

NO.  
IN THE  
SUPREME COURT OF THE UNITED STATES  
OCTOBER TERM 2019

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DONALD L. MCDONALD

Petitioner

-vs-

WARDEN SHERWIN MILES

Respondent

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PETITION FOR WRIT OF HABEAS CORPUS

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## **QUESTION PRESENTED FOR REVIEW**

Whether Petitioner is being held unlawfully in state custody in violation of the Constitution of the United States where his natural life sentence under the Illinois Habitual Criminal Statute is unconstitutional and violates the Fourteenth Amendment's void for vagueness doctrine prohibited under due process principles of the United States Constitution.

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## POINTS AND AUTHORITIES

<i>Bousley v. United States</i> , 523 U.S. 614, 620, 118 S.Ct. 1604 (1998)	P. 6
<i>Connally v. general cons. Co.</i> , 269 U.S. 385, 391, 46 S.Ct. 126 (1926)	P. 3
<i>In re Detention of Liberman</i> , 201 Ill.2d 308, 267 Ill.Dec. 728, 764 N.E. 2d 19 (2002)	P. 7
<i>Johnson v. United States</i> , 135 S.Ct. 2551 (2109)	P.P. 3,4,5,6
<i>Kolender v. Lawson</i> , 103 S.Ct. 1855 (1983)	P. 7
<i>Mathis v. United States</i> , 136 s. S.Ct. 2243 (2016)	P. 5
<i>Michigan Avenue Bank v. County of Cook</i> , 191 Ill.2d 493, 503-04, 247 Ill.Dec. 473 N.E. 528 (2000)	P.P. 6,7
<i>Montgomery v. Louisiana</i> , 136 S.Ct. 734	P. 6
<i>People v. Britt-El</i> , 206 Ill.2d 339, 236 Ill.Dec. 309, 744 N.E. 2d 204	P. 4
<i>People v. Brown</i> , 225 Ill.2d 188 (2007)	P. 6
<i>People v. Christensen</i> , 102 Ill.2d 321 (1984)	P. 7
<i>People v. Ligon</i> , 2016 IL 18023 (2016)	P. 6
<i>People v. McDonald</i> , 846 N.E. 2d 690	P. 3
<i>People v. Pitsonbarger</i> , 205 Ill. 2d 444, 460, 275 Ill.Dec. 838, 793 N.E. 2d 609 (2002)	P. 4
<i>State v. Kilmer</i> , 808 S. e. 2d 867 (W.VA 2017)	P. 7
<i>Welch v. United States</i> , 136 S.Ct. 1257 (2016)	P.P. 3, 4, 6
<i>United States v. Batchelder</i> , 442 U.S. 114, 123, 99 S.Ct. 2198 (1979)	P. 3
<i>United States v. Williams</i> , 128 S.Ct. 1830 (2008)	P. 6

JURISDICTION

Following a Jury Trial in 1995, petitioner was convicted of Criminal Sexual Assault and sentenced to natural life imprisonment as a habitual criminal (720 ILCS 5/33B-1 (West 1994)).

On September 10, 2015 petitioner filed a pro se motion for leave to file a Successive Post Conviction which was denied on 4/29/2016. Petitioner appealed to the First District Appellate Court and was denied on April 1, 2018. Petitioner appealed to the Illinois Supreme Court and was denied review on March 20, 2019; Petitioner applied for leave to file a Successive Habeas Corpus Petition in the United States Court of Appeals for the Seventh Circuit on April 22, 2019 and was denied on April 29, 2019.

Therefore, the Court has jurisdiction pursuant to 28 U.S.C. §1651 and this Court's Rule 20.4(a).

CONSTITUTIONAL PROVISION INVOLVED

The Fourteenth Amendment provides that, "no person shall.... be deprived of life, liberty or property, without due process of law."

STATUTE INVOLVED

720 ILCS 5/12-13, or 720 ILCS 5111-1.20 (a)(1)(3)

720 ILCS 5/33B-1.(a)

STATEMENT OF CASE

1. Defendant Donald McDonald appeals from an order of the Circuit Court of Cook County denying his pro se motion for leave to file his fifth successive petition for relief under the Post Conviction Hearing Act (Act) (725 ILCS 5/122-1 et seq. (West 2014)).
2. Following a 1995 jury trial, defendant was convicted of criminal sexual assault and sentenced to natural life imprisonment as a habitual criminal (720 ILCS 5/33B-1 West 1994)). On direct appeal, this court affirmed that judgment. *People v. McDonald*, No. 1-95-2669 (1996) (unpublished order under Supreme Court Rule 23).

REASON FOR GRANTING PETITION

Granting petition's writ will be in aid of the court's appellate jurisdiction by demonstrating equal protection principles through the consistent exercise of the court's recent holdings in *Johnson v. United States*, 135 S.Ct. 2551 (2015) and *Welch v. United States*, 136 S.Ct. 1257 (2016) to the Seventh Circuit Court of appeals who manifestly abused its discretion in denying McDonald leave to file a Successive Habeas Corpus petition; based on the Illinois Habitual Criminal Act's (3 strikes law) multi definition of "violent felony" as seen in the title of the statute, (720 ILCS 5/33B-1)(West 1994) opposed to the element's cause listing of crimes which are broader than the title's alternative factual meaning; and unconstitutionally vague under due process principles warranting the exercise of the court's discretionary powers to create fundamental fairness in sentencing between pro se defendants and those with counsel.

ADEQUATE RELIEF COULD NOT BE OBTAINED

ADEQUATE RELIEF COULD NOT BE OBTAINED IN ANY OTHER FORM OR FROM ANY OTHER COURT. The Circuit Court of Cook County denied review of petitioner's contentions that his due process right's under Johnson and Welch were violated, the court denied review.

Petitioner appealed to the First District Appellate Court, petitioner was denied his right to pro se representation, counsel was appointed who withdrew, again denying petitioner review.

Petitioner appealed to the Illinois Supreme Court, who also denied review.

Petitioner sought leave from the Seventh Circuit Court of Appeals who reframed petitioner's argument and denied leave.

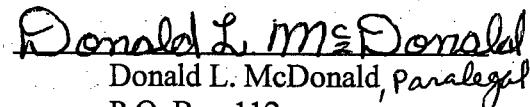
Adequate relief could not be obtained in any other form or from any other court denying petitioner' substantial right to due process of law and equal protection of law.

"These writs are rarely granted," But Illinois' courts have refused to honor the United States Supreme Court precedent regarding vagueness doctrine. Petitioner was only required to show a "gist" of a substantial constitutional violation, but was held to a different standard by the Cook County Circuit Court, the appellate court denied Petitioner's right to proceed pro-se, appointed counsel who promptly filed a motion to withdraw which allows the Illinois Appellate to deny pro-se litigants without expressing the reasons for denial. And the Seventh Circuit failed to properly consider McDonald's issue by contending petitioner's issue concerned "his two previous criminal sexual assault convictions should not have counted because force was not an element" When petitioner knows nothing about two convictions being raised herein, petitioner contends his predicate offense is not a forcible felony as required by statute in 1995 and to hold otherwise makes the statutes void for vagueness in violation of the Fourteenth Amendment. Adequate relief cannot be obtained in any other form or from any other court. These writs are rarely granted.

Wherefore, Petitioner respectfully requests he be granted leave to file successive Petition for Habeas Corpus with appointment of counsel if necessary.

Respectfully submitted:

Date: 7-3-19

  
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