

No. 18-8532

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S. FILED MAR 12 2019 OFFICE OF THE CLERK
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TERRENCE L. WRIGHT — PETITIONER
(Your Name)

vs.

NORTH CAROLINA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

TERRENCE L. WRIGHT
(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'S USE OF A DEFENDANT'S
ALCOHOL-VIOLENCE, LOW LEVEL PRIOR MISDEMEANOR
CONVICTIONS AS AN AGGRAVATED FACTOR
TO IMPOSE A LIFE SENTENCE VIOLATES THE
DEFENDANT, VIOLATES THE RULE AND
UNUSUAL PUNISHMENT CLAUSE OF THE
EIGHTH AMENDMENT TO THE UNITED
STATES CONSTITUTION.

(!)

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 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☐ is unpublished.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☐ is unpublished.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 _____; 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☒ is unpublished.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☐ is unpublished.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 01-15-19.
A copy of that decision appears at Appendix A.

☐ 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

AMENDMENT VIII.

EXCESSIVE BAIL SHALL NOT BE REQUIRED, NOR EXCESSIVE FINES IMPOSED, NOR CRUEL AND UNUSUAL PUNISHMENT INFLICTED

NORTH CAROLINA GENERAL STATUTE 14-1.1.(a)(3)(1992).

SENTENCES FOR CLASS C FELONIES MAY BE PUNISHABLE BY LIFE IMPRISONMENT, A TERM OF UP TO FIFTY YEARS, A FINE, OR BOTH A TERM AND A FINE.

NORTH CAROLINA GENERAL STATUTE 15A-134D.4.(a)(1992).

AGGRAVATING FACTOR NO. 15.

"THE DEFENDANT HAS A RISK OF REPEATED OR CONTINUED CRIMINAL OFFENSES PUNISHABLE BY MORE THAN 60 DAYS CONFINEMENT."

STATEMENT OF THE CASE

FOLLOWING A JURY TRIAL IN THE SUPERIOR COURT OF GRAHAM COUNTY, NORTH CAROLINA, THE PETITIONER WAS CONVICTED OF SECOND DEGREE MURDER. PETITIONER WAS SENTENCED TO A TERM OF LIFE IMPRISONMENT, BASED ON THE TRIAL JUDGE'S DETERMINATION THAT PETITIONER'S PRIOR CONVICTIONS OF A AGG-VIOLENT, LOW LEVEL MISDEMEANOR LARLEY CHARGE, WAS AN AGGRAVATING FACTOR THAT JUSTIFIED IMPOSING A TERM OF LIFE IMPRISONMENT UPON THE PETITIONER, UNDER NORTH CAROLINA GENERAL STATUTE (N.C.G.S.) 15A-134D. 4.(c). (15). (1992), THAT LAST STATUTORY AGGRAVATING FACTORS. THE TRIAL JUDGE WAS NOT REQUIRED TO IMPOSE A LIFE SENTENCE ON THIS FINDING, AND PURSUANT TO N.C.G.S. 14-1.1.(a)(3) (1992), COULD HAVE SENTENCED PETITIONER TO ANY TERM OF IMPRISONMENT BETWEEN 15 TO 50 YEARS, OR A FINE, OR BOTH A TERM OF IMPRISONMENT AND A FINE. THE PETITIONER HAS BEEN SERVING HIS LIFE SENTENCE SINCE FEBRUARY 4, 1997. ON 14 NOVEMBER 2018, PETITIONER FILED A HABEAS CORPUS PETITION IN THE SUPREME COURT OF NORTH CAROLINA, ASSERTING THAT HIS LIFE SENTENCE VIOLATES THE EIGHTH AMENDMENT'S CRUEL AND UNUSUAL PUNISHMENT CLAUSE. THE PETITION WAS DENIED JANUARY 15, 2019.

