

**IN THE
SUPREME COURT OF THE UNITED STATES**

March TERM OF 2019

NO_

RYAN A. WATKINS

PETITIONER,

-against-

SIXTH CIRCUIT

Respondents

**PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

RYAN A. WATKINS

PO Box 740

London, Ohio 43140

QUESTION PRESENTED

Whether Petitioner was entitled to present his claims after re-sentencing to the United States District Court of appeals.

Whether the Sixth Circuit Court of appeals decision was an unreasonable application of well established Federal Law when it denied Petitioner opportunity to present his second successive Petitioner as provided by Federal Law.

PARTIES

The Petitioner is Ryan Watkins Prisoner at the Madison Correctional Institution Facility in London, Ohio

The Respondent is Mike Dewine at the Attorney General office at 30 E Broad Street 14th
Columbus, Ohio
43215

TABLE OF CONTENTS

| | |
|---|--|
| Question Presented | |
| Parties | |
| Table of Authorities | |
| Decisions below..... | |
| Jurisdiction | |
| Constitutional and Statutory Provisions Involved..... | |
| Statement of the Case..... | |
| Basis for Federal Jurisdiction | |
| Argument in Support of Granting Certiorari..... | |
| A. Conflicts with Decisions of Other Courts | |
| B. Importance of the Question Presented | |
| Conclusion | |

Appendix

| | |
|--|-----|
| Decision of the United States Court of Appeals | A.1 |
| Order of the United States District Court..... | |

Table of Authorities

Cases:

State v. Watkins, 10th Dist. No. 01AP-1376, 2002-Ohio-5080, 2002 WL 31123872 (Ohio Ct. App. Sept. 26, 2002)

Magwood, 561 U.S. at 335, 339, 130 S.Ct. 2788; King v. Morgan, 807 F.3d 154, 157 (6th Cir. 2015).

In re Campbell, 874 F.3d 454, 459 (6th Cir. 2017).

In re Stansell, 828 F.3d 412 (6th Cir. 2016).

Decision Below

Crangle v Kelly, No.14-3447 838 F.3d 673: 2016 U.S. App. LEXIS 17319; & King v Morgan No.13-

4189 Sixth Circuit Decided December 1,2015.... Theses decisions below affect this case in its entirety and serve as a direction for this Honorable Court to accept Jurisdiction to review the constitutional Violation that exist and has occurred in this case.

JURISDICTION

This court has Jurisdiction over this case based on the decision that affects all citizens in the United States when courts decide cases and in those decisions allow relief to prisoner's as in this case. The United States Court of Appeals for the Sixth Circuit Court of Appeals in Ohio has already made clear the order of allowing Petitioner's such as in this case to present their issues after Re Sentencing.

This became the law of the case in; Crangle v Kelly, No.14-3447 838 F.3d 673: 2016 U.S. App. LEXIS 17319; & King v Morgan No.13-4189 Sixth Circuit Decided December 1,2015as well as in Magwood

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This Court therefore must first address whether the action is subject to transfer to the Sixth Circuit for authorization for filing as successive.

Before a second or successive [*4] petition for a writ of habeas corpus can be filed in a district court, a petitioner must ask the appropriate circuit court of appeals to authorize the district court's consideration of the application. 28 U.S.C. § 2244(b)(3)(A). If a district court in the Sixth Circuit determines that a petition is a second or successive petition, *see In re Smith*, 690 F.3d 809 (6th Cir. 2012), the district court must transfer the petition to the United States Court of Appeals for the Sixth Circuit pursuant to 28 U.S.C. § 1631. *In re Sims*, 111 F.3d 45, 47 (6th Cir. 1997). The Sixth Circuit, in turn, will authorize the filing of a second petition only if the petitioner establishes either that the claim sought to be asserted relies on a new rule of constitutional law made retroactive by the United States Supreme Court to cases on collateral review; or if the factual predicate for the claim could not have been discovered previously through the exercise of diligence, and these facts, if proven, would establish by clear and convincing evidence that, but for the constitutional error, no reasonable fact finder would have found the applicant guilty. *Id.*

However, in certain "limited circumstances, a § 2254 petition is not considered 'second or successive' within the meaning of § 2244(b) even though the petitioner filed a previous habeas application." [*5] *Storey v. Vashbinder*, 657 F.3d 372, 376 (6th Cir. 2011).

