

20-5386

Supreme Court, U.S.
FILED

JUN 30 2020

OFFICE OF THE CLERK

No.

IN THE

SUPREME COURT OF THE UNITED STATES

Leon Hawkins — PETITIONER

VS

Attorney General — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

SIXTH CIRCUIT COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

Leon Hawkins
P.O. Box 7010
Chillicothe, OH 45601

ORIGINAL

QUESTION(S) PRESENTED

Does Ohio violate petitioner's constitutional right to be sentenced for sentences that merged (yet) the court sentenced separate sentences for the same merged offense?

Does double jeopardy attach to these cases?

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:

RELATED CASES

State vs Williams, 71NE3d, 234, 239 (Ohio 2016)

Slack vs McDaniels, 529U.S., 473, 484 2000

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TABLE OF AUTHORITIES CITED

CASES

State vs Hawkins, 10th dist No. 18AP-126, 2018-Ohio-5251

State vs Williams, 148-Ohio St. 3d 403, 2016-Ohio-7658, 71 N.E. 3d 234

State vs Whitfield, 124-Ohio St 3d 319, 2010-Ohio-2, 922 N.E. 2d 182

Slack vs McDaniels, 529U.S., 473, 484 2000

Statutes & Rules

Section 2929.12 and 2951.02 of the Ohio revised code	2254
R.C. 2941.25	28U.S.C.2244(D)
	28U.S.C.(d)(1)
	28U.S.C.(d)(2)
R.C. 2941.25(A)	28U.S.C.2253(C)(2)

Other

AEDPA

OPINIONS BELOW

Hawkins vs Morgan 2020 U.S. app. LEXIS 10934

United States Court of Appeals for the 6th circuit
April 7th, 2020, filed
No. 19-4126

State vs Williams, 148-Ohio St. 3d403

Supreme Court Ohio
May 3, 2016, submitted; November 10, 2016 decided
No. 2015-1478

JURISDICTION

In all efforts to establish the statutory source for this court's jurisdiction, the court must first look at the **ABETA** and legislative intent to begin and end the clock of litigation of federal habeas petitions and court of appeals jurisdiction prior to looking at this court's jurisdiction.

**ABETA SHOULD HAVE TOLLED BASED ON EXTRAORDINARY CIRCUMSTANCES
IN THIS CASE THIS COURT HAS JURISDICTION TO DECIDE**

The lower court hailed;

Pursuant to rule for of the rules governing 2254 cases in the united states district courts,a magistrate judge conducted an initial review of the petition and concluded that it was barred by the 1-yr statute of limitations set forth in the Antiterrorism and Effective Death Penalty Act (AEBTA)

Petitioner requests to certify this case in conflict with State vs Williams 2015

This court has jurisdiction to resolve the second conflict on the issue of **IMPERMISSIBLE** multiple sentences that should have merged, clearly making this a constitutional violation.

STATEMENT OF THE CASE

Facts of procedural history

This is an appeal from a judgment of the Franklin County of Common Pleas, finding defendant-appellant, Leon Hawkins, guilty on the five counts: two counts of aggravated murder with death penalty specifications of aggravated burglary and aggravated robbery; one count of attempted aggravated murder; one count of aggravated burglary; and one count of aggravated robbery. Each count carries a firearm specification.

On the evening of April 3, 1996, decedent Thomas Martin Brewer, James Mitchell, and Tracy Mitchell (son of James Mitchell), all three residents of 357 Columbia Avenue, were at home watching television. Around 8:00 p.m., Christine Casper, Brewer's girlfriend, arrived and joined the other three. Brewer regularly sold marijuana and other drugs from the residence located at 357 Columbia Avenue. Shortly after Casper arrived, a young black male^[2] came to the front door and asked for something. Casper did not see the person's face, only his hand. Casper then went into the kitchen. Upon entering the kitchen, Casper was confronted by an unknown young black male, later identified as appellant, who had entered through the back door of the residence, while the diversion occurred at the front door. Appellant, standing in the back doorway to the kitchen, pointed a gun at Casper's head. Casper covered her eyes and began to scream. Brewer, hearing the scream, ran from the living room toward the kitchen. When Brewer saw this unknown individual, appellant, pointing a gun at his girlfriend, he ducked into his bedroom and grabbed a shotgun before entering the kitchen. Brewer tried to talk to appellant. Casper heard Brewer say something like, "Don't do it. It's okay. I give up." Casper then heard gunshots. Appellant aimed at Brewer and fired, hitting him at least four times. Brewer fell to the floor, dropping the shotgun, which had not been fired. James Mitchell, upon hearing gunfire, grabbed a .357 revolver from the living room, where he was sitting at the time, and went toward the kitchen. Appellant next began to fire at Mitchell as he^[3] entered the kitchen. Mitchell returned the fire. When appellant ran out of ammunition, he threw his gun into the corner of the kitchen and ran out the back door and into the alley. James Mitchell fired one more shot at appellant as he fled into the alley, where appellant met another person and they both ran north.

Appellant was indicted by the Franklin County Grand Jury on April 17, 1996. Appellant, as defendant, in the presence of the trial court and while represented by counsel, pled not guilty. He also knowingly, intelligently, voluntarily and, in the presence of his counsel and the court, signed a waiver of the right to the reading of the indictment at the arraignment and waived the required twenty-four hours service on the indictment. The waiver was signed by appellant, appellant's counsel and the court. The waiver was recorded on April 17, 1996. Jury trial was commenced on February 18, 1997, and concluded on March 5, 1997. On March 6, 1997, the jury found appellant guilty on all counts with all specifications, including death penalty specifications on counts one and two. A mitigation hearing was then held on March 31, 1997. At the conclusion of the mitigation hearing, the jury^[4] recommended a sentence of life with no parole possibility for thirty years.

