

No. 10-5060

ORIGINAL

Supreme Court, U.S.
FILED

JUN 10 2019

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IN THE

SUPREME COURT OF THE UNITED STATES

Derrick Washington — PETITIONER
(Your Name)

vs.

Luis Spencer — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Derrick A. Washington
(Your Name)

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SUPREME COURT, U.S.

QUESTION(S) PRESENTED

1. Is Congress' 1996 Anti-Terrorism Effective Death Penalty Act (AEDPA) unconstitutional, as ~~it~~ unnecessarily snuffs out convicted persons abilities to seek review of an erroneous conviction, subjecting them to a cruel and unusual penalty of punishment through unjustifiable incarceration?
2. Life Without the possibility of Parole (LWOP) prison sentences constitutes an unconstitutional, state sanctioned practice of indefinite slavery, violating the U.S. Constitution's Article IV Section 4, 5th, 8th, 9th, 10th, 13th, 14th, 15th, and 19th Amendments.

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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OPINIONS BELOW

1. Commonwealth v. Washington, 459 Mass. 32, 944 N.E. 2d 98, 2011
Mass. LEXIS 36 March 3, 2011
2. 311 F. Supp. 3d 392; 2018 U.S. Dist. LEXIS 73972

JURISDICTION

1. Order Of The Court March 13, 2019 (USCA)
2. Mandate March 20, 2019 (USCA)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. Article I Section 8 Clause 18
2. Article I Section 9 Clause 2
3. Article IV Section 3
4. Article IV Section 4
5. Amendment[s] 1st, 4th, 5th, 8th, 9th, 13th, 14th, 15th,
16th, 17th, 19th, 23rd, 24th, 26th.
6. Alaska stat. §12.55.125

STATEMENT OF THE CASE

According To The States Witness Mark Young:

Mark Young, Jr. became intoxicated at a 'Super Bowl' party on Sunday, February 6, 2005, left the party in the afternoon, and returned to his house at 121 Suffolk Street in Springfield, where he went to sleep. A telephone call from [co-defendant Maurice] Felder at 9:42. Felder said he was downstairs, and let Felder into the house along with [co-defendant Aaron] Lester and Derrick Washington (Petitioner denys this disputed fact of false testimony and anywhere else my name is inserted (Derrick Washington) by "Young's" statement). Felder had been in the house before, and Young said he was acquainted with the others.

Once inside, defendants, ordered Young at gun point to contact the victim Tyrone Lewis who Young knew dealt cocaine and ask to deliver \$400 worth of cocaine. Young did so and lured victim into the house. Lewis was told by defendants to call his driver inside the house. Lewis offered to arrange to retrieve what Young testifys to be \$20,000 in cash from his girlfriend. Felder drove to Lewis's house and split the money with the defendants. Despite having cash, the defendants brought victims to Youngs attic, tied them up, and shot at them. Lewis and White died from gunshot wounds but the defendants bullet somehow missed Young, who faked like he was dead.

Young escaped from the house after the defendants left. He ran to a neighbors house who contacted the police. Young was driven to the police station in the earlier morning hours of February 7. Young lied to the police until he was able provide a comfortable enough story to the District Attorney which would clear the way for himself while giving names of suspects. Young Arranged first to leave the Commonwealth, and later agreed to have all his pending cases dropped against him. Young then told the version of events of which he testified to at trial, he identified the three defendants as the assailants

who shot the two victims.

At 3.P.M. on February 7, Trooper Sean Maher of the state police noticed a grey Honda auto mobile traveling south on Route 91 with a loud exhaust system. Maher pulled over the vehicle for two motor violations and asked the driver, Thomas González, for license and registration. Maher asked for the identification from the two passengers, Lester and Washington. Maher learned that they had outstanding warrants. He arrested the two passengers. Washington had \$6,720 in his pocket in a wad.

Commonwealth v. Washington, 459 Mass. 32, 33-37, 944 N.E. 2d98, 102-04 (2011).

