

No. 19-5528

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

[Robert Anthony Chester] ---- PETITIONER

vs.

Supreme Court, U.S.
FILED
AUG 02 2019
OFFICE OF THE CLERK

[State of West Virginia] ---RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

[West Virginia Supreme Court of Appeals]
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR A WRIT OF CERTIORARI

[Robert Anthony Chester]

[Mount Olive Correctional Complex And Jail, One Mountainside Way]

[Mt. Olive, WV 25185]

[Enter Phone Number Here (N/A)]

QUESTION(S) PRESENTED

- 1) Was Petitioner's One Hundred Eighty Year Sentence For His Conviction Of Two Counts Of First Degree Robbery Disparate To The Twenty Year Sentence Imposed On His Co-Defendant In Violation 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 judgement is the subject of this petition is as follows:

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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 judgement 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 [enter site code here]; or,
- has been designated for publication but not yet reported; or
- is unpublished.

The opinion of the United States district court appears at Appendix ___ to the petition and is

- reported at [enter site code here]; or,
- has been designated for publication but 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- is unpublished.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 is

- reported at [enter site code here]; or,
- has been designated for publication but not yet reported; or,
- is unpublished.

The opinion of the [enter any other tier court here] court appears at Appendix ___ to the petition and is

- reported at [enter site code here]; or,
- has been designated for publication but 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- is unpublished.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 [enter date here.]

- No petition for rehearing was timely filed in my case.
- A timely petition for a rehearing was denied by the United States Court of Appeals on the following date: [enter date here], 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 [enter date here] on [enter date here] in Application No. [enter application no. here.]

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 [March 15, 2019.]

A copy of that decision appears at Appendix **A**.

- A timely petition for rehearing was thereafter denied on the following date: [enter date here], 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 [June 21, 2019] on [August 12, 2019] in Application No. [18A1338.]

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

AMENDMENT 8

Bail-Punishment.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

STATEMENT OF THE CASE

Petitioner was indicted by the Taylor County Grand Jury in September 2016 on ten counts: Burglary, two counts of First Degree Robbery, two counts of Wanton Endangerment with a Firearm, Possession of a Firearm by Prohibited Person, two counts of Malicious Assault, Grand Larceny, and Conspiracy to Commit a Felony. Thereafter, the State moved for, and the Circuit Court granted, the dismissal of all counts except the Buglary, two counts of First Degree Robbery, and the count of conspiracy, prior to trial.

The allegations against Petitioner were that he and his co-defendant, Michael Ketterman, Sr., entered the home of the two alleged victims without consent, used force against them, and took away certain property from the premises.

Petitioner's trial took place on October 10th, 11th, and 12th, 2017, with the State's star witness against him being his co-defendant. Following instructions to the jury, and closing arguments, the jury deliberated and found Petitioner guilty of the four remaining counts. The Court ordered a pre-sentence investigation and two sentencing hearings were held. The first sentencing hearing, on November 28, 2017, also served as Petitioner's arraignment upon the recidivist information and concluded with the Circuit Court deferring sentencing Petitioner on the Burglary conviction. However, the Circuit Court did sentence the Petitioner to a determinate sentence of ninety (90) years incarceration on each of his Robbery convictions, and an indeterminate one to five (1-5) years on the Conspiracy conviction with the sentences running consecutively to each other.

Subsequently, the State withdrew the recidivist information, and a sentencing

hearing was held on the Burglary conviction on December 28, 2018. At that time the Circuit Court sentenced Petitioner to the statutory one to fifteen (1-15) years incarceration for the Burglary conviction, which was also run consecutively to the other sentences already imposed. On the very same day, Petitioner's co-defendant, Michael Ketterman, Sr., was sentenced by the Court, to a definite term of twenty (20) years incarceration on his first Robbery conviction; a definite term of eighty (80) years for his second Robbery conviction; and a statutory indefinite sentence of one to five (1-5) years on his Conspiracy conviction. However, the Court ordered that, following his discharge or parole upon the twenty (20) year sentence, the remaining sentences are to be suspended for seven years of probation.

Petitioner, by counsel, filed a Notice of Appeal with the West Virginia Supreme Court of Appeals and thereafter submitted his Brief on Appeal on June 19, 2018. On Appeal, Petitioner claimed, among other assertions of error, that the Circuit Court violated his Eighth Amendment Right by sentencing him to a constitutionally disproportionate sentence of two consecutive ninety (90) year determinate sentences for robbery, as well as handing down a wildly disparate sentence from that of his co-defendant. Following the State's Brief in Response, and Petitioner's Reply, the West Virginia Supreme Court, by Memorandum Decision, affirmed Petitioner's conviction and sentence on March 15, 2019.

Wherefore, Petitioner now seeks review of the United States Supreme Court of Appeals on Certiorari from the clearly erroneous decision of the West Virginia Supreme Court of Appeals.

REASON FOR GRANTING THE PETITION

First, the Petitioner wishes to point out that the sentence imposed on him by the Circuit Court of Taylor County, West Virginia, and affirmed by the West Virginia Supreme Court of Appeals, versus that imposed on his co-defendant, Michael Ketterman, is 900% of that imposed on his co-defendant..

Second, it is also worth considering the testimony of the victims of the robbery in determining whether the wildly disparate sentence doled out by the Circuit Court for the Petitioner was appropriate. Both victims, Trina Rager and Tina Wilfong, testified that it was Michael Ketterman, Sr. (Petitioner's co-defendant) who kept urging the other participant in the crime to shoot Ms. Rager. Despite Mr. Ketterman's solicitation of the victims' murders, he was given a sentence of one-ninth the length of Petitioner's sentences, with his remaining sentences being suspended for seven years probation. Even though multiple witnesses testified that Mr. Ketterman directly requested the murder of the two women, whom he had known his whole life, he was given a sentence making him a free man in a decade or less compared to the almost century before Petitioner would ever have an opportunity to be released from prison.

