

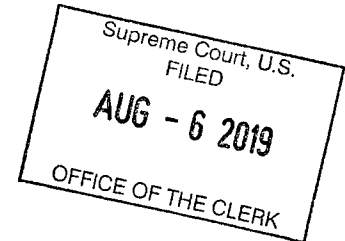
19-5756

No. _____

IN THE
UNITED STATES SUPREME COURT

ORIGINAL

In Re: JAMES BRYANT



On Petition For An Extraordinary Writ
In Aid of the Court's Appellate Jurisdiction
Pursuant to its Original Jurisdiction Under Article III
Of The United States Constitution
28 USC § 1251

[AN ORIGINAL ACTION]

ON PETITION FOR A WRIT OF HABEAS CORPUS
BY A PRO SE PRISONER UNDER JUDGMENT OF A STATE COURT
IN AID OF THIS COURT'S APPELLATE JURISDICTION
TO THE STATE OF MICHIGAN
28 USC §§ 2241-2254(a)

Submitted By:

James Bryant #130565
Petitioner Pro se
Saginaw Correctional Facility
9625 Pierce Road
Freeland, Michigan 48623

QUESTIONS PRESENTED

I

Whether the state trial court lacked subject-matter jurisdiction by convicting Petitioner in 1971 under a vague first-degree murder statute, MCL § 750.316, that did not define what constituted murder?

II

Whether People v Aaron, decided 9 years later, abrogating the first-degree felony murder doctrine, should be applied retroactively to Petitioner's conviction under Teague v Lane?

III

Whether Petitioner has established his entitlement to habeas relief by invoking this Court's Original Jurisdiction and discretionary powers to grant the writ in aid of its appellate jurisdiction by demonstrating exceptional circumstances and where adequate relief cannot be obtained in any form or from any court?

THE PARTIES

The Petitioner is James Bryant, a 73 year old state prisoner serving a mandatory life sentence for first-degree felony murder out of Wayne County, Michigan, Case #71-004908-01-FC, under the jurisdiction of the Michigan Department of Corrections, currently confined at the Saginaw Correctional Facility in Freeland, Michigan.

The Respondents are the Governor Grethen Witmer, State of Michigan; Attorney General Dana Nessel; MDOC Director Heidi Washington; and Warden Thomas Winn, Saginaw Correctional Facility.

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On Petition For An Extraordinary Writ
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Pursuant To Its Original Jurisdiction Under Article III
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28 USC § 1251

[AN ORIGINAL ACTION]

ON PETITION FOR A WRIT OF HABEAS CORPUS
BY A PRO SE PRISONER UNDER JUDGMENT OF A STATE COURT
TO THE STATE OF MICHIGAN

DECISIONS BELOW - STATE COURT PROCEEDINGS

The decisions from the state courts below: Trial, Michigan Court of Appeals and Michigan Supreme Court are unpublished nor are they submitted herewith.¹ The Index of Record lists the following proceedings: Wayne County Register of Actions in Case # 71-004908-01-FC; Trial Dates: 09-13; 09-14; 09-15; 09-16; 09-17; 09-22-1971; Judgment of Sentence out of the old Detroit Recorder's Court (now the Third Judicial Circuit) from a jury trial was entered 09-27-1971; Michigan Court of Appeals Affirming the Conviction and Sentence is reported at COA #13023; Order Denying Leave to Appeal is reported at SC #54464; other denials: COA #77-2693; COA #78-2041; SC #61860; COA #74811; SC #76309; COA

#212540; SC Affidavit re COA #77-2693 & 212540; 09-18-2001 Motion for Relief from Judgment; 10-17-2001 Brief in Opposition to Motion for Relief from Judgment; 20-12-11 Reply to Brief in Opposition to Motion for Relief from Judgment; 05-30-2002 Motion Transcript; 05-30-2002 Order Denying Motion for Relief from Judgment; COA # 248719; SC #124891; 11-16-2016 Motion for Relief from Judgment; 02-21-2017 Opinion & Order Denying Motion for Relief from Judgment; 03-13-2017 Motion for Reconsideration; 07-07-2017 Opinion & Order Denying Motion for Reconsideration.²