REASONS FOR GRANTING THE PETITION

PRIOR TO THIS COURT'S DECISIONS IN *APRENTI V. NEW JERSEY*, 530 U.S. 466 (2000), AND *BLAKELY V. WASHINGTON*, 124 S.Ct. 2531 (2004), THROUGHOUT THE STATE OF NORTH CAROLINA, JUDGES WERE IMPOSING LIFE SENTENCES UPON DEFENDANTS FOR CRIMINAL OFFENSES THAT DID NOT NORMALLY CARRY A LIFE SENTENCE, DUE TO THE SENTENCING JUDGE'S ABILITY TO SOLELY MAKE A FINDING OF AN AGGRAVATING FACTOR TO ENHANCE A DEFENDANT'S SENTENCE. IN MANY CASES, A PRIOR NON-VIOLENT, LOW LEVEL MISDEMEANOR, OR FELONY CONVICTION WAS DETERMINED BY SOME JUDGES TO BE AN AGGRAVATING FACTOR TO JUSTIFY IMPOSING A LIFE SENTENCE. WITHOUT THE INTERVENTION OF THIS COURT, SOME OF THE DEFENDANTS WHO WERE UNJUSTIFIABLY SENTENCED TO LIFE IMPRISONMENT MAY DIE IN PRISON, ALTHOUGH ELIGIBLE FOR PAROLE, ELIGIBILITY DOES NOT GUARANTEE EVER BEING RELEASED.

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

(CONTINUED NEXT PAGE)

THE QUESTION, WHETHER A STATES USE OF A LOW LEVEL, NON-VIOLENT PRIOR MISDEMEANOR CONVICTIONS AS AN AGGRAVATED FACTOR TO IMPOSE A LIFE SENTENCE UPON THE DEFENDANT, VIOLATES THE CRUEL AND UNUSUAL PUNISHMENT CLAUSE OF THE EIGHTH AMENDMENT TO THE UNITED STATES CONSTITUTION, WARRANTS THIS COURT'S REVIEW.

NORTH CAROLINA GENERAL STATUTE (N.C.G.S.) 14-1.1 (a) (3) (1992) PROVIDES: "SENTENCES FOR CLASS C FELONIES MAY BE PUNISHABLE BY LIFE IMPRISONMENT, A TERM OF UP TO FIFTY YEARS, A FINE, OR BOTH A TERM AND A FINE."

HOWEVER, THE SENTENCING JUDGE MUST IMPOSE A 15 YEAR SENTENCE FOR THE CLASS-C FELONY OF SECOND DEGREE MURDER, UNLESS AN AGGRAVATED OR MITIGATED FINDING MERIT THE IMPOSITION OF A LONGER OR SHORTER SENTENCE. SEE STATE V. MELTON, 307 N.C. 370, 298 S.E.2d 673 (1983).

IN THIS PETITIONER'S CASE, AFTER BEING CONVICTED BY A JURY OF THE CLASS-C FELONY OF SECOND DEGREE MURDER, THE SENTENCING JUDGE MADE A FINDING OF AN AGGRAVATED FACTOR AGAINST THE PETITIONER. THE SENTENCING JUDGE FOUND PURSUANT TO N.C.G.S. 15A-134D.4.(a).(15).(1992), THAT "THE DEFENDANT HAS A PRIOR CONVICTION FOR A CRIMINAL OFFENSE PUNISHABLE BY MORE THAN 60 DAYS CONFINEMENT."