Further, the testimony of Mr. Ketterman's own son was that, he and his dad, had already burglarized the victims in this case only a week before the robbery that was supposedly mastermind by the Petitioner. Mr. Ketterman's own son, Joshua Ketterman, testified not only that his father had stolen coins and jewelry from the victims, but that his father had expressed his intention of going back to steal even more from them. Yet the Circuit Court saw fit to sentence him in such a manner that he will

be out on probation in no longer than a single decade.

Third, both Petitioner and his co-defendant are similarly situated and any objective observer would determine that both played equal roles in the crime. However, the Petitioner steadfastly maintains his innocence as he did throughout the investigation, trial and sentencing proceedings against him. The only evidence of his participation in the crime was the testimony of his co-defendant and that testimony was composed by Mr. Ketterman in exchange for his get out of jail relatively free card. Both men were convicted of two counts of First Degree Robbery, with the only difference being that Mr. Ketterman pled guilty by way of a plea bargain and Petitioner stood trial.

This Court has explained that punishment cannot be increased merely because one decides to pursue his right to trial. In *Bordenkircher v. Hayes*, 434 U.S. 357, 98 S. Ct. 663, 54 L. Ed.2d 604 (1978), reh. Denied, 435, U.S. 918, 98 S. Ct. 1477, 55 L. Ed.2d 511, this Court stated that “[t]o punish a person because he has done what the law plainly allows him to do is a due process violation of the most basic sort” and is “patently unconstitutional”. Id., at 363, 98 S. Ct. At 667. See also *United States v. Capriola*, 537 F.2d 319 (9th Cir. 1976); but see *Corbitt v. New Jersey*, 439 U.S. 212, 99 S. Ct. 492, 58 L. Ed.2d 466 (1978) (no per se rule against encouraging guilty pleas).

Petitioner will concede that frequently, a plea agreement results in dismissal of several charges, while going to trial risks exposure to conviction for a larger number of crimes, rendering a direct comparison between co-defendants impossible. However, that is not the case, conversely, here as both Petitioner and Mr. Ketterman have two conviction for Robbery, and thus the outcome is clearly comparable. Despite the fact that both Petitioner and his co-defendant have similar criminal histories, were convicted

on testimony undoubtedly showing both (Petitioner maintains his innocence) were equally involved in the crime, Petitioner was given a sentence 89% greater than that of Mr. Ketterman.

Disparate sentences for co-defendants are not *per se* unconstitutional but sentences of co-defendants that are similarly situated may be considered in evaluating whether a sentence is so grossly disproportionate that it violates the constitution. When sentencing co-defendants, Courts should consider many factors such as the co-defendants' involvement in the crime, prior records, rehabilitative potential, and lack of remorse. If defendants are similarly situated, and the sentences handed down are grossly disproportionate such as in Petitioner's case, courts should have no problem reversing on the disparity of sentence alone.

However, not every minor disparity will rise to the level of a violation of the Equal Protection Clause, the differential treatment must rise to a meaningful level. Contrast *Britton v. Rogers*, 631 F.2d 572, 577 (8th Cir. 1980), cert denied, 451 U.S. 939, 101 S. Ct. 2021, 68 L. Ed. 327 (1981)(statistical disparity in rape sentences of only a few years) with *Meloon v. Helgemoe*, 564 F.2d 602, 607 (1st Cir. 1977), cert denied, 436 U.S. 950, 98 S. Ct. 2858, 56 L. Ed. 2d 793 (1978)(a far more serious criminal penalty means a "far greater legal differential). This Court has upheld a sentencing disparity wherein one co-defendant was given ten years and the other given seven years as not being sufficiently divergent. *Howard v. Fleming*, 191 U.S. 126, 136, 24 S. Ct. 49, 48 L. Ed. 121 (1903). That is simply not the case herein as Petitioner was given a sentence of more than a century and a half longer than that of his co-defendant who the evidence showed was the primary mover and advocated for the murders of the victims.

The difference between the Petitioner and his co-defendant in the case sub judice is that Petitioner maintained his innocence, stood trial, and was only implicated in the crime by the co-defendant's self serving testimony. Another difference, the one Petitioner fears prejudiced him the most, was that he had the audacity to accuse the judge of being biased against him and having a personal or financial connection with the victims. One does not have to delve into the record of Petitioner's case very far to see that the manner in which the Court handled the case, including truncated rulings on significant issues of his constitutional rights, implicates partiality and bias. Furthermore, the allegations of the Court's financial or personal conflict of interest relating to the victims' family (who own a major business in the county) were never fully addressed by the Court. It is not stretching the imagination to deduce that a small town judge, who is simply a politician, had a personal and financial relationship with the high profile victims and their family. Therefore, it is beyond simple speculation that the Court punished Petitioner severely and significantly disproportionately to that of his co-defendant, simply because he dared to question the Court's impartiality.

CONCLUSION

For all the foregoing reasons, Petitioner's Constitutional Eighth Amendment Right was violated by the State of West Virginia by the Court's imposition of a grossly disproportionate sentence on Petitioner compared to that of his co-defendant. Petitioner was subjected to more than one-hundred and fifty years incarceration past that of which the State sentenced his similarly situated co-defendant. Therefore, Petitioner should be afforded a review of this Certiorari due to his Constitutional Rights being severely violated and the petition for a Writ of Certiorari should be granted.

Respectfully submitted,

[Robert Anthony Chester]

R. Chester

Date: [July 31, 2019]