No. 19-7626

****

IN THE
SUPREME COURT OF THE UNITED STATES
1 1ST Street N.E.
Washington, D,C, 20543-0001

****

ORIGINAL

LONNIE RARDEN-PETITIONER

Vs.

STATE OF OHIO-RESPONDENT

ON PETITON FOR WRIT OF CERTIORARI TO

THE SUPREME COURT OF OHIO

PETITON FOR WRIT OF CERTIORARI

LONNIE RARDEN #A547-085
LONDON CORRECTIONAL INSTITUTION
P.O. BOX 69
LONDON, OHIO 43140

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issues to review the judgment below.

QUESTION(S) PRESENTED

Is sentencing a defendant to a de facto life sentence for non-violent offenses fall within a violation of the eight amendment right of cruel and unusual punishment. Does sentencing a defendant under the wrong case number amount to a violation of due process.

Is giving a defendant a sentence of two and a half times harsher than other defendants who committed the same crimes in the same jurisdiction amount to grossly disproportionate sentences. A violation of the Eighth Amendment.

LIST OF PARTIES

[X] 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:

Butler County Prosecutor Michael T. Gmoser
Government Service Center
315 High Street 11th Floor
Hamilton, Ohio 45011

Asst. Prosecutor John Heinkel
Government Service Center
315 High Street 11th Floor
Hamilton, Ohio 45011

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OTHER

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issues to review the judgment below.

OPINIONS BELOW

For cases from federal courts: N/A

For cases from state courts:

The opinion of the highest state court to review the merits appear at State v. Rarden, 2019 Ohio LEXIS 2471. See **Appendix A.**

The opinion of the Twelfth District Court of Appeals appears at State v. Rarden, (12th Dist.), 2019-Ohio-2161. See **Appendix B.**

JURISDICTION

For cases from federal courts:

The date on which the United States Court of Appeals decided my case was: N/A.

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: N/A.

An extension of time to file the petition for writ of certiorari was granted: N/A.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The eighth amendment of the United States Constitution holds that: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

The fourteenth amendment of the United States constitution, section one holds: "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."

Ohio Rules of Criminal Procedure, Rule 43: Presence of the defendant. (A)(1): "Except as provided in Rule 10 of these rules and division (A)(2) of this rule, the defendant must be physically present at every stage of the criminal proceeding and trial, including the impaneling of the jury, the return of the verdict and the imposition of the sentence, except as otherwise provided by these rules. In all prosecutions, the defendant's voluntary absence after the trial has been commenced in the defendant's presence shall not prevent continuing the trial to and including the verdict. A Cooperation may appear by counsel for all purposes. (2) Notwithstanding the provisions of division (A)(1) of this rue, in misdemeanor cases or in felony cases where a waiver has been obtained in accordance with division (A)(3) of this rule, the court may permit the presence and participation of a defendant by remote contemporaneous video for any proceeding if all of the following apply: (a) The court

gives appropriate notice to all parties; (b) The video arrangements allow the defendant to hear and see the proceeding; (c) The video arrangements allow the defendant to speak, and be seen and heard by the court and all parties; (d) The court makes provision to allow for private communication between the defendant and counsel. Counsel shall be afforded the opportunity to speak to defendant privately and in person. Counsel shall be permitted to appear with defendant at the remote location if requested. (e) The proceeding may involve sworn testimony that is subject to cross examination, if counsel is present, participates and consents. (3) The defendant may waive, in writing or on record, the defendant's right to be physically present under the rules with leave of court."

STATEMENT OF THE CASE

On June 1, 2006 Petitioner was arrested by the Hamilton, Ohio Police Department for inducing a panic, violating a protection order and two counts of felonious assault.

Petitioner agreed to plead guilty via bill of information and receive a three-year term of imprisonment in the Ohio Department of Rehabilitation and Corrections, (hereinafter ODRC), for two counts of attempted aggravated assault in Case No. CR2006-06-1027.

All of the jail staff are very familiar with the petitioner. Petitioner has an extensive criminal history but he has NO history of ever causing the jail staff any problems.

Petitioner would be in remiss if he failed to inform this Honorable Court that Ohio Revised Code 2949.12 requires that a Sheriff in Ohio to deliver a defendant into the custody of the ODRC within five days after being sentenced. With that said, the petitioner was sentenced for the two counts of attempted aggravated assault in Case No. CR2006-06-1027 on August 9th, 2006.