STATEMENT OF THE CASE

Facts of procedural history

Upon that decision appellant filed an appeal, which the Ohio Court of Appeals affirmed the trial court's judgment, *State vs. Hawkins*, no. 97AP06-740, 1998 WL 134321 at 7 (Ohio Ct. App. Mar. 24, 1998). The Ohio Supreme Court denied appellant's delayed application for leave to appeal, *State vs. Hawkins*, 700 N.E.2d 333 (Ohio 1998) (table) on April 5, 1999. The United States Supreme Court denied appellant's petition for writ of certiorari, *Hawkins vs. Ohio*, 526 U.S. 1053 (1999). In September 2009, appellant filed a motion for new trial which the trial court construed as a petition for post-conviction relief and denied as untimely, *State vs. Hawkins*, no.96CR-2229. Franklin Cty., (Ohio Ct. Com. Pl. Apr. 16, 2010). In August 2011, appellant filed a motion, *State vs. Hawkins*, no.96CR-2229 (Franklin Cty., Ohio Ct. Com. Pl. Jan. 26, 2012). Affirmed, *State vs. Hawkins*, 10th dist., no.12AP-164 (Ohio Ct. App. Sept. 27, 2012). Appellant then filed for resentencing in Dec. 2017. The trial court denied that motion and the Ohio Court of Appeals affirmed, *State vs. Hawkins*, no.18AP-126 2018 WL 6807128, at *2 (Ohio Ct. App. Dec. 27, 2018). The trial court denied this motion and the Ohio Court of Appeals affirmed. See *State vs. Hawkins* no.18.AP-600, 2019 WL 643296, at *2 (Ohio Ct. App. Feb. 14, 2019), leave to appeal denied, 122 N.E.3d 217. (Ohio 2019) (table). In September, 2019 appellant filed a Habeas Corpus petition 2254 in the district court raising one single ground for relief allied offenses citing *State vs. Williams* 71. N.E.3d 234, 239 (Ohio 2016) Being sentenced to multiple sentences thats not authorized by law. (Ohio's law). Then to the United States Court of Appeals for the Sixth Circuit. That motion was denied Apr. 7, 2020. Now appellant filed a timely, appeal to the United States Supreme Court for you to resolve a conflict amongst the 10th district court and Ohio Supreme Court about allied offenses of similar import.

REASONS FOR GRANTING THE WRIT

Request to resolve a conflict that exists in this case in the Ohio Supreme Courts decisions in State vs Williams 2016

The reasons for granting this writ consists of: clarify the path going forward for lawyers, litigants, and judges of our country. This would resolve the constitutional conflict that presently exists in Ohio, these are the same federal constitutional protections as in the Williams case pursuant to R.C. 2941.25(A).

A court only has authority to impose a sentence that conforms to law, and R.C. 2941.25. And 2945.25 prohibits the imposition of multiple sentences for allied offences for similar import. Thus, when a sentencing court concludes that an offender has been found guilty of two or more offences that are allied offences the court is required to merge the sentences and only impose a single sentence for the merged offense, it should permit the state to select the allied offense proceed on for purposes for imposing sentence and it should impose sentence for only that offense. Accordingly, **imposing separate sentences for allied offenses of single import is contrary to law and such sentences are void.** Therefore, res judicata does not preclude a court from protecting both sentences at a direct appeal.

This case demonstrates that something went wrong at sentencing, petitioner makes a "substantial" ~~showing~~ ^{showing} of a denial of a constitutional right.

The reason for granting this writ is to resolve the conflict of the court's decision of the tenth district court of appeals; State vs Hawkins, 10th dist. No. 18AP-600, 2018-Ohio-5251; and the Ohio Supreme Court's decision: State vs Williams, 71 N.E.3d 234, 239 (Ohio 2016)

CONCLUSION

This case presents a constitutional violation for sure, moreover, the decision of the Ohio Court of appeals misconstrued Petitioners argument to be one of "double jeopardy" when in fact this case consist of a violation of sentencing (allied offenses) being sentenced for more convictions than authorized by law, which Petitioner was entitled to the protections of equal rights and due process. Clearly, this makes this case ripe for this court to accept jurisdiction.

Slack v McDaniel, 529 U.S. 473, 484 (2000) held, "To obtain a COA, a petitioner must make "substantial showing of the denial of a constitutional right." 28 U.S.C.2252(c)(2). When the district court denies a habeas petition on a procedural ground without reaching the underlying constitutional claims, a COA should issue when the petitioner demonstrates "that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." Slack v McDaniel 529 U.S.473.

Petitioner asserts his Petition demonstrates the very issue at stake here, demonstrates that a jurist of reason would find it debatable whether his petition states a valid claim, and therefore, this court would be reasonable to grant his petition.

In the Williams case, the court protected his constitutional right and that protection was not just on a state level. The protections of this case reach far more than a state constitutional violation as held by the lower court and missed by the Sixth Circuit Court of appeal. Petitioner now asks the United States Supreme Court to consider the Federal Constitutional violation that exists if the decision here were allowed to stand.

All citizens of the United States would be affected by the denial to protect multiple sentences for offenses that should have merged and received only on sentences for merged offenses as held by the Ohio Supreme Court in the Williams case.

Petitioner is asking this court to grant his Certiorari and allow this case to be brief on its face for the Federal Constitutional violation against due process in this case.

This petition for writ of Certiorari should be granted in good faith.

Respectfully submitted,

Leon Hawkins

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Date: 6-23-2020