

OCT 25 2019

OFFICE OF THE CLERK

19-6539
No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Dwayne Dumont Haizlip — PETITIONER
(Your Name)

vs.

Joseph Valliere — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

On petition For writ of Certiorari To the 4th Cir. Court of Appeals
PETITION FOR WRIT OF CERTIORARI

Dwayne Dumont Haizlip # 0161397
(Your Name)

Nash Corr. Inst. P.O. Box 600
(Address)

Nashville, N.C. 27856
(City, State, Zip Code)

N-A
(Phone Number)

ORIGINAL

Question(s) Presented

ILLEGAL INCARCERATION!

I. The Federal Const. Question Presented is Whether The Petitioner Mandatory Sentence for his Drug Trafficking Conviction/Sentence Pursuant N.C. Gen. Stat. 90-95 (h) (3) b. is Protected by "Liberty Interest" Emanating From the Due Process of Law clause Fourteenth Amendment?

II. The Federal Const. Question Presented is Whether The "Fair Notice" Requirement Emanating from The Due Process of Law clause Fourteenth Amendment Fulfilled Pursuant N.C. Gen. Stat. 90-95 (h), chapter 90 Article 5, In That Could The Habitual Felon Law Be Used To Enhance The Mandatory Drug Trafficking Sentence?

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 judgment is the subject of this petition is as follows:

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	5
CONCLUSION.....	6

INDEX TO APPENDICES

APPENDIX A	UnPublished United States Court of Appeals for the 4th Cir.; Judgement/Mandate
APPENDIX B	U.S.A. Dist. Court for Middle Dist. of N.C./Recommendation; Order/Judgement
APPENDIX C	State Court decision- State v. Haizlip(2013)
APPENDIX D	Motion for Appropriate Relief "M.A.R."
APPENDIX E	Ordering denying "M.A.R."
APPENDIX F	Certiorari petition filed in N.C. Court of Appeals
APPENDIX G	Order denying State Certiorari

TABLE OF AUTHORITIES CITED

<u>Cases</u>	<u>Page Number</u>
State v. Eaton, 210 N.C. 142 (2011)	E, G, M
State v. Haizlip, (2013)	E, ...
Consumer Product Safety Comm'n v. GTE Sylvania Inc. 447 U.S. 102 (1980)	K
Gagnon v. Scarpelli, 441 U.S. at 786	L
Hicks v. Oklahoma, 447 U.S. 343 (1980)	F, H
Memphis Light Gas & Water Div. v. Craft, 436 U.S. 1, 13 (1978)	L
Miller-EL v. Cockrell, 537 U.S. 322, 336-38 (2003)	H
Missouri v. Hunter, 459 U.S. 359 (1983)	G
Morrissey v. Brewer, 408 U.S. at 486-87, 489	L
Schiro v. Landrigan, 550 U.S. 465, 473 (2007)	L
Slack v. McDaniel, 529 U.S. 473, 484 (2000)	H
U.S. v. Batchelder, 492 U.S. 114 (1979)	I, K
U.S. v. Granderson, 511 U.S. 39 (1994)	E, H
White v. Wheeler, — U.S. —, —, 136 S.Ct. 456, 460 (2015)	L
Wolff v. Mc Donnell, 418 U.S. at 563-564	L

Statutes and Rules

28 U.S.C. 1254(1)	B
N.C.G.S. 14-7.1	J, L
N.C.G.S. 90-95(h)	C, D, E, G, I, J, K
N.C.G.S. 90-95(h)(5)	G, J
S.Ct. Rule 10	

Constitutional Provisions

U.S. Const. Amendment XIV

B, D, F, H, I, K, M

Other

Pages referenced to in the "Petition for Writ of Certiorari" begin and end with App. D.

Pages referenced to in "Table of Authorities" from "Petition for Writ of Certiorari" are identified as alphabets A - O.

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 judgment below.