Sheriff Richard K. Jones derelict his duties under Ohio Revised Code 2949.12 which mandated that the Sheriff deliver the petitioner to the ODRC within five (5) days after being sentenced. As a result of the Sheriff being in dereliction of his duties, the petitioner remained in the Butler County Jail.

While awaiting to be transported to the ODRC, the petitioner and a friend (Christina Hurst, hereinafter Hurst) came up with an escape plan. The petitioner sent Hurst a security screw from the jail. The plan was that Hurst was going to send the petitioner an "allen wrench" into the jail that fit the security screws that held the cell windows into place. The allen wrench was supposed to be sent in the spine of a legal book since jail staff are relaxed in searching legal materials. Unbeknownst to the petitioner, Hurst got cold feet and informed the Butler County Jail Staff of the escape plans. The jail staff entrapped the petitioner and foiled the petitioner's escape plans by taking one of their own legal books, placed finger print dust into the spine of the book where the allen wrench was supposed to have been placed. The book was then placed inside of a Fed Ex box that the jail staff acquired. A deputy sheriff delivered the box to the petitioner's cell. The petitioner opened the spine of the book

and a small amount of finger print dust got onto his jail uniform. Ergo the petitioner was subsequently charged with escape, Butler County Case No. CR2006-07-1271.[1]

The saga was not over. Petitioner and Hurst concocted another plan of setting the Victim Emily Anderson, (hereinafter Anderson) up. The plan was that Hurst would arrange for Anderson to buy drugs directly off of Detective Robert Barber, (hereinafter Detective Barber) from the Butler County Sheriff's Department. In return, this would result in Anderson being charged with aggravated trafficking. In short, the plan was carried out and successful, Anderson was arrested for aggravated trafficking.

That was not the end of the story. Again, while awaiting to be transported to the ODRC, the petitioner and Hurst concocted yet another plan to get even with Anderson. Anderson had no idea that Hurst was the person who set her up to be arrested for aggravated trafficking. Therefore, the plan was that Hurst who was friends with Anderson and the petitioner would take Anderson out for "a night of partying and pill popping" as the prosecution put it. Once Anderson passed out, Hurst would cut herself up and then place the knife into Anderson's hand and then call the Hamilton Police Department and tell them that Anderson attacked her with a knife.

The plan was successfully carried out by Hurst and Anderson was arrested for felonious assault. The following day after Anderson's arrest, Hurst went and took out a protection order against Anderson. That same day, Hurst went to Anderson's

[1] It is important to point out that the petitioner never left the jail, or tampered with any locks, or windows to escape.

house and took letters out of Anderson's mailbox that the petitioner had written to Anderson. The letters had no value, Hurst was simply snooping through Anderson's house while Anderson was in jail.

A few days after Anderson was arrested, Anderson posted bail and claimed that the Petitioner and Hurst set her up and that she did not attack Hurst. Had it not been for Anderson's step father who was an attorney in Butler County, Ohio and was a former Assistant Prosecutor in Butler County. Anderson's assertions would have fell upon deaf ears. Anderson's stepfather contacted some of his former confidants at the Hamilton Police Department to investigate Anderson's assertions.

Petitioner was transported from the Butler County Jail to the Hamilton Police Department for questioning. Petitioner immediately requested an attorney and ended the interview.

When Hurst was questioned, she confessed the entire incident. Thereafter, the Petitioner while awaiting transportation to the ODRC was directly indicted for one count of retaliation; two counts of complicity to perjury; one count of complicity to tampering with evidence; one count of menacing by stalking and seventeen counts of violation of a protection order, Butler County Case No. CR2006-09-1593.

