

NO. 19-8775

IN THE

SUPREME COURT OF THE UNITED STATES

KIRBY GARDNER, Petitioner

v.

STATE OF TEXAS, Respondent

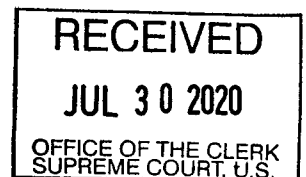
ON PETITION FOR WRIT OF CERTIORARI
TO THE TEXAS COURT OF CRIMINAL APPEALS

WR-17,070-21 (TR. Ct. No. 0831335-2)

PETITIONER SEEK LEAVE TO SUPPLEMENT

SUPPORT FOR WRIT OF CERTIORARI

KIRBY GARDNER #1003719
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902 FM 688
DAYTON, TX. 77535



To The Honorable Justices Of This Court:

The overriding substance in granting the petition stands upon this Court's precedence in the FINALITY of a criminal sentence !!

Petitioner has served from Dec. 15, 1999 - to - Dec. 15, 2019, 20yrs of a 20yr MAXIMUM sentence announced in open court by trial judge after verdict of guilt by jury for a state-jail offense enhanced to a 2nd degree felony that state law authorizes a MAXIMUM penalty of 20yrs. TEXAS PENAL CODE §12.35(a) - state-jail offense; §12.425 - enhancement to 2nd degree felony; §12.33(a) - penalty for 2nd degree felony SHALL BE no more than 20yrs, nor less than 2yrs.

IN 1798, Justice Chase's now well settled opinion buttresses a constitutional protection given to the FINALITY of a MAXIMUM term of imprisonment:

"EVERY LAW THAT CHANGES THE PUNISHMENT & INFLECTS A GREATER PUNISHMENT THAN THE LAW ANNEXED TO THE CRIME WHEN COMMITTED VIOLATES THE EX POST FACTO CLAUSE"

CALDER v BULL, 3 Dall. 386, 390 (1798).

IN U.S. v HAYMOND, 139 S.Ct. 2369 (June 26, 2019) Justice Gorsuch announced the judgment of the Court, delivering an opinion in which Justice Ginsburg, Justice Sotomayor, & Justice Kagan

(1)

joined:

The prison sentence a judge or parole board can impose for a parole/probation violation can not exceed the remaining balance of the term of imprisonment already authorized by the jury's verdict. *Id.* @2374.

The Court recognizes that supervised (parole) release punishment arises from & are "treated as part of the penalty for the initial offense." *Id.* @2380 citing *JOHNSON v. U.S.*, 529 U.S. 694, 700, 120 S.Ct. 1795 (00). -- whether that release is later revoked or sustained, it constitutes a part of the FINAL sentence for his crime. *Id.*

Justice Breyer concurring in the judgment held, "the consequences that flows from violation of conditions of supervised (parole) release under statutes which governs revocation are LIMITED by the severity of the original crime of conviction, not the conduct that results in revocation." *Id.* @2383,

The Texas state courts decisions are "contrary to" the very rubric of *U.S. v. HAYMOND I, II, & III*:

"A sentence is imposed at FINAL judgment, not again & again everytime a convicted criminal wakes up to serve a day of supervised (parole) release & violate a condition of his release," 139 S.Ct. @2392-93 -- as well as the settled precedence in the constitutional protection in the FINALITY of penalty of conviction @ *CALDER v. BULL* supra. RULE 10(c)

(2)

Upon the Court's remand back to the 10th Circuit, the government waived challenge, wherein the 10th Circuit let stand the district court's sentence for time served. See U.S. v HAYMOND, 935 F.3d 1059 (10th Cir. Aug. 23, 2019).

The features of the Texas Gov't Code §508.283(b) operates like Title 18 U.S.C. §3583(k), §508.283(b) formulates punishment beyond the legal limits fixed under facts found in the jury's verdict to inflict additional punishment for revocation of parole.

There is NO HEARING on the state level when a lowe state prison administrator implements §508.283(b), where on the federal level there is a hearing implementing §3583(k).

In support thereof PETITION FOR WRIT OF HABEAS CORPUS SHOULD BE GRANTED.

Petitioner is now serving a NEW 3yr, 2mo, 15 day prison term w/o new charge, trial, or conviction.
14th AMDT. U.S. CONST.

Respectfully,
~~Kirby Gardner~~
Petitioner

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