

No. 20-5538

**ORIGINAL**

IN THE  
SUPREME COURT OF THE UNITED STATES

Michael Gersell Boone — PETITIONER  
(Your Name)



vs.

The People of the State of — RESPONDENT(S)  
Michigan

ON PETITION FOR A WRIT OF CERTIORARI TO

Michigan Supreme Court

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

PETITION FOR WRIT OF CERTIORARI

Michael Gersell Boone  
(Your Name)

RMI, 1342 W. Main St.  
(Address)

Ionia, MI 48846  
(City, State, Zip Code)

N/A  
(Phone Number)

## Question Presented

1. Is Mr. Boone entitled to a resentencing because his sentence was not reasonable as the trial court abused its discretion by violating the doctrine of proportionality?

## 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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## TABLE OF AUTHORITIES CITED

### CASES

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~~People v. Herbie Brewer III, 02-04-20 (C.O.A. # 346446);~~

See attached Court of appeals brief.

People v. Dixon-Bey, 321 Mich. App. 490  
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738; 160 L Ed 2d 621 (2003)  
People v. Herbie Brewer III, 02-04-20 (C.O.A. # 346446)

### STATUTES AND RULES

See attached Court of appeals brief.

U.S.C. 6th Amendment 31. Sentencing

### OTHER

See attached Court of appeals brief.

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 N/A; 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[ ] is unpublished.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 N/A; 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[ ] is unpublished.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[ ] is unpublished.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 Appeals 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 *n/a*.

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: *n/a*, 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 *n/a* (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 *3-27-2000*. A copy of that decision appears at Appendix \_\_\_\_\_.

[ ] A timely petition for rehearing was thereafter denied on the following date: *n/a*, 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 *n/a* (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

MCL § 769.34 (7), (10) on reasonable sentencing in support of the doctrine of proportionality. See *People v. Lockridge*, 498 Mich 358; 870 NW2d 502 (2015) argument in C.D.A. brief.

U.S.C. 6th Amendment 31. Sentencing (See *United States v. Booker*, 534 U.S. 220 argument in Reason For Granting The Petition)

#### STATEMENT OF THE CASE

Petitioner is seeking relief from the Michigan Court of Appeals denial of his request for resentencing and the Michigan Supreme Courts refusal to grant leave to appeal in their court. (See Statement of Facts from the attached C.O.A. brief for case specific)

## REASONS FOR GRANTING THE PETITION

The Court of Appeals failed to reach the right, fair, and proper decision to remand Petitioner's case for resentencing and a reasonable sentence proportionate to all the circumstances of the case from what was stated on the record by the Petitioner and his attorney and what was recorded in the Pre-Sentence Report. The trial court failed to apply the "principle of proportionality" standard from People v. Milbourn, 435 Mich 630; 461 NW2d 1 (1990) and the "proportionality" standard from People v. Stanhouse, 500 Mich 453, 474; 902 NW2d 327 (2017) when the sentencing court failed to apply a barometer by stating on the record the positive aspects from the Pre-Sentence Report and measuring them with the Petitioner and attorney's (defense) positive aspects against the negative aspects of the case. The judge erroneous viewed the Petitioner as not having a drug problem when he has a history of drug abuse on record of the same drugs he was in possession of and when he in fact stated he had a problem with drugs. In this the Court also failed to make sure Petitioner received a sentence proportionate to a person with a drug problem who needs treatment and should have been tried in drug court, but instead now Petitioner did not receive order from the court for any form of drug therapy or treatment. The cause of these problems was from the trial courts upward departure from the guidelines which appears to have been based from the records account and definitely not fair because the sentencing was not conducted by the applicable rules and standards as described in the C.O.A. brief and herein. The trial court judge did not provide a reliable justification for his upward departure because the statement that the Petitioner did not have a drug problem is inaccurate, and the judge gave no positive aspects of Petitioner's life to weigh against the negative. (See page 7 of C.O.A. brief) this case should be remanded in light of the fact that the appeal attorney cited and based a significant portion of his argument on People v. Dixon-Bey, 321 Mich. App. 490 which was on leave to the Michigan Supreme Court in People v. Dixon-Bey, 301 Mich. 1066 to which this higher court affirmed the decision in People v. Dixon-Bey, 321 Mich. App. 490 and this higher court's authority need to be taken into consideration when deciding this case as its decision has a direct and pertinent impact on the appeal to the C.O.A. in this case. Plus Head Notes 15, 16, 17, 18, 21, and 22 in (See appendix C) People v. Dixon-Bey give the authority on departures from Guidelines Scores, sentencing proportionality etc. The federal standards can be found and supported in U.S.C. 6th Amendment 31. Sentencing and United States v. Booker, 534 U.S. 220 HN4 The fact that a state labels a crime a "sentence enhancement" rather than a separate criminal act is irrelevant for constitutional purposes. Merely using the label "sentence enhancement" does not provide a principled basis for treating two crimes differently. HN7 ~~because~~ The "statutory maximum" for Apprendi purposes is the maximum a judge may impose solely on the basis of facts reflected in the jury verdict or admitted by the defendant. Petitioner should have been tried in drug court or in the least sentenced proportionately as a drug addict with positive case variables from his pre-sentence report etc. as indicated in the record as a whole.

Just as in People v. Herbie Brewer III 02-04-20 (C.D.A. #346446) the Court did not adequately justify the extent of the departure and why it was more proportionate to the defendant and the circumstances concerning the offense than a different sentence would have been. There was no evidence on the record to support the upward departure. As stated before the court did not make a fair, just right, and proportionate sentence when it did not consider positive aspects from the Petitioner's Pre-Sentence Report and that the Petitioner had a problem with drugs.

## **CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Michael Boone

Date: July 28, 2020