Petitioner was given a Public Defender, David Brewer, (hereinafter Mr. Brewer), who worked part time as a magistrate and was married to an Assistant Butler County Prosecutor, (Brenda Cox). Petitioner had no trust, or confidence in Mr. Brewer. Petitioner's thought process was that whatever he told Mr. Brewer about his case, Mr. Brewer in return convey the information to his wife and she would relay

the information to the Butler County Assistant Prosecutor on the Petitioner's case, (Lance Salyers). Therefore, the petitioner elected to proceed to trial in pro se. In February of 2007, the trial court conducted a hearing on the petitioners' motion to proceed to trial in pro se but the trial court failed to comply with the standards that this Honorable Court set in Von Moltke v. Gillies, 332 U.S. 708; Johnson v. Zerbst, 304 U.S. 458; Faretta v. Cal., 422 U.S. 806 and Iowa v. Tovar, 541 U.S. 77.[2]

Trial began on March 21, 2007, in both cases, CR2006-07-1271 and CR2006-09-1593 with the petitioner representing himself in pro se. Petitioner don't mean to sound cliché but he asserts that a trial occurred on March 21, 2007, but far from a fair trial occurred on that date. Some of the things that went on is unconscionable atrocities. Some instances are, before the trial started each morning, the Judge (Sage) and the victim's step-father (Attorney Bradley Carmella) would be standing in the judge's doorway to his chambers talking. At trial, Petitioner called Detective Barber as a witness to testify to the fact that letters taken out of Anderson's mailbox by Hurst had no evidentiary value and would exonerate the petitioner of the complicity to tampering with evidence charge. The prosecution immediately called a side bar requesting the trial court to quash the subpoena stating that by allowing Detective Barber to testify would jeopardize his safety at work because of the numerous news cameras in the courtroom. As stated above, Detective Barber worked as an undercover drug agent. Petitioner's rebuttal was that since there were

[2] Petitioner is confident that if this Honorable Court does not grant him relief in the instant case, the issue of him proceeding to trial in pro se will reach this Honorable Court via certiorari later this year because he did not knowingly or intelligently waive his right to counsel.

numerous news cameras in the courtroom, Detective could wear a mask, the court could order the news cameras to point their cameras away from the detective, or order the news cameras leave while Detective Barber testified. Petitioner tried to emphasis to the trial court that it was imperative that Detective Barber testify. The trial court simply declined these suggestions and quashed the subpoena.

Petitioner filed a post-conviction petition on this issue but it was dismissed because the Butler County Clerk of Court's drug their feet in filing it and filed it ONE DAY late. See **Appendix D** and **Appendix E.**

At the conclusion of trial, the petitioner requested that the trial court instruct the jury on lesser included offenses. The trial court said to the petitioner that it had already typed out the jury instructions and was not going to re-type them.

A Butler County Jury convicted the petitioner guilty on all counts in both cases. Before sentencing the Petitioner asked the trial court for a continuance to investigate if his offenses were "allied offenses." The trial court refused to any allied offense analysis which was required pursuant to Ohio Revised Code 2941.25 and *Brown v. Ohio*, (1977), 432 U.S. 161, 165, 97 S.Ct. 2221, 53 L.E.d2d 187.

Lastly, at sentencing, on the escape charge, (Case No. CR2006-07-1271) the trial court stated:

> "Okay, The Court has considered all the requirements under the Ohio Revised Code. In Case Number 2006-07-1227, it's the sentence of the Court that you be confined in Ohio Department of Rehabilitation and Corrections for a definite period of five years, plus the cost of prosecution. The Court will also assess five years of – three years of post-release control." See **Appendix C.**

Petitioner would point out that case number 2006-07-1227 belongs to State of Ohio v. James Harold Johnson. See **Appendix** D.

The trial court then proceeded to sentence the petitioner in Case No. CR2006-09-1593. For the retaliation charge, the trial court sentenced the petitioner five years in the ODRC; for the two counts of complicity to perjury, the trial court sentenced the petitioner to ten years in the ODRC; for the complicity to tampering with evidence, the trial court sentenced the petitioner five years in the ODRC; for the menacing by stalking, the trial court sentenced the petitioner to eighteen months in the ODRC, for the seventeen counts of violation of violation of a protection order, the trial court sentenced the petitioner to eighteen months in the Butler County Jail. See **Appendix** E. All sentences were running consecutive to one another except the seventeen counts of violation of a protection order for cumulative sentences of twenty-nine and one half years in the ODRC in all three case numbers.

Out of the petitioner's presence, the trial court issued a journal entry stating the correct case number (CR2006-07-1271) in its journal entry. See **Appendix** F. This clearly violated Ohio's Criminal Rule 43 as well as the fourteenth amendment right to due process.

