CASE OF PEOPLE V. Whitfield, Although he AGREED to Plead Guilty to First DEGREE MURDER AND ARMED ROBBERY, it WAS IN EXCHANGED FOR A TWENTY FIVE YEAR SENTENCE. IN OPEN COURT he PLEADED Guilty to the TWO CHARGES, but DURING his SENTENCING phase, AT NO TIME did the PROSECUTOR OR the COURT ADVISE DEFENDANT THAT PURSUANT TO SECTION 5-8-1(d) OF THE UNIFIED CODE OF CORRECTIONS (the CODE) (730 ILCS 5/5-8-1(d) (WEST 1998)), he would be subject to a THREE YEAR PERIOD OF MANDATORY SUPERVISED RELEASE, FOLLOWING his TWENTY FIVE YEARS SENTENCE FOR MURDER.

HE FILED A MOTION FOR RELIEF FROM JUDGEMENT PROSE, STATING his 14TH AMENDMENT'S DUE PROCESS RIGHTS WERE VIOLATED BECAUSE AN MANDATORY SUPERVISED RELEASE TERM HE WAS NEVER ADVISED AND HAD BEEN ADDED TO his SENTENCE. HE ALSO STATED THAT FOR THE PROPOSITION THAT THE COURTS FAILURE TO ADMONISH him REGARDING the MANDATORY SUPERVISED RELEASE TERM CONSTITUTED A DUE PROCESS VIOLATION WHICH REQUIRED THE COURT TO STRIKE

the Supervised Release term. The Circuit Court granted the States motion to dismiss the defendants Relief from Judgement motion. He appealed to the Illinois Appellate Court, whom upheld the dismissal of his petition.

However, when he appealed to the Illinois Supreme Court, they agreed that his twenty five year sentence, with the mandatory supervised release term would be enhanced to a twenty eight year sentence.

They reversed the Appellate Courts decision, vacated the Circuit Courts sentence and remanded with directions they impose a twenty two year sentence and three years mandatory supervised release term.

The mandatory supervised release term - 730 ILCS 5/5-8-1 (d) states that "Every sentence shall include as though written therein a term in addition to the term of imprisonment." The Illinois Supreme Court interpreted this statute as it is written that mandatory supervised release is not adjacent to the sentence, but included within the sentence. This is the "Gist" of the mandatory supervise release term.

Under the due process's Equal Application, if a particular statute affects only a certain segment of the population, the law will meet the due process requirements as long as the government applies it equally to all persons in that segment. In a court of law, the judicial system are representatives of the government. They help to sustain laws of the land, and to see that they are enforced by statute. In the case of the petitioners motion being denied, the judicial system failed on his equal application of due process.

He was convicted of first degree murder, sentenced to thirty years incarceration under the truth in sentencing legislation, at one hundred percent of his sentence, and was not given an mandatory supervised release term as proven in his order of commitment and calculation sheet (see appendix), but under 730 ILCS 5/5-8-1 (see appendix) he should have been by the sentencing judge. Though, the Whitfield case was a plea agreement that was remanded back to court with instructions, the main point (gist) in this case is his sentence would have been enhanced with the twenty five

YEAR SENTENCE AND THREE YEAR MANDATORY SUPERVISED RELEASE. AND THE ILLINOIS DEPARTMENT OF CORRECTIONS IS NOT AN EXTENSION OF THE COURT AND HAVE NO AUTHORITY TO APPLY AN MANDATORY SUPERVISED RELEASE TERM TO A SENTENCE OF COMMITMENT, IF THEY DID, IT WAS APPLIED IMPROPERLY.

WHEN THIS STATUTE 730 ILCS 5/5-8-1 WAS DRAFTED AND WENT INTO EFFECT IN THE YEAR 1998, ITS SYNTAX HAVE COME UNDER SCRUTINY AND IN CONFLICTION WITH 730 ILCS 5/3-6-3(i) TRUTH IN SENTENCING LEGISLATION. PROSECUTORS AND JUDGES ALIKE HAVE MISAPPLIED THESE STATUTES IN OPEN COURT, AS PROVEN IN THE WHITFIELD CASE AND PETITIONERS. DOZENS, UPON DOZENS OF MOTIONS HAVE BEEN FILED ON THE MISAPPLICATION OF THESE COMBINED STATUTES. IT CONFUSES AGENCIES SUCH AS THE ILLINOIS DEPARTMENT OF CORRECTIONS, WHO DO NOT HAVE THE AUTHORITY TO ENACT AS A TRIER OF THE COURT TO APPLY AN MANDATORY SUPERVISED RELEASE TERM. THE COURTS HERE IN ILLINOIS HAVE A PROBLEM APPLYING BOTH STATUTES ABOVE IN CONJUNCTION PROPERLY, WHERE IT BECOMES A VIOLATION OF ONE'S CONSTITUTIONAL RIGHTS. SINCE ITS ORIGINAL DRAFT AND EFFECTIVE DATE OF 1998, THE ILLINOIS STATE

LEGISLATURES HAVE RE-WRITTEN 730 ILCS 5/5-8-1 TWICE, TO TRY TO MAKE IT CONFORM TO AN ENTIRELY DIFFERENT MEANING FROM ITS ORIGINAL DRAFT (SEE APPENDIX FOR THE ORIGINAL DRAFT 1998; FIRST RE-WITTEN VERSION -2013; SECOND RE-WITTEN VERSION -2018.) AND, THE ILLINOIS SUPREME COURT OVERTURNING THE APPELLATE AND CIRCUIT COURT RULING IN FAVOR OF THE WHITFIELD CASE, BUT ALL THREE COURTS DENIED THE PETITIONERS "MOTION TO VOID JUDGEMENT" PETITION, WHO HAS SIMILAR ISSUES TO THE OVERTURNED CASE ABOVE. THESE ARE THE REASON THE PETITIONER BRINGS THIS PETITION BEFORE THIS HONORABLE COURT, AND ASKS THEM TO HELP THE ILLINOIS STATE LEGISLATURES AND JUDICIAL SYSTEM FINALIZE 730 ILCS 5/5-8-1 AS WELL AS OVERTURNING THE ILLINOIS SUPREME COURT, APPELLATE COURT, AND CIRCUITS RULING AND ORDERING THE COURT TO RE-SENTENCE HIM TO A ONE HUNDRED PERCENT SENTENCE OF TWENTY SEVEN YEARS IN CARCERATION AND THREE YEARS ON A MANDATORY SUPERVISED RELEASE TERM. THE PETITIONER'S CONSTITUTION'S 5TH AND 14TH AMENDMENT OF THE UNITED STATES AND ILLINOIS ARTICLE 1 SECTION 2 CONSTITUTIONAL RIGHTS WERE VIOLATED, AND UNDER THE FUNDAMENTAL FAIRNESS RULE.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: FEBRUARY 20TH 2019