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

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

☐ reported at _____; or,

☐ has been designated for publication but is 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 _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is 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 Aug. 6, 2019.

☒ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, 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 _____ (date) on _____ (date) in Application No. ____ A ____.

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

☐ A timely petition for rehearing was thereafter denied on the following date: _____, 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 _____ (date) on _____ (date) in Application No. ____ A ____.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Statutes

28 U.S.C. 1254(1)

N.C.G.S. 14-7.1

N.C.G.S. 90-95(h)

N.C.G.S. 90-95(h)(5)

Constitutional Provisions

U.S. Const, amend XIV

IN THE SUPREME COURT OF THE UNITED STATES

Dwayne Dumont Haizlip
Petitioner,

v.

No.

Joseph Valleiere
Supt. Piedmont Corr.
Inst., Salisbury, N.C.
Respondent

PETITION FOR WRIT OF CERTIORARI

Now comes the Petitioner, Dwayne Dumont Haizlip, and request that this court issue a Writ of Certiorari to the Fourth Circuit Court of Appeals denying a Petition for Certificate of Appealability, thereby upholding the judgement of the District Court for the Middle District of N.C. denying the Petitioner's Petition for Writ of Habeas Corpus. The Mandate of the Fourth Circuit Court of Appeals was issued on August 16, 2019, due to the Petitioner not filing for an Petition for Rehearing En Banc. In support of this Petition, the Petitioner show the following

OPINIONS BELOW

Are located at 1 in the preceding pages. The effective

B

date of the Judgment and Mandate are August 6 2019. App. A.

On June 3, 2013, the N.C. Court of Appeals filed an opinion affirming the conviction and sentence for Trafficking in Cocaine by possession and transportation and as an habitual Felon. App. C.

On June 19, 2017, the Petitioner filed a Motion for Appropriate Relief "MAR." App. D. The Federal question was denied.

On Dec. 19, 2017, the Guilford County Superior Court denied the "MAR" App. E. The Federal question was presented and denied.

On Feb. 15, 2018 Petitioner filed a Certiorari in the N.C. Court of Appeals. App. F. The Federal question was presented and denied.

On Feb. 19, 2018 the Certiorari was denied without opinion. App. G.

JURISDICTION

See page 2 located in the preceding pages.

CONSTITUTIONAL AUTHORITY INVOLVED

The Fourteenth Amendment to the U.S. Const. provides in pertinent part, "Nor shall any state deprive any person of life, liberty or property without due process of law."

STATEMENT OF THE CASE AND FACTS

Petitioner Haizlip is a prisoner of the state of N.C., For Trafficking in cocaine by Transportation and Possession. N.C. G.S. 90-95(h) begin with the explicit introductory phrase, "Notwithstanding any other provision of law," illustrating the statute is mandatory and is not affected by no other provisions of law. P. 59-at App. D.

The Petitioner was convicted of attaining the status of being an Habitual Felon "HF." The state believes the "HF" law trumps the mandatory drug trafficking sentence, resulting in the Petitioner being sentence to 127-162 months imprisonment.

On June 3, 2013, the N.C. Court of Appeals filed opinion affirming the Petitioner conviction and sentence. App. C. On June 19, 2017 Petitioner filed a "MAR." App. D. On Dec. 19, 2017 the "MAR" was denied. App. E. On Feb. 15, 2018 Petitioner filed Certiorari in the N.C. Court of Appeals. App. F. On Feb. 19, 2018 the Certiorari was denied without opinion. App. G.

The Petitioner then filed a Writ of Habeas Corpus in the Middle Dist. of N.C., raising the issues set out in the Question Presented section. . . .

On Jan. 14, 2019, U.S. Magistrate Judge Patrick Auld entered a Memorandum Opinion and Recommendation denying the Petition Writ of Habeas Corpus.

App. B.

On Feb. 25, 2019, the Honorable Thomas D. Schroeder adopted the magistrate judge findings and denied a Certificate of Appealability. App. B.