DECISIONS BELOW - FEDERAL COURT PROCEEDINGS

The decisions from the federal courts below are unpublished nor are they submitted herewith.³ A list of those proceedings are as follows: 10-03-2005 Petition for Writ of Habeas Corpus dismissed as untimely is reported at USDC ED #08-cv-57497; 01-22-2007 Certificate of Appealability Denied by the Sixth Circuit reported at #05-2456; Second Petition for Writ of Habeas Corpus in USDC ED #2:12-cv-13403, transferred to the Sixth Circuit but denied 06-05-2013 reported at #12-2112; 06-27-2018 another Petition for Writ of Habeas Corpus filed in the USDC ED but transferred to the Sixth Circuit denying it as a second or successive petition reported at #19-1110.

1. As a result of the 1981 prison riots and subsequent transfers most or all of Bryant's legal papers were either destroyed or lost. He has instituted every possible avenue of relief he could pursue in an attempt to effectively exhaust all his available state and federal court remedies,

especially after the Michigan Supreme Court's decision of People v Aaron, 409 Mich 672 (1980), set forth more fully below.

2. Bryant did attempt to seek state habeas corpus relief with respect to the Aaron decision to no avail by filing in the Trial Court #10-005504-AH; COA #302143; SC #144040, challenging the lack of subject-matter jurisdiction of the trial court.

3. See Note 1, supra.

JURISDICTION

Since Petitioner is invoking the Original Jurisdiction of this Court, and because he has exhausted every possible avenue of relief available under his particular circumstances, this Court has Original Jurisdiction under Article III of the United States Constitution and may exercise its discretionary powers to grant a Writ of Habeas Corpus in aid of its appellate jurisdiction under 28 USC §§ 2241-2254(a); 28 USC § 1251 and United States Constitution, Amendment XI. See Rules 17 and 20 of this Court's Rules. See also The All Writs Act, 28 USC § 1651(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This habeas case involves Amendment VIII of the United States Constitution, which provides:

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

Also Amendment XIV, which provides:

Section 1. 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. No State shall make or enforce any law which shall



abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 5. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

Also Amendment XI, which provides:

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

The above Amendments are enforced through the Great Writ of Habeas Corpus pursuant to Article I, § 9, Clause 2, which provides:

The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

The statutory provisions of 28 USC §§ 2241(c)(3) and 2254(a), which provide:

~~The~~ writ of habeas corpus shall not extend to a prisoner unless he is in custody in violation of the Constitution or laws or treaties of the United States.

STATEMENT OF THE CASE

Bryant was convicted by a Michigan jury in 1971, out of the then Detroit Recorder's Court for the City of Detroit (now the Third Judicial Circuit of Wayne County), of the non-existent de facto statutory offense of First-Degree Felony Murder under MCL § 750.316, stemming from a homicide committed during the perpetration of a robbery

MCL § 750.529. At the time of Bryant's trial, the State of Michigan operated under a so-called "felony murder doctrine" in that if a killing occurred during the commission of a felony, the killing was automatically elevated to first-degree [felony] murder as a matter of law. The law at the time required only the intent to do the underlying felony. Bryant received a mandatory life sentence without the possibility of parole.

Nine years after Bryant's conviction, the Michigan Supreme Court decided People v Aaron, 409 Mich at 728, abrogating the felony murder doctrine altogether, applying its decision prospective only to those cases pending on appeal and afterward.

From 1971 to date, Bryant has pursued every possible avenue of relief available in both the state and federal courts without results. See Decisions Below, supra.

Bryant now seeks discretionary habeas corpus relief in this Court by invoking this Court's Original Jurisdiction under Article III; 28 USC § 1251, 2241(c)(3), 2254(a); see also the All Writs Act under 28 USC § 1651(a), in aid of its appellate jurisdiction, alleging that exceptional circumstances exist and where adequate relief cannot be obtained in any form or from any court.

ARGUMENT IN SUPPORT OF GRANTING HABEAS RELIEF

I

The state trial court lacked subject-matter jurisdiction by convicting Petitioner in 1971 under a vague first-degree murder statute, MCL §

750.316, that did not define what constituted murder.