Petitioner was appointed appellate counsel that filed a direct appeal with the Twelfth District Court of Appeals, State v. Rarden, (12th Dist.), Butler App. No. CA2007-03-077) citing the following errors: (1) That the trial court did not substantially comply with Criminal Rule 44. (2) The trial court denied the petitioner access to a law library. (3) The trial court abused its discretion overruling petitioner's

motion to compel discovery. (4) The trial courts sentences were contrary to law. The Twelfth District Court of Appeals for Butler County, Ohio denied the petitioner's direct appeal and affirmed the trial court's decision. State v. Rarden, (12th Dist.), Butler App. No. CA2007-03-077 (Apr. 21, 2008) (Accelerated Calendar), appeal not accepted by the Supreme Court of Ohio. State v. Rarden, 119 Ohio St. 3d 1449, 2008-Ohio-4487, 893 N.E.2d 518, 2008 Ohio LEXIS 2418 (Sept. 10, 2008). Petitioner filed a writ of habeas corpus in the United States District Court for the Southern District of Ohio, Western Division Civil Action No. 1:09-cv-335 in which was denied. Rarden v. Warren Corr. Inst., 2011 U.S. Dist. LEXIS 60599 (S.D. Ohio, Mar. 9, 2011). Petitioner filed a writ of habeas corpus in the United States District Court for the Southern District of Ohio, Western Division Civil Action No. 1:09-cv-335 in which was denied. Rarden v. Warren Corr. Inst., 2011 U.S. Dist. LEXIS 60599 (S.D. Ohio, Mar. 9, 2011).

Meanwhile, on February 14, 2008. Petitioner filed a post-conviction petition pursuant to R.C. §2953.21 calming: that the trial court violated the petitioner's rights when it quashed a subpoena for a witness (Detective Barber) that would have exonerated the petitioner on the complicity to tampering with evidence charge as well as improperly excluding evidence from trial, a *Brady* v. *Maryland,* 373 U.S. 83 violation. See **Appendix G.** On March 11th, 2008, the trial court denied the Petitioner's post-conviction petition because it was filed one day late. See **Appendix H.** In a motion for reconsideration, Petitioner asked the trial court to adopt the mailbox rule. Petitioner's motion was denied. Petitioner appealed arguing that he

mailed it to the clerk of court's office in a timely manner and it was the clerk's office fault that his post-conviction petition was late. The Petitioner appealed to the Twelfth District Court of Appeals, (Butler County App. No. CA2008-04-0102.) The Twelfth District Court of Appeals sua sponte dismissed the appeal.

Petitioner spent roughly three hundred days in the Butler County Jail. After the Petitioner was sentenced, the trial court tried to only give the petitioner seventy days of jail time credit. Petitioner filed a pro se motion for additional jail time credit. The trial court refused to rule on the motion for well over a year. The petitioner had to file a pro se writ of mandamus on the trial court in the Supreme Court of Ohio to make the trial court rule on his motion. After receiving the writ of mandamus, the trial court forthwith denied petitioner's motion for additional jail time credit. Petitioner timely filed a pro se appeal to the Twelfth District Court of Appeals. The Twelfth District Court of Appeals ordered the trial court to give the petitioner the rest of his jail time credit. State v. Rarden, (12th Dist.), 2009-Ohio-5637.

On March 26, 2010, petitioner filed a pro se motion to vacate the petitioner's sentences because the trial court improperly imposed post-release control. The trial court ordered a "re-sentencing hearing." At that hearing, the trial court basically re-imposed post-release control. But in its journal entries, the trial court lied and said that it conducted a complete de novo sentencing hearing when in it did not. (emphasis added). Petitioner appealed in pro se, claiming that the trial court lied in its journal entries. The Twelfth District Court of Appeals affirmed the trial court's decision. State v. Rarden, (12th Dist.), Butler No's. CA2010-04-095 and CA2010-05-106 and

CA2010-05-126, appeal to the Supreme Court Ohio not accepted, State v. Rarden, 130 Ohio St.3d 1497, 2011-Ohio-6556.