On Aug. 6, 2019, the Fourth Circuit Court of Appeals denied the Petitioner's request for a C.O.A. App. A.

SUMMARY OF ARGUMENT

Petitioner contends that the mandatory sentence Pursuant N.C. G.S. 90-95(h)(3) b. is protected by "Liberty Interest" emanating from the Due Process of Law clause of the Fourteenth Amendment. The Petitioner also contends that N.C. G.S. 90-95(h) Chapter 90 Article 5 in the general laws of N.C. does not provide "Notice Requirement" emanating from the Due Process of Law Clause, in that the mandatory drug trafficking sentence can be enhance by the habitual felon law.

The habeas court upheld the reasoning of the N.C. court of Appeals that the mandatory drug trafficking sentence by statute was less significant than the habitual felon sentence which is not mandatory by statute.

Petitioner asserts that the habeas court and the Fourth Circuit erred by dismissing the Petition for Habeas Corpus and denying the C.O.A.

I. ARGUMENT

The Petitioner was tried and convicted in trafficking in cocaine with a weight of 200-400 grams. The conviction was affirmed by State v. Haizlip, 2013 N.C. LEXIS (2013) App C. The Petitioner then filed a "MAR". The "MAR" was denied by State v. Eaton, 210 N.C. 142, (2011) App. E.

The Eaton court declared:

Because both [statutes] contain mandatory language, N.C. drug trafficking statute and its habitual felon statute complement each other... Sentenced as an [sic] habitual felon is arguably more mandatory than the language found in N.C. Gen. Stat.

90-95(h)... (4) And it's reasonable to assume the legislature meant to further enhance drug traffickers who are also habitual felons."

State v. Eaton (2011).

The N.C. Court of Appeals cites no authority for the preceding declaration. This court declared, "[U]n-enacted approvals, beliefs, and desires are not law." U.S. v. Granderson, 511 U.S. 39 (1994).

In 1979 the N.C. Legislator declared, "Notwithstanding any other provision of law, the following provisions apply except as otherwise provided in this Article... 200-400 grams of cocaine... Shall be sentenced to... 70-84 months in the state prison. N.C.G.S. 90-95(h)(3) b. P. 59-60 at App. D.

F

Haizlip contends the mandatory language in N.C.G.S. 90-95(h)(3)b. is protected by "Liberty Interest." The sentence for Petitioner's drug trafficking crime is 70-84 months; the habitual felon sentence is 127-162 months. 57-78 months of the Petitioner's liberty is at stake here.

This Honorable U.S. Supreme Court declared:

It is not correct to say that the defendant's interest in the exercise of that discretion is merely a matter of state procedural law... And that liberty interest is one that the Fourteenth Amendment preserves against arbitrary deprivation by the state... And such an arbitrary disregard of the Petitioner's rights to liberty is a denial of due process of law. Hicks v. Oklahoma, 447 U.S. 343 (1980):

In the Hicks court, the defendant was not afforded the procedure due to him prescribed by statute, the court took notice, vacated the judgement and remanded the case back to the state court of appeals. The same posture taken in the Hicks court is applicable to the Petitioner's case because the statutory procedure was not adhered to by the state court.

The only other provision of law that the N.C. Legislator included in the context of the statute

that authorizes the sentencing court to diverge from the mandatory punishment of 70-84 months for 200-400 grams of cocaine is N.C.G.S. 90-95(b)(5)-Substantial Assistance. P.62 at App. D.

There is no other language included by the legislator in 90-95(b) (Chapter 90 Article 5 in the general laws of N.C. that allow the state sentencing judge to diverge from the mandatory punishment for drug trafficking; however, the state took it upon themselves and deemed the habitual Felon law was "more mandatory than the drug trafficking statute." State v. Eaton, 210 N.C. 142, (2011).