At the time of Bryant's Michigan jury trial, he was impermissibly and unconstitutionally charged under and convicted of First-Degree Felony Murder. The de facto statutory provision he was initially charged under, MCL § 750.316, read, in part, as follows:

Murder which is perpetrated by means of poison, lying in wait, or other wilful, deliberate, and premeditated killing, or which is committed in the perpetration, or attempt to perpetrate ... [a] robbery ... is murder of the first-degree, and shall be punished by imprisonment for life.

The above statute - MCL § 750.316 - punished all homicides, committed in the perpetration or attempt to perpetrate a prescribed felony - such as armed robbery under MCL § 750.529 - whether intentional, unintentional or accidental, without the necessity of proving the relation between the homicide and the perpetrator's state of mind, i.e., without the prosecution having to prove a malicious intent to kill (malice aforethought). At the time of Bryant's trial, malice aforethought was defined in People v Morrin, 31 Mich App 301, 310-311 (1971), lv den 385 Mich 775 (1971). Cf also People Garcia, 398 Mich 250, 258 (1976). Other Michigan cases too had defined malice in homicide cases. Cf People v Aaron, 409 Mich 672, 728 (1980).

Some 9 years after Bryant's constitutionally-infirm felony murder conviction, the Michigan Supreme Court decided the case of People v Aaron, 409 Mich 672 (1980),

finally abrogating the felony murder doctrine altogether. Id at 728. The Michigan Supreme Court recognized that Michigan did not nor never had a statutory felony murder doctrine, id at 717, nor was there ever a common-law felony murder doctrine either. Id at 722; cf Mich Const 1963, art 3, § 7. So, in effect, Bryant was unconstitutionally tried and convicted, and continues to stand illegally convicted, under a constitutionally vague first-degree felony murder statute that did not lawfully exist; thereby rendering his prosecution as being unconstitutional, illegal and ultra vires as noted in People v Barksdale, 219 Mich App 484 (1996). Since that appears to be the case, then the state circuit court that tried and convicted Bryant was operating without lawful subject-matter jurisdiction and contrary to due process as held in Albright v Oliver, 510 US 266 (1994). As it stands, Bryant's conviction violates the Due Process and Equal Protection Clauses as well as the Cruel and Unusual Punishment Clause under the Fourteenth and Eighth Amendments.

The jury in Bryant's trial was compelled to give a directed verdict of guilt on the undefined charge of first-degree felony murder by finding him guilty of only the underlying robbery, thereby depriving him of a valid defense to the homicide itself, which was unforeseeable on his part, in violation of due process. Here, since there was no element or elements to the homicide itself, the prosecution was left without the required burden of having

to prove Bryant's guilt on the homicide itself beyond a reasonable doubt, contrary to In-re-Winship, 397 US 358, 364 (1970). If the government fails to sustain its burden of proof on any element, the accused must be acquitted, so held this Court. Id at 363.

The state, through its Legislature, has the authority to define the elements that constitute criminal conduct and may design statutes that facilitate proof of every element. McMillan v Pennsylvania, 477 US 79, 85 (1986). In responding to the concerns that states would have power to define crimes to the detriment of the accused, this Court announced in Patterson v New York, 432 US 197 (1977), that there are "constitutional limits beyond which the States may not go" in defining the elements of a crime. Id at 210. For instance, the Legislature may not declare an individual guilty or presumptively guilty, nor may it command that the filing of an information against an accused creates a presumption of all facts necessary to find guilt. Id. That is what happened in Bryant's case with respect to the de facto felony murder doctrine. This authority of the states may be circumscribed by the Due Process Clause, Speiser v Randall, 357 US 513, 523 (1958), and the Eighth Amendment's prohibition against cruel and unusual punishment. Cf Robinson v California, 370 US 660, 666-667 (1962). Furthermore, this authority may be limited by state common law. Cf Mich Const 1963, art 3, § 7; see Stepniewski v Gagon, 732 F2d 567, 571 (7th Cir 1984)

("[t]raditional common law offenses, such as murder and assault, usually require some showing of intent" before being punishable).

