

No. _____

19-7226
October Term

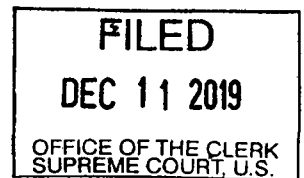
IN THE
SUPREME COURT OF THE UNITED STATES

TONY ROBINSON — PETITIONER
(Your Name)

ORIGINAL

vs.

PEOPLE OF THE STATE OF ILLINOIS — RESPONDENT(S)



ON PETITION FOR A WRIT OF CERTIORARI TO

APPELLATE COURT OF ILLINOIS, FIRST JUDICIAL DISTRICT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

TONY ROBINSON
(Your Name)

600 S. Linwood Rd., P.O. Box 1700
(Address)

Galesburg, Illinois 61403
(City, State, Zip Code)

(309)-343-4212
(Phone Number)

SUBBETH COMPTON
OFFICE OF THE CLERK
DEC 11 2018
FILED

ORIGINAL

QUESTION(S) PRESENTED

1. Whether or not defendant's sentence is void because the victim's age was not charged in the indictment, pled to, or proved beyond a reasonable doubt.
2. Whether or not he was actually innocent of the "element" of knowingly murdering an individual under the age of 12.
3. Whether or not the trial court was precluded from imposing an extended-term sentence because the jury found him guilty under a theory of accountability.
4. Whether or not the "de facto life sentence" imposed on "an immature young adult with a history of mental health problems" was unconstitutional.
5. Whether or not the statute under which he was sentenced was declare unconstitutional and was never properly re-enacted.

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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:

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OTHER

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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 judgment 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 _____; 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☐ is unpublished.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 _____ 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 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 Cook County Circuit 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.

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JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

☐ 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 May 22, 2019.
A copy of that decision appears at Appendix A.

☐ 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).

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CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

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

735 ILCS 5/2-1401. Relief from judgments. In relevant part, (a) Relief from final orders and judgments, after 30 days from entry thereof, may be had upon petition as provided in this Section. . . . etc. (f) Nothing contained in this Section affects any existing right to relief from a void order or judgment, or to employ any existing method to procure that relief.

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STATEMENT OF THE CASE

On August 9, 1994, Joseph Orr was shot in the back. Thereafter, Tony Robinson, and his co-defendants, Jamal White, Terrell Young and Demetrius Jones was charged by indictment returned by the Grand Jury.

Following a jury trial in 1997, Tony Robinson was convicted of first degree murder for the fatal shooting death of nine-year old Joseph Orr in the back while he played in a clubhouse outside his home. The trial court sentenced Tony Robinson to an extended term of 100 years in prison. On direct appeal, the appellate court affirmed and corrected the mittimus to reflect one conviction for murder. People v. Robinson, No. 1-97-2639 (1999) (unpublished order under Supreme Court Rule 23). Tony Robinson thereafter unsuccessfully challenged his conviction and sentence in three post-conviction petitions. People v. Robinson, Nos 1-00-2785 (2002), 1-06-1428 (2008) (unpublished orders under Supreme Court Rule 23), 1-10-1108 (2011) (unpublished summary order under Supreme Court Rule 23(c)).

On February 2, 2017, Tony Robinson filed a section 2-1401 petition challenging his extended-term sentence as void. Specifically, Tony Robinson, argued that his sentence was void because (1) the victim's age was not charged in the indictment, pled to, or proved beyond a reasonable doubt; (2) he was actually innocent of the "element" of knowingly murdering an individual under the age of 12; (3) the trial court was precluded from imposing an extended-term sentence because the jury found him guilty under a theory of accountability; (4) the "de facto life sentence" imposed on "an immature young adult with a history of mental health problems" was unconstitutional; and (5) the statute under which he was sentenced

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declared unconstitutional and was never properly re-enacted.

On March 24, 2017, the circuit court denied the petition stating that there was no basis in law upon which it could grant defendant the relief defendant sought. Tony Robinson's late notice of appeal was allowed on May 9, 2017.

The Office of the State Appellate Defender, which was appointed to represent Tony Robinson on appeal, filed a motion in the appellate court requesting leave to withdraw based on counsel's conclusion that an appeal in this cause would be frivolous. The motion was made pursuant to Pennsylvania v. Finley, 481 U.S. 551 (1987), and was supported by a memorandum.

Copies of the motion and memorandum were sent to Tony Robinson and he was advised that he could submit any points in support of his appeal.

Tony Robinson responded, challenging counsel's conclusion that there is no basis to consider the petition where it was filed almost 18 years after the statutory two-year deadline for filing and no exceptions to the statute of limitations apply. Citing subsection (f) of section 2-1401, which provides that "[n]othing contained in this section affects any existing right to relief from a void order or judgment" (735 ILCS 5/2-1401(f) (West 2016)), Tony Robinson maintains that his extended-term sentence is void for all the reasons argued in his petition and, therefore, not subject to the procedural bar of timeliness.