REASONS FOR GRANTING THE PETITION

1. Justice William Brennan asserted that there is no higher duty than to maintain unimpaired the right to seek the writ, whose "root principle is that in a civilized society, government must always be accountable to the judiciary for a man's imprisonment ... Fay v. Noia, 372 U.S. 402 (1963)." Under the Anti-Terrorism Effective Death Penalty Act (AEDPA), a strict one-year time limit applied for incarcerated offenders to file their Habeas Corpus petition following the petitioner's denial of their state appeal at its highest level of review. During this one year period the petitioner is not constitutionally required to be assigned counsel and if he/she is one day late in submitting said petition the petitioner is then denied their ability to file for habeas corpus and have their conviction reviewed irregardless if they're wrongly convicted/innocent. The AEDPA was enacted by Congress during the Clinton administration's push for government to be tough on crime following the 1996 Oklahoma City bombings in which President Clinton had referenced on many occasions following the incident that he wanted to "stamp out any opportunities for criminals like Timothy McVeigh to wait years down the line to appeal their conviction and get out of prison." The AEDPA has been effective in stamping out Habeas Corpus processes for many persons, especially for those who're less educated and have little to no resources to secure **effective** representation to pursue habeas review.

The petitioner takes issue with the AEDPA because it is an abuse of Congressional implied powers and in fact lays assault to Article I Section 9 Clause (2). Congress garners

its implied powers from Article I Section 8 Clause (18) through their interpretation of what's considered to be Necessary and Proper. The Necessary and Proper standard showcased itself in the 1819 McCulloch v. Maryland, 4 Wheat. (17U.S.) 316 case which allowed "a generous range of 'implied' means for achieving express powers" and in addition created an operative test that determines if whether the implied means are appropriate and plainly adapted to achieving the enumerated means (eg. express powers granted in clauses 1-17 in section 8 of Art.I). Most concerning, McCulloch requires that the exercise of federal power NOT violate any other provision which, is where the concern derives from the petitioner in relation to the AEDPA.

Article I Section 8 is the power granting section while Section 9 is limiting. Section 9 expressly prevents legislature from arbitrarily wielding its criminal law powers. Through Section 9, it prevents Congress from suspending the Writ of Habeas Corpus, the "Great Writ" that since the time of the Magna Carta (although not constitutionally relevant) has remedied arbitrary and indefinite incarceration. The AEDPA is an abuse of legislative power and was only conceived because 1) the tough on crime momentum of the 1990s 2) This Court (SCOTUS) has not been presented a well enough argument for judicial review to annul the Act and 3) the legislators and courts have yet to weigh the degree of encroachment the AEDPA has in relation to constitutional Rule of Law.

The petitioner has grown passionate about the stipulations commanded from the AEDPA as a result of being victimized from

it. Immediately following the denial of my appellate issues in the highest state courts I was tasked with filing a habeas petition as a pro se defendant. After about nine months of researching the process and how to present previous claims I'd exhausted in the state courts, I discovered that my constitutional right to a public trial had been violated. As a result of the new evidence the issue had not been preserved and I was compelled to file a motion for a New Trial in the Superior Court. Following my filing of my motion for a New Trial, I informed the District Court about what was occurring with my newly discovered issues and my subsequent motion for New Trial and that I planned on filing a habeas petition and to Stay my time until I resolved the pending motion in the state court. However, they suggested I file the petition only for them to later deny, stating I filed a mixed petition. I eventually was able to clear that up and judge William Young had granted a Stay upon the completion of exhaustion. Not long after, I'm assigned counsel from the Committee for Public Counsel Services (CPCS) to represent me for my pending Rule 30 Motion for New Trial in the state Superior Court. Unfortunately for me, the way this attorney performed it can't be determined if results would have differed much if I had not secured representation. In such, we lost at every stage of representing and appealing our issues (not initially disconcerting as losing is not uncommon). He then volunteers to represent me in the District Court prior to us being unsuccessful in the state court after I informed him that I was on a Stay from justice Woodlock and for him to notify the Court "if"

we did not prevail before the Single justice in the state Court specifically to not run afoul with any time constraints. My attorney insisted that he was not required to notify the Court because I had already been granted a Stay and the time would be "tolled" until he decided to move forward (which is exactly what he argued before the USCA claiming there is no caselaw that required him to notify the Court if I had already been granted a Stay). Ultimately, Woodlock decided he was required to immediately pursue the Habeas process following the finalization of the state proceedings, despite the earlier granting of the Stay and consequently deemed my Habeas Corpus petition to be "time barred/untimely."