This Court in Mullaney v Wilbar, 421 US 684 (1975), held that a state may not relieve the prosecution of its burden of proving an essential element of a crime by establishing a presumption as to an essential element of a crime that the defendant must negate as an affirmative defense. Id at 703-704. See Patterson, 432 US at 212-216 (reaffirming Mullaney's holding that the state may not shift burden of persuasion on element of murder statute). Michigan's so-called first-degree felony murder statute of MCL § 750.316, at the time of Bryant's trial in 1971, created such a presumption by only requiring proof of the underlying felony but not the elements of murder. Aaron, 409 Mich at 708.

As for presumptions, this Court in County Court v Allen, 442 US 140 (1979), cautioned that a presumption will not be constitutionally valid if it undermines the factfinder's responsibility to determine the existence of the essential elements of a crime beyond a reasonable doubt. Id at 156; see Mullaney, 421 US at 702-703 n31 (due process prohibited use of presumption that relieved state of burden of persuasion on essential element of malice); Morgan v Shirley, 958 F2d 662, 669 (6th Cir 1992) (due process prohibited use of presumption in jury charge that relieves state of burden on essential elements of charged

offense).

An instruction deprives the accused of due process if it is susceptible to an interpretation that removes the prosecution's burden of proving the element of intent beyond a reasonable doubt. In Sandstrom v Montana, 442 US 510 (1979), this Court held that the trial court's instruction to the jury that "[t]he law presumes that a person intends the ordinary consequences of his voluntary acts" created an unconstitutional mandatory presumption on the element of intent. Id at 515. This Court held that this instruction deprived the accused of due process because it was susceptible to an interpretation that removed the prosecution's burden of persuasion on the element of intent. Id at 524; see Yates v Aiken, 484 US 211, 214 (1988) (instruction that malice presumed from use of a deadly weapon unconstitutionally removed state's burden of persuasion on element of intent); Houston v Dutton, 50 F3d 381, 385-386 (6th Cir 1995) (same). Bryant's jury was misinstructed that all they had to find guilt on was the underlying felony alone to prove the element of murder.

Petitioner Bryant was jury-convicted upon a statute that did not define murder, such a charge being first-degree felony murder and was nothing more than a de facto, non-existent criminal offense and therefore he was unconstitutionally charged, tried and convicted which effectively deprived the trial court of subject-matter

jurisdiction. McGrath v Kristensen, 340 US 162 (1950); Winters v Dalton, 207 Mich App 76 (1994). Jurisdiction may be raised at any time. Lack of subject-matter jurisdiction renders the state court's judgment void ab initio. Cf Ex parte Siebold, 100 US 371, 376 (1880).

This Court should grant habeas relief.

II

People v Aaron, decided 9 years later, abrogating the first-degree felony murder doctrine, should be applied retroactively to Petitioner's conviction under Teague v Lane.

In 1971, Bryant was jury-tried and convicted for first-degree felony murder under the then statutory provision of MCL § 750.316. See Issue I, supra. He was sentenced to mandatory life in prison. Bryant is now 73 years old, and has served 48 years on his life sentence.

Nine years after Bryant's conviction, the Michigan Supreme Court decided the case of People v Aaron, 409 Mich 672 (1980), abrogating the first-degree felony murder doctrine altogether. Id at 728. The Aaron Court clearly recognized that Michigan, at the time of Bryant's trial, did not have a statutory felony murder doctrine. Id at 717. It was noted that Michigan had a statute that made a murder occurring during the course of one of the enumerated felonies a first-degree murder. That statute read, in part:

Murder which is perpetrated by means of poison, lying in wait, or other wilful, deliberate, and premeditated killing, or which is committed in the perpetration, or attempt to perpetrate ...

robbery ... is murder of the first-degree, and shall be punished by imprisonment for life.

The Aaron Court also recognized that Michigan had no common-law felony murder doctrine either. Id at 722. Prior to the Aaron decision, the statute - MCL § 750.316 - punished all homicides, committed in the perpetration or attempt to perpetrate one of the prescribed felonies, such as robbery under MCL § 750.529, as a first-degree murder, whether intentional, unintentional or accidental, without the necessity of proving the relation between the homicide and the perpetrator's state of mind (such as malice aforethought); it required only the intent to do the underlying felony. Id at 708.