On April 10, 2013, petitioner filed a pro se motion requesting that the trial court to vacate his sentences because; when the trial court sentenced the petitioner, the trial court considered unconstitutional fact finders as this Honorable Court found unconstitutional in Apprendi v New Jersey, (2000), 530 U.S. 466, 120 S.Ct. 2348 and Blakely v. Washington, (2004), 542 U.S. 296, 124 S.Ct. 2531.

Instead of addressing the merits the trial court did it usual and re-cast petitioners motion into a post-conviction petition pursuant to Ohio Revised Code §2953.21 and applied res judicata. Petitioner filed a pro se appeal. The Twelfth District Court of Appeals affirmed the trial court's decision. State v. Rarden, (12th Dist.), 2014-Ohio-564. appeal to the Supreme Court Ohio not accepted, State v. Rarden, 139 Ohio St. 3d 1407, 2014-Ohio-2245, 2014 Ohio LEXIS 1328, 9 N.E.3d 1064.

As soon as the Judge that sentenced the petitioner was off of the bench. Petitioner hired an attorney that his ex-wife worked for and on September 16, 2015, his attorney filed a motion to vacate his void sentences claiming that the court committed structural errors in giving jury instructions and because the trial court sentenced the petitioner to five years in prison for a misdemeanor crime that only carries six months in the Butler County Jail.[3] Judge Keith Spaeth who has been on

[3] The judge that sentenced the petitioner had just retired and the attorney saw this as an opportunity to set things right.

the bench the longest in Butler County, Ohio set the matter on his docket. He ordered the petitioner to be transported from prison to a hearing set for December 17, 2015. For some reason the cases were transferred to the newest judge on the bench from the Butler County Prosecutor's Office, (Judge Jennifer Muench-McElfresh). On November 18, 2015, she denied petitioner's motion, finding that petitioner's claims were barred by the doctrine of res judicata. Petitioner's attorney appealed claiming: His sentence for escape was void because the jury verdict form upon which his conviction was based neither provided that the conviction was a third-degree felony nor found him guilty of the additional elements required to support a third-degree felony escape conviction. Petitioner also argued that his convictions for complicity to perjury and tampering with evidence were void because during deliberations the trial court's answers to the jurors' questions regarding the offenses deprived appellant of his right to a jury trial. The Twelfth District Court of Appeals affirmed the trial court's decision. State v. Rarden, (12th Dist.), 2016-Ohio-3108, appeal to the Supreme Court Ohio not accepted, State v. Rarden, 2016 Ohio LEXIS 2509.

On December 11, 2017, the Petitioner filed a pro se, motion to correct an illegal sentence[4]. In that motion, petitioner requested that the trial court resentence him or correct an illegal sentence. Petitioner argued that the trial court failed to conduct a de novo sentencing hearing in 2010 and failed to properly inform him of his post release control. In addition, petitioner argued that his sentence was contrary to law,

[4] Petitioner came to realize that in Butler County, courts like to play semantics and to recast unclassified motions into post-conviction petitions and then deem them late and apply res judicata instead of doing the right thing. This Court and the Supreme Court of Ohio has found that a "motion to correct an illegal sentence" is not an unclassified motion. Therefore, petitioner started captioning all of his motions as "motion to correct an illegal sentence."

the trial court engaged in improper judicial fact-finding, and the trial court improperly "packaged up" his prison sentences. The trial court denied his motion. Petitioner filed a pro se appeal and raised five assignments of error for review: Assignment of Error No. 1: Appellant was not properly notified of post release control. Assignment of Error No. 2: The trial court was prohibited from packaging up defendant's post release control. Assignment of Error No. 3: The trial court erred when it sentenced the appellant under an unauthorized statute. Assignment of Error No. 4: The trial court erred when it sentenced the appellant under an unauthorized statute. Assignment of Error No. 5: The trial court erred when it sentenced the appellant under the sentencing packaging doctrine. The Twelfth District Court of Appeals affirmed the trial court's decision, State v. Rarden, (12th Dist.), 2018-Ohio-4487, appeal to the Supreme Court Ohio not accepted, State v. Rarden, 2018 Ohio LEXIS 346. US Supreme Court certiorari denied by Rarden v. Ohio, 2019 U.S. LEXIS 4246 (U.S., June 24, 2019).