I initially was compelled to present a case for ineffective assistance of counsel (which I strongly feel valid) but, I realized the larger issue was the constitutional question of the AEDPA as I'm confident that not having the liberty of time to consult existing laws concerning the structure on an AEDPA and could primarily focus on the research, preparation and presentation of issue[s] relating to the error of my conviction irregardless of time restraints, the function of justice would be carried out. In turn, the AEDPA has robbed the petitioner of justice or equitable adjudication. In fact, because I am serving a sentence of LWOP and have been time barred to have any prospective errors of my conviction reviewed or the idea of my innocence deliberated upon through a constitutional guarantee of Habeas Corpus (Art.I Sec.9 Clause 2) serves as a grave injustice.

2. Life Without the possibility of Parole (LWOP) prison sentences constitutes an unconstitutional, state sanctioned practice of indefinite slavery as persons encumbered by such sentence will forever remain chattel property of the state.

United State Citizens are guaranteed a republic form of government through Article IV Section 4 while, in addition, the 14th Amendment decrees that, "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....[government must not] deny to any person within its jurisdiction the equal protection of the laws (14th Amendment)." Through the 14th Amendment's Incorporation Clause, citizens of States are entitled to all guarantees sanctioned by the U.S. Constitution. The petitioner, Derrick Washington, who has been sentenced to LWOP is ~~scheduled~~ to be indefinitely deprived of liberties afforded by the 1st, 4th, 5th, 8th, 9th, 13th, 14th, 15th, 17th, 19th, 23rd, 24th, and 26th amendments deminishing my human status to non-citizen; see Dred Scott v. Sandford, 15 LED, 19 HOW 393:

The words "people of the United States" and "citizens" are synonymous terms, and mean the same thing. They both describe the pollitical body, who, according to our rep̄ublican institutions, from the sovereignty, and who hold the power and conduct the government through their representatives. They are what we familiarly call the "sovereign people," and every citizen is one of this people, and a constituent member of this sovereignty. The question before us is, whether the class of persons described in

the plea in abatement compose a portion of this people, and are constituent members of this sovereignty. We think they are not, and that they are not included, and were not intended to be included, under the word "citizens" in the Constitution, and can, therefore, claim none of the rights and privileges which that instrument provides for and secures to citizens of the United States. On the contrary, they were at that time considered as a subordinate [405] and inferior class of beings, who had been subjugated by the dominant race, and whether emancipated or not, yet remained subject to their authority, and had no rights or privileges but such as those who held the power and the government might choose to grant them.

The primary force of the Scott decision has been thwarted by the 13th Amendment but, however, it is through that same vehicle (13th Amend.) that resuscitates the reverberating pulses of slavery administered through the authority of its "exception" clause (13th amend.) vis-a-vis LWOP sentences. Although, the petitioner does not present this Court the question regarding the constitutionality of state sanctioned slavery in relation to prison/inmates (as the constitution permits such practice), the petitioner challenges the mode in which slavery is implemented, LWOP. LWOP forcloses any sense of hope and differs from a death penalty only in that it prolongs the torturous idea of death while still physically forced to exist in perpetual pain, conflicting with 8th Amendment Cruel and Unusual punishment standards. Washington's sentence of LWOP excoriates any remaining vestiges of human dignity

