

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Graylin Gray — PETITIONER
(Your Name)

vs.

Scott R. Farkes and Todd Waster RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Eighth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Graylin Gray
(Your Name)

2725 N. Hwy 50, P.O. Box 900
(Address)

Tecumseh, NE 68450
(City, State, Zip Code)

(402) 335-5998
(Phone Number)

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SUPREME COURT, U.S.

QUESTION(S) PRESENTED

Mr. Gray alleged that he is in state custody "pursuant to" a sentence, not pursuant to "the" (e.g. one) judgment, which includes both the conviction and sentence. The records maintained by the Clerk of the District Court of Lancaster County, Nebraska, do not contain a record entitled "Judgment of Conviction" in case number CR 06-511 in the District Court of Lancaster County, Nebraska.

Did the United States district court err in denying and dismissing without prejudice to reassertion in a petition for writ of habeas corpus pursuant to 28 U.S.C. §2254 properly authorized by the Eighth Circuit Court of Appeals ?

The Petition presented the question "whether petitioner is in state custody pursuant to a sentence, not pursuant to the judgment, which includes both the conviction and 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:

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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 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 is unpublished.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 is unpublished.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 April 20, 2020.

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

The following statutory and constitutional provisions are involved in the case.

U.S. Const. Amend. 14

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No state shall make or enforce any law which 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 any person within its jurisdiction the equal protection of the law.

Fed. Rules Crim. Pro. 32(K)(1)

In General. In the judgment of conviction, the court must set forth the plea, the jury verdict or the court's findings, the adjudication, and the sentence. If the defendant is found not guilty or is otherwise entitled to be discharged, the court must sign the judgment, and the clerk must enter it.

28 U.S.C. §2241(c)(3)

Section 2241 authorizes federal district court to issue a writ of habeas corpus to a state or federal prisoner who is in custody in violation of the Constitution or laws or treaties of the United States.

Neb. Rev. Stat. §25-1313

When a trial by jury has been had, judgment must be rendered by the court and entered by the clerk in conformity to the verdict, unless it is special, or the court order the case to be reserved for future argument or consideration.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED CONTINUE

Neb. Rev. Stat. §25-1301(2)(Reissues 2008)

Rendition of a judgment is the act of the court or judge thereof, in making and signing a written notation of the relief granted or denied in an action.

Neb. Rev. Stat. §25-1301(3)(Reissue 2008)

Entry of a judgment is the act of the clerk of the court in placing the file stamp and date upon the judgment.

STATEMENT OF THE CASE

Gray filed a petition for writ of habeas corpus, pursuant to 28 U.S.C. §2241 in the United States District Court for the district of Nebraska, claiming that he is a pretrial detainee, and is in state custody pursuant to a sentence, not pursuant to the judgment, which includes both the conviction and sentence.

The United States district Court entered an Memorandum And Order denying and dismissing without prejudice petition for writ of habeas corpus on December 17, 2019.

Gray filed a Petition for Certificate of Appealability in the United States district court for the district of Nebraska.

The United States district court entered an Memorandum And Order denying Petitioner's Petition for Certificate of Appealability on January 8, 2020.

Gray filed a Petition for Certificate of Appealability in the United States Court of Appeals for the Eighth Circuit on January 17, 2020.

The United States Court of Appeals for the Eighth Circuit entered an Judgment denying application for a certificate of appealability and dismissed the appeal on April 20, 2020.

REASONS FOR GRANTING THE PETITION

I. THE DISTRICT COURT'S DENIAL OF HABEAS CORPUS RELIEF WARRANTS THIS COURT'S ATTENTION

The doctrine of stare decisis allows the U.S. Supreme Court to revisit an earlier decision where experience with its application reveals that it is unworkable. *Johnson v. U.S.*, 135 S.Ct. 2551 (2015).

This Court requires failure to enter a final judgment of conviction, constitutes no conviction at all. *Ramdass v. Angelone*, 120 S.Ct. 2113 (2000).

A criminal "judgment" generally includes both the conviction and sentence. See, e.g., Fed. Rule Crim. Roc. 32(K)(1)(a criminal judgment, "must set forth the plea, the verdict or the court's findings, the adjudication, and sentence. ... The judge must sign the judgment, and the clerk must enter it"). *Teague v. Lane*, 489 U.S. 288, 314 n.2, 109 S.Ct. 1060, 103 L.Ed.2d 334 (1989) ("As we have often stated, a criminal judgment necessarily includes the sentence imposed upon the defendant"). This well-established principle applies in the federal habeas context, where petitioner is in custody pursuant to "the judgment." §2254(b). A person cannot be held in custody "pursuant to" a sentence, but only pursuant to "the" (e.g. one) judgment, which includes both the conviction and sentence. See *Burton v. Stewart*, 549 U.S. 147, 156-157, 127 S.Ct. 793, 166 L.Ed.2d 628 (2007)(per curiam)(explaining that AEDPA's statute of limitation did not run until the judgment ----- "both his conviction and sentence became final"(internal quotation marks omitted)).

It is the adjudication of guilt, that is, the judgment of conviction and not the type of punishment thereafter imposed that establishes and publishes a defendant's guilt and brands him a criminal. *Plum v. Beckett*, *supra*; *Berman v.*

REASONS FOR GRANTING THE PETITION CONTINUES

U.S., 302 U.S. 211, 58 S.Ct. 164 (1937). To create finality in a criminal case for purpose of appeal, it is necessary that conviction be followed by sentence. *Berman v. U.S.*, 508 U.S. 129, 113 S.Ct. 1993 (1993).

A judgment of guilt is a necessary prerequisite for a sentence to be pronounced, and failure to obtain a conviction prior to sentencing a defendant is a violation of the due process rights guaranteed to citizens by the U.S. and Nebraska Constitutions. See *In re Winship*, 397 U.S. 358, 90 S.Ct. 1068, 1072, 25 L.Ed.2d 368 (1970).

In this case, Petitioner received a Affidavit of Troy Hawk, testifying that in his capacity as Clerk of the District Court of Lancaster County, Nebraska, his duty is to maintain the records of the District Court of Lancaster County, Nebraska, including the records in case number CR 06-511 in the District Court of Lancaster County, Nebraska. That the records maintained by the Clerk of the District Court of Lancaster County, Nebraska, do not contain a record entitled "Judgment of Conviction" in case number CR 06-511 in the District Court of Lancaster County, Nebraska.

Because Petitioner is in state custody pursuant to a sentence, not pursuant to the judgment, which include both the conviction and sentence, this Court must grant Certiorari.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Maylin Gray

Date: April 30, 2020