The Aaron Court made it's decision prospective only, despite the decision's new constitutional rule that should have required retroactive application. Cf Griffith v Kentucky, 479 US 314, 328 (1987) (holding that on direct review, a new constitutional rule must be applied retroactively "to all cases, state and federal"). States may not disregard a controlling, constitutional command in their own courts. See Martin v Hunter's Lessee, 14 US 304, 1 Wheat 304, 340-341 (1816). Cf also Yates v Aiken, 484 US 211, 218 (1988).

This Court's plurality opinion (by Justice O'Connor) in Teague v Lane, 489 US 288 (1989), set forth a framework for retroactivity in cases on federal collateral review. Under Teague, a new constitutional rule of criminal

procedure does not apply, as a general matter, to convictions that were final when the new rule was announced. Teague recognized, however, two categories of rules that are not subject to its general retroactivity bar. First, courts must give retroactive effect to new substantive rules of constitutional law. Substantive rules include "rules forbidding criminal punishment of certain primary conduct," as well as "rules prohibiting a certain category of punishment for a class of defendants because of their status or offense." Penry v Lynaugh, 492 US 302, 330 (1989); see also Teague, supra, at 307. Even though Teague describes new substantive rules as an exception to the bar on retroactive application of procedural rules, this Court has recognized that substantive rules "are more accurately characterized as ... not subject to the bar." Schriro v Summerlin, 542 US 348, 352 n4 (2004). Second, courts must give retroactive effect to new "watershed rules of criminal procedure" implicating the fundamental fairness and accuracy of the criminal proceeding." Id at 352; Teague, 489 US at 312-313.

It appears that Teague requires retroactive application of new substantive and watershed procedural rules in federal habeas proceedings. But this Court concerned Teague's decision with federal habeas review, and that Danforth v Minnesota, 552 US 264 (2008), held that states are free to make new procedural rules retroactive on state collateral review. 552 US at 281-282. Then in

Montgomery v Louisiana, 136 S Ct 718, 729 (2016), this Court addressed part of the question left open in Danforth: holding that when a new substantive rule of constitutional law controls the outcome of a case, as in Bryant's case, the Constitution requires state collateral review courts to give retroactive effect to that rule in that Teague's conclusion establishing the retroactivity of new substantive rules is best understood as resting upon constitutional premises. That constitutional command is, this Court reasoned, like all federal law, binding on state courts. This was limited to Teague's first exception for substantive rules; it did not address Teague's exception for watershed rules of procedure. The first exception was addressed because the Constitution requires substantive rules to have retroactive effect regardless of when a conviction became final. Id.

Michigan's Aaron decision, abrogating the felony-murder doctrine and requiring the state to prove the culpability of the individual coupled with the malicious intent to kill beyond a reasonable doubt, most certainly changed the rule of law in that respect. Bryant never had the opportunity to raise his arguments in the state or federal courts as no adequate procedure or remedy existed, except by ineffective discretionary means to no avail. Aaron's prospective application precluded Bryant from raising his unconstitutional felony-murder conviction ipso facto ipso jure.

By holding that new substantive rules are retroactive, Teague continued a long tradition of giving retroactive effect to constitutional rights that go beyond procedural guarantees. See Mackey v United States, 401 US 667, 692-693 (1971) ("[T]he writ has historically been available for attacking convictions on [substantive] grounds"). Even in pre-1953 era of restricted federal habeas relief, an exception was made "when the habeas petitioner attacked the constitutionality of the state statute under which he had been convicted. Since, in this situation, the State had no power to prescribe the conduct for which the petitioner was imprisoned, it could not constitutionally insist that he remain in jail." See Desist v United States, 394 US 244, 261 (1969).

In Ex parte Siebold, 100 US 371 (1880), the petitioners therein attacked the judgments on the ground that they had been convicted under unconstitutional statutes, as was Bryant. The Court explained that if "this position is well taken, it affects the foundation of the whole proceedings." Id at 376. Thus, a conviction under an unconstitutional law

is not merely erroneous, but is illegal and void, and cannot be a legal cause of imprisonment. It is true, if no writ of error lies, the judgment may be final, in the sense that there may be no means of reversing it. But ... if the laws are unconstitutional and void, the Circuit Court acquired no jurisdiction of the causes. - Id 376.