and further erases privileges and immunities of American citizenship. LWOP is a suspect classification for strict scrutiny as the indefinite sentence denies any opportunity for review (parole) and perpetuates a mode of suffering in which its finality can only be fulfilled by death (Grants of Executive Clemency are rare, if not obsolete. In Massachusetts, for instance, the governor only commuted one sentence between 1997 and 2019. See State Clemency Project, Willie Hortons Shadow: Clemency in Massachusetts NYU Center on the Administration of Criminal Law pg.2), depriving Washington of fundamental liberties consisting voting, traveling, making contracts, owning property, procreating and/or being among family. See Meyer v. Nebraska, 262 U.S.390 (1923) ("to marry, establish a home , and bring up children" is an important part of the "liberty" protected by the due-process clauses) See Moore v. City of East Cleveland, 431 U.S. 494 (1977) ("The Constitution protects the sanctity of the family precisely because the institution is...deeply rooted in this nation's history and tradition...families are not limited to the nuclear family [rather] the tradition of uncles, aunts, cousins, and especially grandparents sharing a household...has roots equally venerable and equally deserving of constitutional protection.") In addition, LWOP is a form of sterilization subject to strict scrutiny; see Skinner v. Oklahoma, 316 U.S. 535 (1942).

The petitioner further challenges the sanction of LWOP's unconstitutionality in that its inequitably distributed both intrastate and interstate. States are sovereign in their

own right although, in light of civil liberties, States are charged with conforming to a federal standard of uniformity, as prisoners, who're traded through an interstate-compact system among states, see Pennsylvania v. Wheeling and Belmont Bridge Co., 13 HOW. (54U.S.) 518 (1858), are intertwined in the system of federalism which must be governed by 14th amendment equal protection standards. For instance, despite the ubiquitous cloth of American citizenship, the penalties distributed throughout the United States for uniform crimes differ greatly among the federal system, states and intrastate (eg. Whitey Bulger trial, those testifying against Bulger, Kevin Weeks & Materano had confessed to a combined murder count of over 20 murders, and they are both free American citizens at this very moment). In terms of States, Alaska, does not impose a sentence of death or LWOP (see Alaska Stat. § 12.55.125 (2006)), but instead gives a term of years which could max at 99 years but however, most don't receive the max and those who do receive high numbers are eligible for earned good time (programming to reduce time from their sentence). In relation to the petitioner, who became incarcerated at ~~two months~~ into the age of 20 years old, would provide me, at the least with a modicum of hope and/or incentive to live; (see Alice Ristorph, "Hope, Imprisonment and the Constitution," 23 Federal Sentencing Reporter 75 (Oct.2010)). As a result of the uniformity in crimes and the difference in punishment administered throughout the States and federal system despite the sameness of United State citizenship, in relation to penalties that result in loss of life or LWOP must be subject

to equal protection.

The mode of criminal sanction among State penalties establish an inference of gross disproportionality based on a "threshold comparison of the crime committed and the sentence imposed" see Harmelin v. Michigan, 501 U.S. at 960. Absent judicial guidance from this Court the inequitable distribution of LWOP will remain "purely a matter of legislative preogative" See Rummel, 445 U.S. at 274 (holding "constitutional a life sentence for a recidivist theif"); Logan, "propotionality and Punishment," 706 ("[S]tate and federal legislatures can exercise virtually unfettered discretion in their formation of sentences."). As a result of sovereign inconsistency regarding the loss of life and implementation of state's sanctioning a lifetime of chattel slavery, SCOTUS must intervene.

In turn, the state sanction of LWOP violates the petitioner's 9th Amendment right, as he lives in a constant state of humiliation and toxic stress. The mode of incarceration in the state of Massachusetts, especially where I'm currently incarcerated, makes unavoidable that prisoners take showers with doors made of plastic, see-through viewing exteriors, relieve himself in exposed restrooms/cells for public observance and talk to/communicate with all persons under the constant eye, ear and surveillance of prison administration (family, friends, loved ones etc.) indefinitely terminating any sense of dignity and/or privacy. Because of the total absence of privacy, a breakdown of human dignity has began to effect the posture