This Honorable court declared, "Legislature, not courts, prescribe the scope of punishment and thus prevent[5] the sentencing court from prescribing greater punishment than the legislature intended." Missouri v. Hunter, 459 U.S. 359 (1983).

Haizlip contends the mandatory provisions of N.C.G.S. 90-95(b)(3) b. are protected by "Liberty Interest." Due to the fact, the mandatory sentence was not imposed, implicates the state failure to follow its own statutory command, resulting in the Petitioner being arbitrary deprived of his liberty. Similarly the Hicks court declared, "Where a defendant is deprived of a state statutory right, such a deprivat-

ion may implicate the Federal Due Process Clause. States may create liberty interest that are protected by the Fourteenth Amendment." Hicks v. Oklahoma (1980).

In 1994 this Honorable court was faced with a similar dilemma as in the Petitioner's case: "Notwithstanding any other provision of law," the government hotly contested. However, the U.S. Supreme court ruled in favor of Granderson because the panel declared, "Where the language of a statute is clear language, that language... should be followed." In this case before the bar, the results should be the same because Granderson has not been overruled and N.C.G.S. 90-95(b)(3) b. is clear in its prescription of punishment - 70-84 months. U.S. v. Granderson, 511 U.S. 39 (1994).

"The [Petitioner] has been unlawfully deprived of his liberty, due to the fact the mandatory punishment he is entitled to by statute was not imposed. Hairlip has been denied the dispositive procedural due to him '[70-84 months' mandatory sentence]', by denial of a constitutional right." Slack v. McDaniel, 529 U.S. 473, 484 (2000); Miller-EL v. Cockrell, 537 U.S. 322, 336-38 (2003), that is protected by liberty interest.

II.

The Guilford County Superior court and the N.C. court of appeals did not answer the Petitioner "Fair Notice" argument lodge within their courts. This disregard was brought to the attention of the Federal Middle Dist. Court and the Fourth Circuit Court of appeals, to no avail did either court use its supervisory authority and demand the lower courts to answer the Petitioner's "Fair Notice" argument.

With respect the Petitioner ask that this Honorable court demand the lower courts to respond to the "Fair Notice" argument presented in their courts, in fulfilling the "Fair Notice requirement... fundamental principle that 'must' be satisfied by Due Process, arising from the Fourteenth Amendment Due Process of Law clause." U.S. v. Batchelder, 492 U.S. 114 (1979).

The Petitioner's "Fair Notice" contentions are bolstered by what is actually written in the context of N.C.G.S. 90-95(b), P. 59-62 at App.D. Nowhere in Chapter 90 Article 5 in the general laws of N.C. is there an authorization for a habitual Felon sentence. P. 59-62 at App.D.

The N.C. Legislator unequivocally declared, "Notwithstanding any other provision of law, the following provisions apply except as otherwise provided in this Article... 200-400 grams of cocaine... shall be

sentenced to... 70-84 months in the state prison.

N.C.G.S. 90-95(b)(3) b. P. 59-60 at App. D

The 70-84 months' sentence is applicable because it is included in Article 5 chapter 90 in the general laws of N.C. at 90-95(b).

However the habitual felon provisions are located under Article 2A Chapter 14 in the general laws of N.C. at 14-7.1, and is not applicable in this case.

The Petitioner takes no quarrel with the habitual felon being unconstitutional. The Petitioner wholly contends: The N.C. Legislator did not authorize in the context of the mandatory drug trafficking statute, the habitual felon provisions the state relies so heavily upon. See Senate Bill 1054 An Act To Control Trafficking In Certain Substances.

P. 69-71 at App. D. The only other provision of law under chapter 90 Article 5 in the general laws of N.C. the legislature included in the drug trafficking statute that allows the sentencing judge departure from the mandatory sentence of 70-84 months for 200-400 grams of cocaine is 90-95(b)(5) Substantial Assistance P. 62, 70-71 at App. D.