The statute Bryant was convicted under - MCL § 750.316

was unconstitutionally vague because it did not define what actually constituted "felony murder." See Issue I, supra. Murder was defined in People v Morrin, supra, 31 Mich App 301, 310-311 (1971), lv den 385 Mich 775 (1971); People v Garcia, 398 Mich 250, 258 (1980). Even prior cases listed in Aaron likewise defined murder. Aaron, 409 Mich at 728. These cases were in existence before and around the time Bryant was tried and convicted. He was never given the opportunity to demonstrate that he did not himself perpetrate the homicide.⁴

4. Initially, there were three individuals involved in the underlying robbery; two of them put the blame on Bryant, but the homicide was accidental only at the time this was not a defense, affirmative or otherwise in that the homicide occurred as a result of the underlying robbery which was automatically elevated to first-degree [felony] murder before Aaron. Hence, Bryant was factually innocent of felony murder.

This Court recognized the same logic that governs a challenge to punishment that the Constitution deprives States of authority to impose. Penry, supra, 492 US at 330. Since a court lacked jurisdiction where a statute was unconstitutional and was one the court could not lawfully operate under, a conviction or sentence imposed in violation of a substantive rule is not just erroneous but contrary to law and, as a result, void. Montgomery, supra, 136 S Ct at 731; Ex parte Siebold, supra, 100 US at 376. It follows, that a court has no authority to leave in place

a conviction or sentence that violates a substantive rule, regardless whether the conviction or sentence became final before the rule was announced.

This Court's decision in Montgomery, being a juvenile case not applicable to this case, certainly has a bearing on the analysis necessary in Bryant's case as well, even though he was not a juvenile at the time of his conviction for felony murder. In support of its holding that a conviction obtained under an unconstitutional law warrants habeas relief, the Ex parte Siebold Court explained that "[a]n unconstitutional law is void, and is no law." Ibid. Furthermore, in Montgomery, this Court reasoned:

A penalty imposed pursuant to an unconstitutional law is no less void because the prisoner's sentence became final before the law was held unconstitutional. There is no grandfather clause that permits States to enforce punishments the Constitution forbids. To conclude otherwise would undercut the Constitution's substantive guarantees. Writing for the Court in [United States v. United States Coin & Currency, Justice Harlan made this point when he declared that "[n]o circumstances call more for the invocation of a rule of complete retroactivity" than when "the conduct being penalized is constitutionally immune from punishment." 401 US [715] at 724 [(1971)]. - Montgomery, 136 Sct at 731.

This Court in Montgomery continued to state that if a State may not constitutionally insist that a prisoner remain in jail on federal habeas review, it may not constitutionally insist on the same result in its own postconviction proceedings. Under the Supremacy Clause of the Constitution, state collateral review courts have no greater power than federal habeas courts to mandate that a

prisoner continue to suffer punishment barred by the Constitution. If a state collateral proceeding is open to a claim controlled by federal law, the state court "has a duty to grant the relief that federal law requires," citing Yates, supra, 484 US at 218. Where state collateral review proceedings permit prisoners to challenge the lawfulness of their confinement, States cannot refuse to give retroactive effect to a substantive constitutional right that determines the outcome of that challenge. Montgomery, at 731.

During the Term of this Court in Johnson v United States, 136 US 2551 (2015), this Court considered the residual clause of the Armed Career Criminal Act of 1984, 18 USC § 924(e)(2)(B)(ii), holding that provision void for vagueness. Even though that case is inapplicable to Bryant's case, he asks whether Johnson is a substantive decision that is retroactive in cases on collateral review. If so, the void-for-vagueness doctrine prohibits the states, under the Fourteenth Amendment, from imposing sanctions "under a criminal law so vague that it fails to give ordinary people fair notice of the conduct it punishes, or so standardless that it invites arbitrary enforcement." Id at 2556. That being said, it should be no different with Michigan's then first-degree [felony] murder statute under MCL § 750.316.

The Johnson decision was applied in Welch v United States, 136 S Ct 1257 (2016), by applying its holding

retroactively. The trilogy of Johnson-Montgomery-Welch, and this Court's retroactive analysis, should be rationally applied to Bryant's case through Teague's retroactive application as well. It plainly appears that the first-degree [felony] murder statute Bryant was convicted under was certainly unconstitutionally void for vagueness, and therefore his conviction for felony murder, which was undefined, and his mandatory life sentence are necessarily void rendering the state's judgment unlawful for want of subject-matter jurisdiction under Ex parte Siebold.