For example, a habeas petition is not considered "second or successive" under § 2244(b) when the claim has been raised in a prior petition, but dismissed as unripe, although other claims in the initial petition were decided on the merits. *Stewart v. Martinez-Villareal*, 523 U.S. 637, 643-46, 118 S.Ct. 1618, 140 L.Ed.2d 849 (1998). Even if the claim was not presented in an earlier petition, a subsequent petition raising the claim does not constitute a "successive" petition for purposes of § 2244(b) if the claim would have been dismissed as unripe in the initial petition. *Panetti*, 551 U.S. at 945, 127 S.Ct. 2842. Nor do the successive petition restrictions apply if the first petition was dismissed for lack of exhaustion. *Slack*, 529 U.S. at 478, 487, 120 S.Ct. 1595. The restrictions also do not apply if an intervening state court judgment (such as a resentencing) occurred after the first habeas petition was decided. *Magwood*, 561 U.S. at 335, 339, 130 S.Ct. 2788; *King v. Morgan*, 807 F.3d 154, 157 (6th Cir. 2015).

In re Campbell, 874 F.3d 454, 459 (6th Cir. 2017).

As discussed, the Supreme Court has held that a habeas corpus petition is not successive where it is filed after the trial court conducts a re-sentencing hearing that results in the issuance of a new judgment. *Magwood*, 561 U.S. at 331-39 (2010). In *Magwood*, the petitioner had originally filed a § 2254 petition challenging his 1981 death sentence. "[T]he District Court upheld Magwood's conviction but vacated his sentence and conditionally granted the writ based on the trial court's

failure to find [*6] statutory mitigating circumstances relating to Magwood's mental state." *Id.* At 326 (footnote omitted). The state trial court thereafter held a new sentencing hearing, again imposing death sentence. *Id.* Magwood filed a second petition under 28 U.S.C. § 2254, in which he alleged that he had not received fair notice that he could be sentenced to death and that he had been denied the effective assistance of counsel during the re-sentencing hearing. *Id.* At 328. Noting that the later sentencing hearing had resulted in a new judgment, the Supreme Court held that Magwood's second habeas corpus petition did not constitute a successive petition. *Id.* At 331.

Similarly, in *In re Stansell*, 828 F.3d 412 (6th Cir. 2016), the Sixth Circuit held that, even where a sentence has been vacated only partially (because it did not include a term of post-release control) and the state trial court re-sentenced the Petitioner for the limited purpose of imposing that term, that action resulted in a new or intervening judgment that permitted Stansell to raise challenges to his original conviction and his original sentence to a term of incarceration, as well as to his new term of post-release control. *Id.* At 416. "Final judgment in a criminal case means sentence. The sentence is the judgment." *Id.* (quoting *Berman v. United States*, 302 U.S. 211, 212, 58 S. Ct. 164, 82 L. Ed. 204 (1937))

In the present case, Petitioner asserts that he filed his second Petition in light of the decision afforded all prisoner's in a new intervening judgment that permitted Petitioner opportunity to raise challenges to his original conviction. However, the courts has now contradicted itself in theses cases and Petitioner has been denied opportunity to present his challenges anew, yet in *Crangle v Kelly*, also *King v Morgan* those petitioner's were allowed to challenge their original convictions after Re sentencing.

Unless this court accept Jurisdiction to resolve the constitutional and statutory violation that is occurring in theses cases, Petitioner and all citizens of the United States are continued to be violated as herein.

STATEMENT OF THE CASE

Petitioner challenges his October 19, 2001, convictions after a jury trial in the Franklin County Court of Common Pleas on murder, aggravated robbery, felonious assault, and having a weapon while under disability, with firearm specifications. On September 26, 2002, the appellate court affirmed [*2] the judgment of the trial court. State v. Watkins, 10th Dist. No. 01AP-1376, 2002-Ohio-5080, 2002 WL 31123872 (Ohio Ct. App. Sept. 26, 2002). Petitioner did not file a timely appeal, and on November 19, 2003, the Ohio Supreme Court denied his motion for a delayed appeal. State v. Watkins, No. 2003-1719, 2003-Ohio-5992, 100 Ohio St.3d 1483, 798 N.E.2d 1092 (Ohio Sup. Ct. Nov. 19, 2003).

