

No. 19-7031

ORIGINAL

Supreme Court, U.S.
FILED

FEB 27 2020

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

Randall Duane Throneberry PETITIONER
(Your Name)

Mike Hunter, Oklahoma ^{VS.}
Attorney General — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Oklahoma Court of Criminal Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Randall Duane Throneberry #522925
(Your Name)

JCCC Unit 2 - 216 N. Murray Street
(Address)

Helena, Oklahoma 73741
(City, State, Zip Code)

(580) 852-3221
(Phone Number)

QUESTION(S) PRESENTED

1. Whether under the clear language of Oklahoma Statute Title 21, § 1123, Petitioner's enhanced sentence under Oklahoma Statute Title 21, § 51.1A is invalid and must be vacated.

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. Due Process Clause, Fourteenth Amendment to United States Constitution
(Appendix B)
2. Due Process Clause, Fifth Amendment to United States Constitution
(Appendix B)
3. Oklahoma Statute Title 21 § 1123
4. Oklahoma Statute Title 21 § 51.1A

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☐ is unpublished.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☐ is unpublished.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☒ is unpublished.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 _____ 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☐ is unpublished.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 _____.

☐ 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 January 16, 2020.
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).

STATEMENT OF THE CASE

Petitioner, Randall Duane Throneberry, was charged by Information in Oklahoma County District Court Case No. CF-2015-6679 with Count I – Lewd acts with a child under the age of sixteen (16) in violation of Okla. Stat. Title 21, § 1123. Petitioner was charged after one prior felony conviction for lewd molestation.

A jury trial held on August 28-30, 2017 before the Honorable Timothy Henderson, the jury found Petitioner guilty of lewd acts with a child. The jury assessed punishment of life without the possibility of parole as that was the only sentencing option available. At formal sentencing on September 8, 2017, the trial court sentenced Petitioner in accordance with the jury's recommendation.

Petitioner appealed to the Oklahoma Court of Criminal Appeals (OCCA) maintaining that his sentence was both invalid and excessive. The OCCA affirmed the judgment and sentence. Petitioner now appeals to this Honorable Court.

REASONS FOR GRANTING THE PETITION

In Oklahoma, the lewd molestation statute, Okla. Stat. tit. 21 § 1123, has its own specific enhancement provision. For a first offense involving a child under the age of twelve (12) years old the sentence is not less than twenty-five (25) years. In relation to a second offense of lewd molestation § 1123 (A)(4) specifically provides,

Except as provided in Section 51.1a of this title, any person convicted of a second or subsequent violation of this subsection shall be guilty of a felony punishable as provided in this subsection and shall not be eligible for probation, suspended or deferred sentence.

By the clear language of that section of the statute a second offense of lewd molestation carries not less than twenty-five (25) years. A third offense carries life or life without parole.

The lewd molestation statute references Okla. Stat. tit. 21 § 51.1a which creates a mandatory life without parole sentence for a second offense of lewd molestation, rape, forcible oral sodomy and child sexual abuse. It was the application of the general enhancement provision of § 51.1a that allowed for the automatic life without parole sentence Petitioner received. Because there is a specific enhancement provision under § 1123 (A)(4) the general provision had no application here.

Additionally, in almost every criminal case in the State of Oklahoma the jury decides the appropriate punishment. Okla. Stat. tit. 22 § 926.1. However, in Petitioner's case the jury is completely stripped of discretion in determining an

appropriate sentence. Equal protection demands equal treatment for those who are similarly situated. Jury sentencing is prescribed for all cases, except for defendants such as Petitioner.

In Hicks v. Oklahoma, 447 US 343, 100 SCt 2227, this Court recognized that there is due process interest in a right conferred by a state statute. Oklahoma law gives discretion to the jury to determine appropriate punishment where the defendant is convicted at a jury trial. Because § 51.1a strips those defendants who fall within its purview of the right to a sentence rendered by a jury exercising discretion as provided under state statute and federal constitutional law, it violates the 14th Amendment.

Finally, under the 8th Amendment, the automatic, mandatory life without parole sentence is disproportionate given the facts and circumstances of this case. A life without parole sentence is the “second most severe sentence permitted by law” second only to the death penalty. Harmelin v. Michigan, 501 US 957 (1991) Petitioner was given this punishment for touching the private parts of an 8 year old child. Inappropriate touching of a child certainly merits serious punishment but hardly merits the “second most severe sentence permitted by law.”

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Randall Thoreberry

Date: February 26, 2020