of my emotional and mental stability bringing about a common feeling of inferiority of myself towards prison administrators who have total power and authority over every aspect of my human status until my death (petitioner is now 34 years of age). Washington's LWOP sentence calls for an exploration of 9th Amendment guarantees and deeper examination into the folds of Substantive Due Process; See Griswold v. Connecticut, 381 U.S. 479 (1965) ("Just as the Court had found that First Amendment rights to freedom of speech implied a peripheral "right to freedom of association," he reasoned, so the 1st, 3rd, 4th, 5th, and 9th amendments imply "zones of privacy" that form the basis for the general privacy right affirmed in this case.") The 9th Amendment ensures that although certain rights are not enumerated in the Constitution, "shall not be construed to deny or disparage others retained by the people (9th Amend.)." As evidenced in its language, the 9th Amendment offers an interpretation as "hope" to be considered a right guaranteed by our U.S. Constitution. For one who exist without hope, is unlikely to contribute to his own interests, the interests of his immediate environment or the interests of the human family. Hope can only derive from the hopeless where it's self-conceived (eg. the blip of hope derived from the mere action of petitioner filing this SCOTUS petition, despite the almost statistical certainty that my Constitutional questions concerning the AEDPA and LWOP will not be selected for adjudication given the overwhelming caseload this Court receives). James Madison and other constitutional framers decided to ratify the 9th Amendment specifically

for the questions addressed in this petition that are unenumerated human rights like that of hope which is so deeply woven into the spirit of our Constitution. See Palko v. Connecticut, 302 U.S. 319 ("declares that ~~a right is fundamental~~ if it is 1) Deeply rooted in this Nation's history and tradition, and 2) Implicit in the concept of ordered liberty, 'such that' neither liberty nor justice would exist if [the right] were sacrificed.") See;

LWOP deprives inmates of hope, but hope can have powerful, positive effects. For instance, biologist Curt Richter found that rats immersed in water tended to keep themselves afloat for as many as eighty-one hours when they had previously been freed from confined areas. Rats who had not had that prior experience, thus had little hope, died within minutes. Positive psychologists have seen similar, if less dramatic, effects of hope among humans. High levels of hope have been shown to correlate with academic performance, athletic success, better coping abilities, and psychological adjustment. "Low hoppers," moreover, "are often depressed and vegetable-like in their demeanors, especially after encountering impediments." They are "lethargic and have an 'I don't give a damn' attitude." ¶ Thus, it is no stretch to think that some hope of future life outside of prison, even a distant hope, can improve inmate behavior and corrections efforts. Correspondingly, taking away all hope-the hallmark of the LWOP sentence-can create difficult problems for prison administration that can affect not only the rehabilitation of the offender but also the safety and quality of life of other prisoners and correctional staff. (Ogletree, Charles; Sarat, Austin. LIFE WITHOUT PAROLE AMERICA'S NEW DEATH

Invoking Article IV Section 4, those condemned to LWOP sentences are locked out of the guarantee of a republic form of government and forever unable to participate in the political process. A republic form of government stands to be a government by the people but governed through their elected officials in which it implies an inclusive characteristic of our American experiment. Incarcerated persons in Massachusetts cannot vote and therefore those who're sentenced to LWOP are prevented from picking the people who make the laws that govern their everyday lives. My permanent exclusion from the political process crystallizes my inferior human status and situates me on an island outside of American citizenship. Without the representation guaranteed from Article IV Section 4, 15th, 17th, 19th, 23rd, 24th, and 26th Amendments (voting amendments), Taney's opinion in Scott becomes absolute as I remain arrested in this sovereign jurisdiction (Department of Correction prison system) who, transcends the constitutional authority of Article IV Section 3 (No new State shall be formed or erected within the jurisdiction of any other State), as the DOC is governed by its own laws, supersedes Antitrust regulations, circumvents citizenship rights, and warehouses masses of a politically unrepresented population; see Sandin v. Conner, 515 U.S. 472 (1995). Characteristically, the DOC, (being a "total" environment (an environment where people eat, sleep and live out their lives)), exist as a de facto

State within the sovereign State of Massachusetts. The petitioner, who is under an indefinite custody of the DOC exist as chattel property of such subjected to arbitrary whims of its absolute authority over my human status.

Voting privileges would enable me to rise in a status of dignity as it would establish me as a stakeholder. As a result, lawmakers would begin to take interests in DOC conditions of confinement, make regular visits into institutions of confinement, begin breaking the autonomous culture of dehumanization within the DOC and eventually shifting the mode of sentencing guidelines as I can imagine they'd then be seeking my vote as would participate in "rights" afforded with citizenship responsibilities. Washington's permanent disfranchisement is cruel and unusual and his human status constitutes "the total destruction of the individual's status in organized society (Trop v. Dulles, 356 U.S. 86 (1958))." To participate in the political process is part of the lifeblood of American Democracy and the sentence of LWOP equates to ~~political~~ death amounting to cruel and unusual punishment in violation 8th & 14th amendments.