This Honorable Court declared, "[A]bsent a clearly expressed legislative intention to the contrary, [the statutory] language must ordinarily be regarded as con-

clusive." Consumer Product Safety Comm'n v. GTE Sylvania, Inc., 447, U.S. 102, 108 (1980).

N.C.G.S. 90-95(h)(3) b. is clear in its prescription for punishment for drug traffickers in N.C., 70-84 month for 200-400 grams of cocaine, P. 59-60 at App.D.

The Petitioner's right to know what affect the statue has upon his future is "Guaranteed" by the U.S. Const. Fourteenth Amendment "Fair Notice" requirement. The provision for the habitual felon are not encompassed under Chapter 90 Article 5 in the general laws of N.C; however, the habitual Felon laws are found under Chapter 14 Article 2A in the general laws of N.C.

The U.S. Supreme Court writes:

A criminal statue is therefore invalid if it fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden.

U.S. v. Batchelder, 492 U.S. 114 (1979).

N.C.G.S. 90-95(h) Chapter 90 Article 5 does not provide "Fair Notice" that a statue "habitual felon" from Chapter 14 Article 2A can be utilized to enhance what the legislator has not allowed. The habitual Felon statues are invalid with drug trafficking statues, because they are not found under Chapter 90 Article 5.

Again Chapter 90 Article 5 does not provide notice for imposition of a sentence pursuant N.C.G.S. 14-7.1; the Petitioner has a reasonable expectation of the mandatory "70-84 month" sentence. Our Honorable U.S. Supreme Court believes: ---

I see no reason to depart here from this court's longstanding recognition that adequate notice is a fundamental requirement of due process e.g.

Memphis Light Gas & Water Division v. Craft, 436 U.S. 1, 13, (1978); Mullane v. Central Hanover Trust Co. 339 U.S. 306, 314 (1950), A principle heretofore found equally applicable in the present context, Wolff v. Mc Donnell, 418 U.S. at 563-564; Gagnon v. Scarpelli, 441 U.S. at 786; see also Morrissey v. Brewer, 408 U.S. at 486-87, 489.

Likewise, the Petitioner affirms the same.

The Petitioner is entitled to this court's writ of Certiorari, because he has shown the lower courts have not reasonably applied clearly established federal law. The lower courts "Fair Notice" disregards and rulings were lacking in justification and there was error well understood and comprehended in existing law beyond any possibility for fair minded disagreement. White v.

Wheeler, — U.S. —, 136 S. Ct. 456, 460 (2015); Schirra v. Landrigan, 550 U.S. 465, 473 (2007).

REASONS FOR GRANTING THE PETITION CONCLUSION

The Fourth Circuit Court of Appeals ruling in this case does not line up this Honorable courts decisions in: Granderson, Hicks, Hunter, Batchelder, etc. Such results have significance and impact on the liberation of a multitude of men and women lying dormant in the N.C. state prisons. Until this court intervenes and grant its writ of Certiorari, the illegal habitual felon sentencing law in State v. Eaton (2011), won't stop the massacre it places on individuals, it deems "more mandatory" than what the law allows. Some times the Father has to step in and correct his offspring; in this case the Petitioner request the U.S. Supreme court step in and demand the lower courts to correct the Petitioner sentence to 70-84 months for 200-400 grams of cocaine from the illegal 127-162 months sentence for the Habitual Felon.

Because the court opinions in the "Liberty Interest and Fair Notice" contention by Petitioner were contrary to, or an unreasonable application of, clearly established federal law, by finding the habitual felon law may be used to enhance the mandatory trafficking sentence, the Petitioner's due Process of law rights have been flagrantly violated, review should be granted and this case remanded back to the lower court.

N

The Petition for a writ of certiorari should be granted.

Respectfully Submitted,
this the 25 day of Oct.,
2019.

15/ Dwayne O. Haizlip
-- # 0161397 --

Nash Corr. Inst.

P.O. Box 600

Nashville, N.C. 27856