On March 19, 2018 while the above issues were making their way through the courts, the petitioner filed another "motion to correct illegal sentences." In that motion, the petitioner claimed that his sentences were void because the court sentenced the petitioner under the wrong case number and then ran sentences consecutive to that wrong case number. Also while the above cases were making their way through the appeals courts, on November 13, 2018, the petitioner filed another "motion to correct an illegal sentence." In that motion, the petitioner claimed that his sentences were void because his twenty-six and one half year prison term was grossly

disproportionate to sentences handed out to defendants who committed similar crimes in the same jurisdiction.

On November 28, 2018 the trial court issued two separate decisions denying the petitioner's motions pursuant to res judicata. Petitioner timely filed a pro se appeal to the Twelfth District Court of Appeals. His assignments of errors were: Assignment of Error No. 1: The trial court cannot sentence a defendant under the wrong case number. And Assignment of Error No. 2: A trial court cannot sentence a defendant to inconsistent, or grossly disproportionate sentences. The Twelfth District Court of Appeals affirmed the trial court's decision. State v. Rarden, (12th Dist.), 2019-Ohio-2161, see **Appendix B**, appeal to the Supreme Court Ohio not accepted, State v. Rarden, 2019 Ohio LEXIS 2471, see Appendix A.

REASONS FOR GRANTING THE PETITION

As this Honorable Court knows, the United States Supreme Court Rule 10, (b) holds:

> "a state court of last resort has decided an improper federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals."

Likewise, United States Supreme Court Rule 10, (c) holds:

> "a state court or a United States court of appeals has decided on important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions. Of this Court."

Pursuant to United States Supreme Court Rule 10, (c). The reasons that this Honorable Court should grant certiorari is because it is not only important for this

Honorable Court to protect the fourteenth and eighth amendments to the United States Constitution. It is this Honorable Court's duty to protect the constitution and not allow the states to water it down, or dilute it simply because they are tired of the petitioner appealing their decisions.

The reviewing courts' in Ohio are calling sentencing the petitioner under the wrong case number an innocent "slip of the tongue." **Appendix** B. That is just simply absurd and preposterous. If that were the case, it is as the petitioner proposed to the state courts. Which is, that it is <u>not</u> necessary for a defendant to be present at a sentencing hearing any longer. Now, a judge's oral sentence does not matter anymore. The only thing that matters is that as long as the judge writes the sentence(s) correctly in his journal entry, the sentence(s) are set into stone and cannot be challenged.

Petitioner is not aware of this Honorable Court ever addressing an issue of this nature. The Petitioner would argue that his sentences are contrary to law. A trial court has no jurisdiction to sentence a defendant under the wrong case number. It is clearly a violation of the fourteenth amendment as well as Ohio Criminal Rule 43. The petitioner found one case out of the State of Montana where a defendant was sentenced under the wrong case number for ten months before the trial court corrected the sentence. The defendant then filed a 42 U.S.C. §1983 action for being sentenced under the wrong case number for ten months. See, Kelly v. Montana, 2013 U.S. Dist. LEXIS 82910. The case was dismissed because, Kelly failed to state a claim upon which relief may be granted. But needless to say, the trial court re-sentenced

Kelly after sentencing him under the wrong case number. Id at [5]. This Honorable Court should accept this case so that it may set some clear precedence on this issue and how it violates the fourteenth amendment of the United States constitution.

The other reason this Honorable Court should grant certiorari is pursuant to United States Supreme Court Rule 10, (b) because this Honorable Court set a three prong test to if a sentence is grossly disproportionate in the syllabus of Solem v. Helm, (1983), 463 U.S. 277:

> "1. The Eighth Amendment's proscription of cruel and unusual punishments prohibits not only barbaric punishments, but also sentences that are disproportionate to the crime committed. Pp. 284-290.
>
> (a) The principle of proportionality is deeply rooted in common-law jurisprudence. It was expressed in Magna Carta, applied by the English courts for centuries, and repeated in the English Bill of Rights in language that was adopted in the Eighth Amendment. When the Framers of the Eighth Amendment adopted this language, they adopted the principle of proportionality that was implicit in it. Pp. 284-286.
>
> (b) The constitutional principle of proportionality has been recognized explicitly in this Court for almost a century. In several cases the Court has applied the principle to invalidate criminal sentences. *E. g., Weems* v. *United States*, 217 U.S. 349. And the Court often has recognized that the Eighth Amendment proscribes grossly disproportionate punishments, even when it has not been necessary to rely on the proscription. Pp. 286-288.
>
> (c) There is no basis for the State's assertion that the principle of proportionality does not apply to felony prison sentences. Neither the text of the Eighth Amendment nor the history behind it supports such an exception. Moreover, this Court's cases have recognized explicitly that prison sentences are subject to proportionality analysis. No penalty is *per se* constitutional. Pp. 288-290.