On October 16, 2003, Petitioner filed his first federal habeas corpus Petition. He asserted (as he does here) that the trial court's failure to instruct the jury on the essential element of theft and aggravated robbery denied him due process, and that he was denied the effective assistance of trial counsel based on his attorney's failure to object to errors in the jury instructions. Watkins v. Hurley, Case No. 2:03-cv-941. However, on October 26, 2004, the Court issued final Judgment dismissing that action as procedurally defaulted. *Id.*

Subsequently, in 2015, Petitioner filed a motion for re-sentencing in the state trial court based on the trial court's failure to properly notify him of post-release control at his sentencing hearing. The trial court denied the motion, but on March 1, 2016, the state appellate court reversed that decision, and remanded the case to the trial court for a "limited resentencing to properly impose post-release control." State v. Watkins, 10th Dist. No. 15AP-694, 2016-Ohio-780, 2016 WL 817003, at *2 (Ohio Ct. App. March 1, 2016).

[¶ 3] On remand, the trial court held a resentencing hearing and properly [*3] notified appellant of post-release control. At the hearing, appellant argued that certain of his convictions should merge for purposes of sentencing. The trial court concluded that in light of this court's limited remand, the only issue it could address at the resentencing hearing was appellant's post-release control notification. Therefore, the trial court did not consider appellant's merger argument.

State v. Watkins, 10th Dist. No. 16AP-581, 2017-Ohio-1141, 2017 WL 1162426, at *1 (Ohio Ct. App. March 14, 2017). On March 14, 2017, the appellate court affirmed the judgment of the trial court. *Id.* On July 26, 2017, the Ohio Supreme Court declined to accept jurisdiction of the appeal. State v. Watkins, No. 2017-0535, 2017-Ohio-6964, 150 Ohio St.3d 1411, 78 N.E.3d 910 (Ohio Sup. Ct. July 26, 2017). On June 14, 2018, Petitioner filed this *pro se* Petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. He asserts, as he did previously, that he was denied due process and the right to the effective assistance of counsel because the trial court failed to define theft in its jury instruction on aggravated robbery, and trial counsel failed to object.^[1]

BASIS FOR FEDERAL JURISDICTION

Basis for this court jurisdiction is to allow the court to resolve the conflict that exist in this current case, with Crangle v Kelly, along with King v Morgan

ARGUMENT IN SUPPORT OF GRANTING CERTIORARI

A. Conflicts with Decisions of Other Cases

The conflict that exist here is whether King v Morgan allows Petitioner's a new ticking clock at a Habeas Corpus Petition challenging the original conviction. Petitioner asserts it does the decision of the Sixth Circuit answer's in the negative. Clearly, Crangle v Kelly assert s Petitioner should have been allowed to raise his issues at the second level of his appeals, however, the Sixth circuit simply failed to permit Petitioner's new challenge.

Petitioner ask this United States Supreme Court to resolve the conflict that now exist with theses types of cases herein. This would resolve the conflict that currently exist today.

B. Importance of the Question Presented

The importance of the question presented herein, protects Citizens & Incarcerated inmates from not receiving the benefit afforded in the decision of Crangle v Kelly and the new decision of King v Morgan all stemming from the misunderstanding of Magwood.

CONCLUSION

This case is a ambiguous as it was post **Crangle v Kelly No.14-3447 838 F.3d 673: 2016 U.S. App. LEXIS 17319; & King v Morgan No.13-4189 Sixth Circuit Decided December 1,2015** when the Sixth District Court of appeals address the very issue in which has now been decided and denied against the holdings in Crangle v Kelly, & King v Morgan When the Sixth District finally held that Petitioner's second Habeas was not successive based on a new sentencing hearing where the trial court failed to properly impose Post Release Control.

The importance of this decision and the United States Supreme Court to accept Jurisdiction is to allow the all citizens the right issued by the Sixth District Court of Appeals governing Ohio and now Petitioner ask this honorable Court to review and resolve the conflict that clearly exist in Ohio based on the misinterpretation of the law of the case.

In cases where challenging decisions that were decided and not adhere to by certain courts only denies equal Protection of the law for certain offenders, where other defender's receive the benefit of the decisions in which in this case certain defendant are denied the benefit in which Petitioner herein seeks.

In this case, the unequal treatment of Crangle v Kelly, & King v Morgan clearly will be found to violate equal protection clause because it lacks the rational basis in which the Sixth Circuit applied those two particular cases. The Decision of the Sixth District Court of Appeals, requires courts to apply the law to all citizens and not just a selected few. If the decision were allowed to stand, it would deny Petitioner the very right that others are entitled to as discussed in **King v Morgan No.13-4189 Sixth Circuit Decided December 1,2015.**

Wherefore, Petitioner ask this court to accept his Certioria to allow equal Protection to all citizens of the United States.