

19-8260

No. _____

Supreme Court, U.S.

FILED

JAN 14 2020

OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

— PETITIONER

(Your Name)

vs.

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

(Your Name)

(Address)

(City, State, Zip Code)

ORIGINAL

(Phone Number)

QUESTION(S) PRESENTED

1. Whether issuance of the writ is agreeable to the usages and principles of law
2. Whether the State of New York Court of Appeals has decided an important federal question in a way that conflicts with the *ex post facto* clause
3. Whether the State of New York Statute is punitive where it increased classification of the offense of "Course of sexual conduct against a child in the first degree" from an non-violent felony offense to an violent felony offense and thereby increased punishment from an indeterminate maximum sentence of $12\frac{1}{2}$ to 25 years imprisonment to an determinate maximum sentence of 25 years imprisonment followed by 5 years postrelease Supervision
4. Whether an error of law or fact occurred below that constitutes a fundamental defect which inherently resulted in a complete miscarriage of justice
5. Whether Petitioner's current sentence of 25 years imprisonment followed by 5 years postrelease Supervision is manifestly erroneous

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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New York State 4th Dept. App. Div. Decision

APPENDIX B

APPENDIX C Pro Se Motion for Writ of Error Coram Nobis

APPENDIX D Prosecutors Answering Affirmation to error
Coram nobis motion w/ Exhibits 1 and 2

APPENDIX E Pro Se motion for permission to appeal from
Appellate Division Summary denial

APPENDIX F a) Monroe County Clerk's Recording Page with
Certificate of Conviction; b) Memorandum in
Support of N.Y.S. Assembly relating to ch. 122 Text
of law ... specifically Sections 3 and 4; c) Penal Law
Sec. 70.02 1(a); d) Penal Law Sec. 70 Subd. 1; and
e) 1996 proposed legislation Front & Back, by
former New York Governor, Hon. George E. Pataki
to classify "Course of Sexual Conduct against a
child in the first and second degree" as violent
felonies

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Peugh, 133 S.Ct. at 2077-78 — Pg. 10, 11	
People v. Samms, 710 N.Y.S.2d 310 — Pg. 8, 10	
People v. Keindl, 68 N.Y.2d 410 — Pg. 9	
U.S. Johnson, 220 F.Supp.3d 264 — pg. 10, 11	

STATUTES AND RULES

U.S.C.A. Const. Art. 1, Sec. 9, cl. 3 — Pg. 10
U.S.C.A. Const. Art. 1, Sec. 10, cl. 1 — Pg. 10
U.S.C.A. Amendment Fourteen of the Due Process Clause and the Fifth, Sixth and Eighth Articles of The Bill of Rights...
McKinney's Penal Law Sec. 70.02 1(a) w/ Credits
New York Penal Law Sec. 70 Subd. 1 — pg. 10
New York Penal Law Sec. 70.06 — Pg. 9

OTHER

Request pursuant to Hains v. Kerner, 404 U.S. 519,
92 S.Ct. 594; and People v. Renauld, 535 N.Y.S.2d 985...
for leaneously relating to any mistakes, errors, omissions etc.

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.

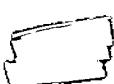
For cases from **state courts**:

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 NYS Supr. Ct. App. Div. Fourth Dept. 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.



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 _____. 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 February 3, 2020 (date) on _____ (date) in Application No. 19 A 627.

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

STATEMENT OF THE CASE

1. To: The Honorable Justice Ginsburg of the United States Supreme Court. Your Petitioner Fulton, Alvin a Citizen of The United States of America in proper person, appearing as his own counsel, who hereby petitions This Noble Court for a writ of Certiorari directed to the State of New York Court of Appeals - To review the Decision of the Court below denying Verified Letter - Motion for Certificate of Appealability to appeal from Summary denial in the State of New York Supreme Court, Appellate Division - Fourth Department, of Petitioner's Pro Se verified notice of motion for Writ of error coram nobis.

2. On April 13, 2001 Petitioner was arrested by Rochester, New York Police and on April 18, 2001 charged by indictment No.: 2001/244 without an opportunity to testify as requested. Thus, upon defense motion pursuant to CPL Sec. 190.50[5] initial indictment was dismissed by Monroe County Supreme Court Justice, and prosecutor was granted leave to resubmit case to grand jury over defense objections... At which time Prosecutor gave notice of an May 30, 2001 grand jury resubmission

and again your Petitioner invoked his right to testify thereat, but was for the second consecutive time deprived of said right.

3. However, unbeknownst to Petitioner, Prosecutor haunted the May 30, 2001 grand jury - and informed said grand jury that they could vote ... then, the grand jury was adjourned, and case re-submitted to a third and newly empanelled grand jury on the 12th day of June, 2001 at which time Petitioner was called to testify

4. Thereafter, on June 18, 2002 Petitioner was arraigned on "alleged" Superceding indictment No. 2001/378 charging Petitioner with the offense of "Course of Sexual Conduct against a child in the first degree," from the year 1999 to 2000.