2. A court's proportionality analysis under the Eighth Amendment should be guided by objective criteria. Pp. 290-295.

(a) Criteria that have been recognized in this Court's prior cases include (i) the gravity of the offense and the harshness of the penalty; (ii) the sentences imposed on other criminals in the same jurisdiction, that is, whether more serious crimes are subject to the same penalty or to less serious penalties; and (iii) the sentences imposed for commission of the same crime in other jurisdictions. Pp. 290-292.

(b) Courts are competent to judge the gravity of an offense, at least on a relative scale. Comparisons can be made in light of the harm caused or threatened to the victim or to society, and the culpability of the offender. There are generally accepted criteria for comparing the severity of different crimes, despite the difficulties courts face in attempting to draw distinctions between similar crimes. Pp. 292-294.

(c) Courts are also able to compare different sentences. For sentences of imprisonment, the problem is one of line-drawing. Decisions of this kind, although troubling, are not unique to this area. The courts are constantly called upon to draw similar lines in a variety of contexts. Cf. *Barker* v. *Wingo*, 407 U.S. 514; *Baldwin* v. *New York*, 399 U.S. 66. Pp. 294-295.

3. In light of the relevant objective criteria, respondent's sentence of life imprisonment without possibility of parole is significantly disproportionate to his crime, and is therefore prohibited by the Eighth Amendment. Pp. 295-303.

(a) Respondent's crime of uttering a "no account" check for $ 100 is viewed by society as among the less serious offenses. It involved neither violence nor threat of violence, and the face value of the check was not a large amount. Respondent's prior felonies were also relatively minor. All were nonviolent and none was a crime against a person. Respondent's sentence was the most severe that the State could have imposed on any criminal for any crime. He has been treated in the same manner as, or more severely than, other criminals in South Dakota who have committed far more serious crimes. Nevada is the only other State that authorizes a life sentence without possibility of parole in the circumstances of this case, and there is no indication that any defendant such as respondent, whose prior offenses were so minor, has received the maximum penalty in Nevada. Pp. 296-300.

> (b) The possibility of commutation of a life sentence under South Dakota law is not sufficient to save respondent's otherwise unconstitutional sentence on the asserted theory that this possibility matches the possibility of parole. Assuming good behavior, parole is the normal expectation in the vast majority of cases, and is governed by specified legal standards. Commutation is an ad hoc exercise of executive clemency that may occur at any time for any reason without reference to any standards. In South Dakota, no life sentence has been commuted in over eight years, while parole -- where authorized -- has been granted regularly during that period. Moreover, even if respondent's sentence were commuted, he merely would be eligible to be considered for parole. *Rummel* v. *Estelle*, 445 U.S. 263, distinguished. Pp. 300-303."

In Ohio, the Supreme Court of Ohio holds that grossly disproportionate sentences are a violation of the eighth amendment to the U.S. constitution. *McDougle v. Maxwell,* (1964), 203 N.E.2d at 336. In *McDougle* the court said:

> "where the offense is slight, more may be prohibited than savage atrocities. However, the penalty must be so greatly disproportionate to the offense as to shock the sense of justice of the community."

After the Petitioner was sentenced, he was immediately escorted out of the courtroom by several deputies. Once out of the ear shot of the judge, one deputy sheriff (McCready) that grew up with the petitioner stated: "are you fucking kidding me, did he just give you twenty-six and a half years for that bull shit."

Then, once the Petitioner arrived at the ODRC Reception Center, the Intake Records Officer said: "who did you piss off."

The petitioner's ex-wife is a legal assistant to several criminal attorneys' in Butler County, Ohio. On several occasions, several attorneys' that she worked for,

(Michael Shanks, Timothy Evans, Jeremy Evans, David Washington, Clayton Napier) all expressed to her that the petitioner was "railroaded."