Finally, LWOP does violate the 8th Amendments cruel and unusual punishment standard as it draws its meaning from "the evolving standards of decency that marks the progress of a maturing society (Trops p.101)." As our society evolves, laws must compliment the maturing nature of contemporary affairs. American society, governed by the U.S. Constitution, comports with anatomic structure of the human body. In such,

the Congress being the brain to decide, the Executive serving to be the body which enforces the brains decisions and, the Judiciary, who essentially acts as the moral conscious checking the brain when its decisions don't reflect the character of constitutional letter in which the body/person of America is supposed to carry out in line with forming a more perfect Union (fundamental fairness, liberty, equality, integrity etc.). Although, throughout the course of American history since its birth, the "person" of America (combining brain (Congress), body (President), and Conscious (Judiciary)) have done some horrible and regrettable things (Slavery, Wounded Knee, Separate but Equal Doctrine, Child neglect via Laissez-Faire Constitutionalism, Japanese Interment Camps, Wrongs wrought from Civil Right demands, Unequal Justice via Criminal Justice) but, through evolving standards of human decency, America has matured and evolved beyond past debilitating behaviors and practices. Despite the past wrongs, America, the person, has never been counted as being incorrigible and has given itself second chances for redemption (eg. civil war) and yet, We the People, always maintained a strain of of "hope" in a greater tomorrow.

Just like the country of America (as a person), individual persons (American citizens, children of this nation) who may have done some regrettable things as well, must not be tagged as incorrigible and must be afforded second opportunities at "life" in accordance with evolving standards of human decency. No American citizen should be sanctioned to indefinite

torture/slavery as property of another or the state as, other nations such as Brazil, Costa Rica, Columbia, El Salvador, Peru, and Mexico who do not permit any form of life imprisonment because it has been deemed inconsistent with human rights (see Dirk van Zyl Smit, "Life Imprisonment:Recent Issues in National and International Law, "International Journal of Law and Psychiatry 29 (2006):405, 410-11). Furthermore, most European Countries such as Belgium, Austria, Germany, Luxemburg, and Switzerland don't sentence their citizens to LWOP (see Van Zyl Smit, "Outlawing irreducible Life Sentences," at 40). The message that ending LWOP communicates is a nations value of their citizenry and is reflective of the redemptive strain pulsing throughout the veins within our U.S. Constitution evidenced through its Reconstruction Amendments (13th,14th,15th).

Through SCOTUS's setting the platform for Congress to lay a uniform standard for guidelines for a maximum punishment consistent with the redeemable qualities of our U.S. Constitution, as LWOP does not correspond with our U.S. Constitution. Legislators can begin enacting laws that include the Constitutional guarantee of "hope (allowing all persons to access parole at some point, which does not open a "flood gate" to what some deem the "worst of the worst" because all it offers is a chance for review eg. Marylyn Manson)." Lawmakers, here in the state of Massachusetts have erected a Bill to abolish LWOP (House No.3358; Senate No.826 Senator Boncore & Rep. Livingstone), however, LWOP is an unconstitutional sentence as it is unequitably applied and arbitrarily distributed

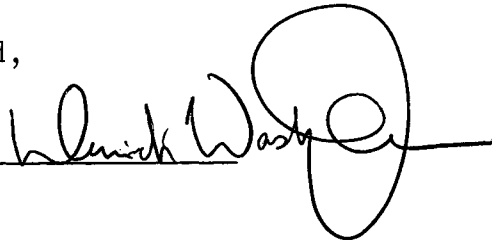
and snuffs out any possibility of hope and therefore is an unconstitutional sentence devoid of any of the appellate protections afforded to persons sentenced to Death although the cosequence of death delivered from LWOP is dealt in a separate mode and fashion.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Derrick A. Washington

A handwritten signature in black ink, appearing to read "Derrick Washington", written over a horizontal line.

Date: June 10, 2019