5. On June 12, 2002 after trial by jury Petitioner was sentenced to 25 years imprisonment followed by 5 years postrelease Supervision. Though unaware at the time, Petitioner came to know that his current sentence of 25 years imprisonment followed by 5 years postrelease supervision is illegal, unauthorized and unconstitutional as a matter of law - and in violation of Petitioner's Civil Rights



guaranteed and protected by the Due Process Clause of the Fourteenth Amendment of the United States Constitution, and the Fifth and Sixth Articles of the Bill of Rights. The State of New York Court of Appeals order denying verified notice of motion for Certificate of Appealability are presented under APPENDIX-A, herewith

6. Furthermore, decision of the Court below denying Verified Letter- Motion for Certificate of Appealability is also inconsistant and adverse to previous decisions in parellel cases of the New York State Court of Appeals. See People v. Samms, 710 N.Y.S.2d 310.

7. Petitioner submitted in the Court below -That the offense of "Course of Sexual Conduct against a child in the first degree" was not legislated and effectuated into law as an violent felony offense until January 19,2016, and that Petitioner's Current sentence of 25 years imprisonment followed by 5 years postrelease supervision as an violent felony offender is erroneous, and cannot stand.

RE: Appendix - F(a), Monroe County Clerk's Recording Page with Certificate of Conviction which dose not classify Petitioner as an Second Violent Felony



offender, but rather, as an Second Felony Offender, Contrary to what Petitioners current sentence reflects. RE: APPENDIX - F(a) ... Monroe County, Clerk's Recording Page w/certificate of Conviction; F(b) ... Memo- randum in Support of New York State Assembly relating to chapter 122 Text of law, specifically sections 3 and 4; F(c) ... Penal Law sec. 70.02 1(a); F(d) ... Penal Law sec. 70 Subd. 1; and F(e) ... 1996 proposed legislation Front & Back, by former New York Governor, Hon. George E. Pataki - to classify "course of sexual conduct against a child in the first and second" as violent felonies, which changed Maximum allowed Sentences from $12\frac{1}{2}$ to 25 years imprisonment, to a determinate sentence of 25 years imprisonment followed by 5 years postrelease Supervision.

8. However, minimum allowed sentence for the said offense prior to change in law, was $3\frac{1}{2}$ to 9 years imprisonment. RE: New York Penal Law Sec. 70.06.

9. Notably, in the year between 1999 and 2000, as charged by indictment, People v. Keindl, 68 N.Y.2d 410 was the leading case that former Governor, Hon. George E. Pataki proposed legislative change



10. The Federal Court have determined that the ex post facto clause of the United States Constitution is violated when the court sentenced defendant to a greater sentence than that annexed to the offense at the time of alleged commission.

see Peugh, 133 S. Ct. at 2077-78; and U.S. Johnson, 220 F.Supp.3d 264.

11. Therefore, it is Petitioner's contention, that pursuant to People v. Samms, 710 N.Y.S.2d 310 – the New York State Court of Appeals were bound to correct the sentencing error that had occurred below in Petitioner's case.

12. Also, pursuant to the facts in Petitioner's case, and U.S.C.A. Const. Art. 1, Sec. 9, cl. 3 – along with U.S.C.A. Const. Art. 1, Sec. 10, cl. 1, the retroactive effect of the change in law was in deed of an punitive nature – and in violation of U.S.C.A. Amendment Fourteen of the Due Process Clause and the Fifth, Sixth and Eighth Articles of the Bill of Rights. RE: McKinney's Penal Law Sec. 70.02 1(a) w/ credits; and Penal Law Sec. 70 Subd. a.

REASONS FOR GRANTING THE PETITION

13. A state Court of last resort has decided an 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 Noble Court. RE: U.S. Johnson, 220 F.Supp.3d 264, and Peugh, 133 S.Ct. at 2077-78

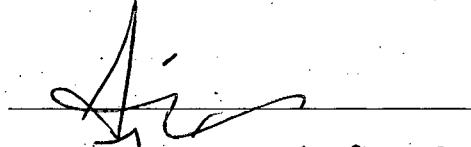
14. And to borrow an appropriate Maxim "Justice Delayed Is Justice Denied." Therefore it is prayed that justice be finally served whereby Petitioner's Sentence is Corrected so as to conform to the existing law in effect at the time and in the 1999 and 2000 as charged by indictment RE: Ex-2 Appendix-D, Prosecutors answering affirmation to Motion for writ of error coram nobis

CONCLUSION

The petition for a writ of certiorari should be granted.

An Unconstitutional Sentence cannot Stand

Respectfully submitted,



Date: January 09th, 2020