This Court should grant habeas relief nunc pro tunc.

III

Petitioner has established his entitlement to habeas relief by invoking this Court's Original Jurisdiction and discretionary powers to grant the writ in aid of its appellate jurisdiction by demonstrating exceptional circumstances and where adequate relief cannot be obtained in any form or from any court.

Now that this Court has answered Bryant's questions presented in this Petition for a Writ of Habeas Corpus insofar as his first two issues are concerned, Bryant now asks this Court to answer whether or not he is entitled to relief for an original writ of habeas corpus. This Court's Rule 20.4(a) delineates the standards under which this Court grants such writs.

A petition seeking the issuance of a writ of habeas corpus shall comply with the requirements of 28 USC §§ 2241 and 2242, and in particular with the provision in the last paragraph of 2242 requiring a statement of the "reasons for not making application to the district court of the district in which the applicant is held." If the

relief sought is from the judgment of a state court, the petition shall set forth specifically how and wherein the petitioner has exhausted available remedies in the state courts or otherwise comes within the provisions of 28 USC § 2254(b). To justify the granting of a writ of habeas corpus, the petitioner must show exceptional circumstances warranting the exercise of the Court's discretionary powers and must show that adequate relief cannot be obtained in any other form or from any other court. These writs are rarely granted.

Petitioner Bryant, a 73 year old prisoner serving a mandatory life sentence out of the State of Michigan for first-degree felony murder, seeks review by this Court pursuant to its Original Jurisdiction under Article III of the United States Constitution by way of a writ of habeas corpus under Article I, § 9, Cl 2 and 28 USC §§ 1251, 2241(c)(3) and 2254(a) in aid of this Court's Original Jurisdiction. Bryant believes he is constitutionally entitled to the writ of habeas corpus.

"The writ of habeas corpus is a writ of inquiry." 39 Am. Jur. 2nd, Habeas Corpus, § 1, p 179. The primary purpose of the writ of habeas corpus is to inquire into and remove any restraints upon a person's liberty which is defined to include the ability to enjoy all the rights protected by the United States and Michigan Constitutions, as well as other rights, and refers to the fullest scope of freedoms one has, including Petitioner Bryant's due process and equal protection liberty rights from an unlawful incarceration. Preiser v Rodriguez, 411 US 475 (1973).

The function of the Great Writ of Habeas Corpus has

been to test the legality of the detention of any person restrained of his liberty. Jones v Cunningham, 371 US 236 (1963) (construing the Federal Habeas Corpus Act, 63 Stat 105; 28 USC § 2241(a)(c)(3)), cited in Billingsly v Birzgalis, 20 Mich App 279, 281 (1969). In the Michigan case of People v McCager, 367 Mich 116 (1962), it was plainly expressed therein that

Habeas corpus is a civil proceeding the main purpose of which is to cause the release of persons illegally confined, to inquire into the authority of law by which a person is deprived of his liberty. ... Application for the writ of habeas corpus is not made in the criminal proceeding; it is made in a new and independent civil action instituted to enforce a civil right, the right to liberty. ... Its power is supreme; it is of unparalleled authority over all other writs.

1. Reason For Not Filing For Habeas Relief in District Court

Bryant filed for habeas review in the United States District Court for the Eastern District of Michigan on three separate occasions: the first petition was dismissed as untimely (#08-cv-57497); his second petition was transferred to the Sixth Circuit as successive and denied (#2:12-cv-13403; 12-2112); his third petition was transferred to the Sixth Circuit as successive and denied (#19-1110). It would have been futile for Bryant to file for habeas relief at this stage. He attempted to raise statutory vagueness and the non-retroactivity of the Aaron decision.

2. Exhaustion of State Remedies

All available state court remedies have been effectively exhausted through the Trial Court, Michigan Court of Appeals and the Michigan Supreme Court, including postconviction remedies (too numerous to name here). Bryant also sought state habeas corpus relief in each of those state courts, raising the non-retroactivity of the Aaron decision, the statutory vagueness of the first-degree [felony] murder statute of MCL § 750.316, and lack of jurisdiction; all to no avail.