Judge Keith Spaeth told one of petitioner's attorney's (Timothy Evans) that Judge Sage gave the petitioner way too much time and that "murders and rapist don't get that long of a sentence." These statements CLEARLY establish what the Supreme Court of Ohio established in *McDougle* when they said:

> "the penalty must be so greatly disproportionate to the offense as to shock the sense of justice of the community."

The Petitioner researched to see what similar sentences were handed down in the Twelfth District Court of Appeals. Petitioner found that defendants who were convicted of crimes similar to what the petitioner was convicted of were sentenced to:

- Retaliation = probation to two (2) years of imprisonment. See, State v. Metcalf, (12th Dist.), 2003-Ohio-6782; State v. Rotted, (12th Dist.), 776 N.E.2d 551; State v. Goodson, (12th Dist.), 1999 Ohio App. LEXIS 2109.
- Complicity to tampering with evidence = probation to three (3) years of imprisonment. See, State v. Harrison, (12th Dist.), 2007-Ohio-7078; State v. Miniard, (12th Dist.), 2007 WL 313489; State v. Prater, (12th Dist.), 2006-Ohio-3895; State v. Haney, (12th Dist.), 2006-Ohio-3899; State v. Dell. (12th Dist.), 2006- WL 1051844; State v. Catron, (12th Dist.), 2001 WL 1142923; State v. Conklin, (12th Dist.), 1995 WL 128388; State v. Smith, (12th Dist.), 2011-Ohio-1476; State v. Collins, (12th Dist.), 2015-Ohio-3710 and State v. Schuster, (12th Dist.), 2015 Ohio App. LEXIS 4710.

- Complicity to perjury = probation to eighteen (18) months of imprisonment. See, State v. Rodriquez, (12th Dist.), 2009-Ohio-549; State v. Bell, (12th Dist.), 2004 WL 3155162 and State v. Keller, (12th Dist.), 1998 App. LEXIS 435.
- Menacing by stalking = probation to twelve (12) months of imprisonment. See, State v. Russell, (12th Dist.), 2012-Ohio-1127, State v. Shavers, (12th Dist.), 2016-Ohio-5561 and State v. Knoble, (12th Dist.), 2008-Ohio-5004.
- Violation of protection order = probation to thirty (30) days in the county jail. See, State v. Verga, (12th Dist.), 2015-Ohio-2582.

The Petitioner in the instant case received sentences of at least two and a half times longer than the average sentence handed down for similar crimes in the Twelfth District Court of Appeals. This clearly supports the petitioner's assertions that his sentences are clearly grossly disproportionate.

What the courts did in Ohio in the case at bar is in conflict with other State Supreme Courts that state:

> "Even a sentence within the prescribed statutory limit may violate a defendant's constitutional right against excessive punishment. State v. Sweeney, 443 So.2d 522, 531 (La. 1983); State v. Jones, 98-1055 (La.App. 5 Cir. 2/23/99), 729 So.2d 95, 97. A sentence is considered excessive if it is grossly disproportionate to the offense or imposes needless and purposeless pain and suffering. State v. Lobato, 603 So.2d 739, 751 (La. 1992); State v. Munoz, 575 So.2d 848, 851 (La.App. 5 Cir. 1991), writ denied, 577 So. 2d 1009 (La. 1991). In reviewing a sentence for excessiveness, the appellate court must consider the punishment in light of the harm to society and gauge whether the penalty is so disproportionate as to shock its sense of justice. State v. Daigle, 96-782 (La.App. 5 Cir. 1/28/97), 688 So.2d 158, 159, writ denied, 97-0597 (La. 9/5/97), 700 So.2d 506."

CONCLUSION

What has happened in this case is not just a miscarriage of justice. It is an atrocity to the justice system. The petitioner has the second longest sentence in the State of Ohio's history for a non-violent offender.

President Trump and democratic leaders agree that prison reform needs to happen. With that said, the Petitioner would convey to this Honorable Court that this case is as good as any to start with.

The petition for writ of certiorari should be granted.

Respectfully Submitted,

Lonnie Rarden

Date: January 30th 2020.