THE PETITIONER'S PRIOR CONVICTION WAS FOR MISDEMEANOR LARCENY, FROM NOVEMBER 18, 1991. UPON THIS FINDING ONLY, THE SENTENCING JUDGE IMPOSED A SENTENCE OF LIFE IMPRISONMENT AGAINST THIS PETITIONER. SEE - JUDGMENT, AGGRAVATING AND MITIGATING FACTOR SHEET, AND CRIMINAL HISTORY PRINT-OUT ATTACHED TO THE STATE HABEAS CORPUS AT APPENDIX-B, OF THIS PETITION. WITHOUT THE USE OF THIS AGGRAVATING FACTOR, THE PETITIONER COULD NOT HAVE BEEN SENTENCED TO LIFE IMPRISONMENT. THE EIGHTH AMENDMENT DECLARES THAT "EXCESSIVE

BAIL SHALL NOT BE REQUIRED, NOR EXCESSIVE FINES IMPOSED, NOR CRUEL AND UNUSUAL PUNISHMENTS INFLICTED." THE EIGHTH AMENDMENT'S PROSCRIPTION OF CRUEL AND UNUSUAL PUNISHMENTS HAS BEEN HELD TO BE APPLICABLE TO THE STATES BY THE FOURTEENTH AMENDMENT. SEE E.G. ROBINSON V. CALIFORNIA, 370 U.S. 660 (1962). HERE, THE SENTENCING JUDGE'S USE OF PETITIONER'S LOW LEVEL, NON-VIOLENT PRIOR MISDEMEANOR CONVICTIONS FOR THE SOLE PURPOSE OF IMPOSING A LIFE SENTENCE UPON THIS PETITIONER, CLEARLY RESULTED IN CRUEL AND UNUSUAL PUNISHMENT, IN VIOLATION OF THE EIGHTH AMENDMENT.

PURSUANT TO N.C.G.S. 14-1.1.(a)(3)(1992), THE SENTENCING JUDGE, EVEN AFTER FINDING PETITIONER PRIOR MISDEMEANOR LARCENY CONVICTIONS TO BE AN AGGRAVATING FACTOR, STILL COULD HAVE IMPOSED A SENTENCE OF UP TO 50 YEARS, AND DID NOT HAVE TO IMPOSE A TERM OF LIFE IMPRISONMENT AGAINST THE PETITIONER. THERE ARE OTHER AGGRAVATING FACTORS GREATER IN SIGNIFICANCE AND WEIGHT THAT WOULD

JUSTIFY THE IMPOSITION OF A LIFE SENTENCE.

HOWEVER, NONE OF THEM WERE PRESENT IN THIS PETITIONER'S CASE.

THE NORTH CAROLINA SUPREME COURT HAS ISSUED A SUMMARY DENIAL OF PETITIONER'S CLAIM THAT AS IMPOSED, HIS LIFE SENTENCE IS A VIOLATION OF THE EIGHTH AMENDMENT'S CRUEL AND UNUSUAL PUNISHMENT CLAUSE (APPENDIX-A). A SUMMARY DENIAL BY THE STATE HIGHEST COURT IS CONSIDERED A RULING ON THE CLAIM'S MERITS.

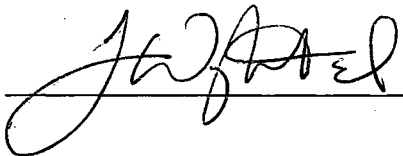
WHEREFORE, THE PETITIONER ASKS THAT THIS COURT FIND THAT A TERM OF LIFE IMPRISONMENT IMPOSED UPON A DEFENDANT'S PRIOR CONVICTIONS OF A NON-VIOLENT, LOW LEVEL CRIMINAL OFFENSE, AS AN AGGRAVATING FACTOR, VIOLATES THE CRUEL AND UNUSUAL PUNISHMENT CLAUSE OF THE EIGHTH AMENDMENT TO THE UNITED STATES CONSTITUTION, AND THAT A LIFE SENTENCE IMPOSED IN SUCH MANNER AND BY SUCH METHOD MUST NOW BE VACATED.

THE PETITIONER ASKS THAT THIS COURT VACATE HIS SENTENCE OF LIFE IMPRISONMENT, AND ORDER THAT PETITIONER IS ENTITLED TO BE RESENTENCED TO A TERM BETWEEN 15, AND 50 YEARS AS PROVIDED BY N.C.G.S. 14-1.1.(a)(3) (1992).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: MARCH 12, 2019