3. Exceptional Circumstances Justifying Habeas Relief

Since Bryant was unlawfully convicted under an unconstitutionally vague felony murder statute, where he has served 48 years on a mandatory life sentence thereof, which did not define murder at all, constitutes an exceptional circumstance requiring habeas review, because he was effectively deprived from presenting an affirmative defense of accidental homicide, contrary to due process and equal protection of the law as well as cruel and unusual punishment, that could have resulted in either a verdict of manslaughter or an acquittal altogether. The then first-degree murder statute - MCL § 750.316 - listed thereunder the enumerated felonies, such as robbery (MCL § 750.529), that required only the intent to commit the underlying felony if a homicide occurred which was automatically elevated to first-degree [felony] murder without having to prove the intent of the accused, no matter what. A Draconian law to be sure.

Nine years after Bryant's conviction, the Michigan Supreme Court decided the case of People v Aaron, supra, 409 Mich 672 (1980), abrogating the so-called felony-murder doctrine requiring the government to prove beyond a reasonable doubt that a homicide committed during the perpetration of or attempt to perpetrate one of the enumerated felonies was committed with a malicious intent to kill (malice aforethought). The Aaron decision was to be applied prospective only, contrary to a new substantive rule of constitutional law as determined by Teague v Lane, supra, 489 US 288 (1989) (setting forth the framework for retroactivity). Bryant never had the benefit of Teague's analysis to which he was ignorant.

Another exceptional circumstance involves the lack of subject-matter jurisdiction of Bryant's state trial court where he stands unconstitutionally convicted via a constitutionally vague first-degree [felony] murder statute of MCL § 750.316, rendering the state court judgment null and void ab initio. See Ex parte Siebold, supra, 100 US 371 (1880).

4. Adequate Relief Cannot be Obtained in Any Other Form or From Any Other Court

Despite the fact that Bryant has effectively pursued all of his available and even unavailable state and federal court remedies to no avail, or attempted to pursue the same, due to strict procedural requirements, defaults and time limits, it has been futile in that he has been

completely unable to obtain any form of relief from any other court: he has tried appeals, discretionary appeals, postconviction proceedings, and state and federal habeas corpus reviews without any results at all over these past 48 years. Not only has Bryant pursued and exhausted his available state and federal court remedies as best he could under his particular circumstances - he has exhausted himself as well. There are no other avenues of relief left open to him other than in this Court on habeas review. Furthermore, his jurisdictional claim may be raised at any time.

Bryant believes he has established the entitlement of habeas relief, and the justification for granting the same by showing exceptional circumstances warranting the exercise of this Court's discretionary powers because he has been unsuccessful at attempting to obtain adequate relief in any other form or from any other court.

Bryant also demonstrates good cause for not being able to effectively exhaust all his available state court remedies as he was denied the effective assistance of both trial and appellate counsels, and because he was actually precluded from challenging his constitutionally-infirm felony murder conviction as a result of the restrictive limited decision of Aaron in that the jury was given a directed verdict to find him guilty by being found guilty of the underlying felony; he was precluded from raising an affirmative defense that the homicide was accidental and

not intentional. In addition, the state's judgment is void ab initio requiring habeas relief.

RELIEF SOUGHT

WHEREFORE: Petitioner Bryant moves this Court to exercise its discretionary powers by granting the Writ of Habeas Corpus in aid of both its original and appellate jurisdictions and by granting either of the following relief:


1. Apply the retroactivity of Teague v Lane's holding to Petitioner Bryant's first-degree [felony] murder conviction as a direct result of the Michigan Supreme Court's decision of People v Aaron;

2. Declare Petitioner Bryant's conviction void ab initio due to the State of Michigan's first-degree [felony] murder statute in 1971, MCL § 750.316, de facto as being unconstitutionally vague;

3. Declare Petitioner Bryant's State Judgment of Conviction and Sentence void ab initio requiring his immediate discharge from confinement for the State of Michigan's want of subject-matter jurisdiction;

4. Any other or additional relief that is just and proper in the premises.

Respectfully submitted by:


JAMES BRYANT #130568
Petitioner Pro se
Saginaw Correctional Facility
9625 Pierce Road
Freeland, Michigan 48623

Dated:

JULY 25, 2019