REASONS FOR GRANTING THE PETITION

This Court should grant this petition for writ of certiorari to determine if

Tony Robinson's sentence is void because (1) the victim's age was not

charged in the indictment, pled to, or proved beyond a reasonable doubt;

(2) he was actually innocent of the "element" of knowingly murdering an

individual under the age of 12; (3) the trial court was precluded from im-

posing an extended-term sentence because the jury found him guilty

under a theory of accountability; (4) the "de facto life sentence" imposed

on "an immature young adult with a history of mental problems" was un-

constitutional; and (5) the statute under which he was sentenced was

declared unconstitutional and was never properly re-enacted.

The Illinois Appellate Court, First Judicial District claimed the Illinois

Supreme Court abolished the void sentence rule in People v. Castleberry,

2015 IL 116916 ¶¶ 1, 19 and that a defendant can no longer rely on the

void sentence rule to challenge statutorily nonconforming sentence in

perpetuity. The Illinois Appellate Court, First Judicial District only ad-

ressed one of his arguments that the statute which the trial court imposed

his extended-term sentence was declared unconstitutional and was

never properly re-enacted. However, the Illinois Appellate Court, First

Judicial District failed to acknowledge that a void judgment can still be

raised when the sentence exceeds the statutorily prescribed maximum,

such as in this case. Accordingly, for the reasons stated in this petition,

this Court should grant the writ of certiorari.

Tony Robinson was charged with degree murder in connection

with the August 9, 1994, shooting death of nine-year old Joseph Orr

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along with co-defendants Jamal White, Terrell Young and Demetrius Jones. Tony Robinson was convicted of first degree murder and sentenced to 100 years in prison.

Nine year old Joseph Orr was playing in a makeshift clubhouse with several other children on August 9, 1994, in the area of 4530 S. Champain in Chicago (C. 307-308). The state called five witnesses at trial and only witness identified the defendant in a lineup but that was a few months after the shooting. None of the state's witnesses had a direct view of the shooter. The defense called Willie Mae Flemister and her two daughters, Joy and Thelma to testify. Mrs. Flemister and Joy both testified that they saw someone they knew as "Tick" running with a gun around the time of the shooting (R. 3752, 3784). Officers on the scene did not listen to Mrs. Flemister when she tried to tell them about "Tick" (R. 3791).

During deliberations, the jury sent a note stating that:
Due to the evidence in this case we are uncomfortable with the choices provided for a decision of guilt of first degree murder. While we do feel beyond a reasonable doubt that Tony Robinson was involved in the death of Joey Orr, we would like to note that we cannot conclude beyond a reasonable doubt that Tony Robinson was responsible for the shooting of Joey Orr. (C. 322).

After the court instructed the jury to continue deliberations, they returned a guilty verdict. (C. 322). The trial court sentenced the defendant to an extended-term of 100 years in prison, based on the age of the decedent, as well as Robinson's prior conviction for residential burglary. (C. 322).

ARGUMENT

This Court should grant Tony Robinson's petition for writ of certiorari to resolve a conflict of authority created by the Illinois Appellate Court's opinion in this case to determine if the circuit court of Illinois lacked subject matter jurisdiction when it imposed an extended term sentence.

Tony Robinson was charged with the shooting death of Joseph Orr. In his indictment, the state failed to include the victim's age was under 12 years old. However, after defendant was found guilty of first degree murder, the trial court imposed an extended term sentence of 100 years. In defendant's petition to vacate a void judgment pursuant to section 2-1401, he argued this is his first claim. The Illinois Appellate Court refused to address this issue as they claimed it did not raise to a "cognizable post-Castlesberry voidness claim" and did not merit discussion. People v. Robinson, Illinois Appellate Court, First Judicial District, No. 1-17-1383 918.

However, the first Judicial District Court of Illinois failed to acknowledge that the trial court lacked subject matter jurisdiction when they imposed the 100 year extended term sentence. The Illinois Supreme Court has stated "that the power to render the particular judgment or sentence is as important an element of jurisdiction as is personal jurisdiction and subject matter jurisdiction." People v. Davis, 156 Ill.2d 149, 155 (1993). Based on this idea, the rule has developed which holds that a circuit court which violates a particular statutory requirement when imposing a sentence acts without "inherent

authority" or "inherent powers". And, because the trial court has acted without power, it has acted without jurisdiction, thereby rendering the sentence void. See People v. Arna, 168 Ill.2d 107, 113 (1995).

The Illinois Appellate Court, First Judicial District is correct that People v. Castleberry, 2015 IL 116916 abolished the "void sentence rule", and that a sentence will be deemed void only in two circumstances: where it was entered by a court that lacked personal or subject matter jurisdiction, or where it was based on a statute that is facially unconstitutional and void ab initio. See the attached Appellate Court decision People v. Robinson, No. 1-17-1383 at 917. The Illinois Appellate Court's decision in this case creates a conflict with well established law.

The trial counsel was not notified that the State intended to use aggravated factors, namely, the victim's age under 12 prior to trial. At no time did the State amend the Complaint or the Bill of Particulars. When the trial court decided to sentence Tony Robinson to an extended-term of 100 years using the aggravated factor of the victim's age under 12, they exceeded their subject matter jurisdiction. In this case, the extended portion of defendant's sentence is void and his case should be remanded for re-sentencing excluding the extended sentence. Nevertheless, the Illinois Appellate Court held to the contrary. Accordingly, this Court should grant this petition for writ of certiorari to review the Illinois Appellate Court's decision.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Loyd Bolin

Date: _____

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