

No.

20-5902

IN THE
SUPREME COURT OF THE UNITED STATES

LARRY B. SEXTON PETITIONER

v.

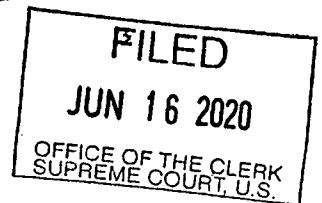
STATE OF TENNESSEE RESPONDENT

STATE OF TENNESSEE

ATTORNEY GENERAL HERBERT SLATERY III

ORIGINAL

ON PETITION FOR WRIT OF CERTIORARI



PRO SE PETITIONER

LARRY B. SEXTON
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HARTSVILLE, TENNESSEE 37074

QUESTIONS PRESENTED FOR REVIEW

Error by the trial court in admitting hearsay evidence at the sentencing hearing and by finding that the petitioner was a career offender and sentencing him to serve a 12 year term as a career offender with a first parole consideration at 60% of the term. The petitioner avers that this would be in violation of the Fourteenth Amendment of the United States Constitution which provides, in pertinent part, that no state shall "deprive any person of life, liberty, or property, without due process of the law."

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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 issues to review the judgment below.

JURISDICTION

The date on which the Supreme Court of the State of Tennessee decided did not grant TRAP 11 to review my case was March 26, 2020. The jurisdiction of this court is invoked under 28 U.S.C. § 1257(A).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The right to procedural due process when the Trial Court allowed hearsay evidence as guaranteed by the fourteenth amendment of the United States Constitution.

STATEMENT OF CASE

The petitioner's direct appeal was denied by the Tennessee Court of Appeals on November 5, 2019 and permission to appeal was denied by the Tennessee Supreme Court on March 26, 2020.

The trial court erred by allowing out of state prior convictions to be used to enhance petitioner's sentence. These were emailed copies of judgments and were not certified by the Clerk of Court for the Nineteenth Circuit Court of St. Lucie County, Florida, as required by **Title 28 U.S.C. § 1738** and **Tennessee Code Annotated § 24-6-101**.

REASONS FOR GRANTING THE PETITION

On November 5, 2019 the Tennessee Court of Criminal Appeals denied the petitioner's appeal and subsequently petitioner's counsel filed a timely motion for permission to appeal using T.R.A.P. 11 to the Tennessee Supreme Court which was denied on , March 26, 2020.

In July 2015, the Lawrence County Grand Jury filed a two-count indictment, charging the petitioner with rape and contributing to the delinquency of a minor. The State later indicted him for aggravated statutory rape and nolle prosequi the first two counts. The petitioner went to trial for aggravated statutory rape in November 2017.

On November 17, 2017, the State filed a notice of intent to seek enhanced punishment as a career offender pursuant to Rule 12.3, Tennessee Rules of Criminal Procedure. The notice listed the following felony convictions for the Petitioner from the Nineteenth Circuit Court of St. Lucie County, Florida: (1) "Larceny X 5," burglary of a conveyance, and possession of burglary tools with a conviction date of July 26, 1994; (2) burglary of a conveyance and damage to property with a conviction date of January 17, 1995; (3) burglary of a dwelling with a conviction date of February 3, 1997; (4) grand theft of a motor vehicle committed on October 8, 1998, with a conviction date of December 30, 1998; and (5) grand theft of a motor vehicle committed on November 13, 1998, with a conviction date of December 30, 1998. The notice also listed attempted bribery of a witness with a conviction date of April 5, 2017, in the Lawrence County Circuit Court.

At the petitioner's January 4, 2018 sentencing hearing, the State introduced his presentence report into evidence. Defense counsel objected to the admission of the report on hearsay grounds, but the trial court overruled the objection. According to the report, the then forty-five-year-old petitioner was married and had one daughter, one son, and two stepsons. In the report, the petitioner described his physical health as "good" and his mental health as "fair" and stated that he began drinking alcohol when he was fifteen years old but stopped drinking in 2014. The petitioner denied using any

nonprescription or illegal drugs and said that he had been the owner/operator of Sexton Trucking Company since 1996.

The report showed that the petitioner began committing crimes when he was twenty one years old and that he had numerous prior felonies and misdemeanor convictions in St. Lucie, Florida and Lawrence County, Tennessee. Of the prior convictions in the report, the State advised the trial court that it was relying on the following convictions in St' Lucie, Florida, to establish the petitioner's status as a career offender, two convictions on December 30, 1998, for Grand Theft of a vehicle, a conviction on February 3, 2997, for burglary of a dwelling, a conviction on January 17, 1995, for burglary of a conveyance, and a conviction on July 26, 1994, for Grand Larceny. The state also advised the trial court that it was relying on a September 6, 1989 conviction in St. Lucie, Florida, for escape which was not listed in the presentence report. For the six convictions, the state introduced into evidence photo copies of certified copies of judgments of conviction. The state advised the trial court that it had introduced the original certified judgments of conviction into evidence at another sentencing hearing for the petitioner on April 5, 2017, and requested that the trial court take judicial notice of the originals from the previous hearing.

The petitioner objected to the documents as hearsay, but the trial court overruled the objection. Finally, the State introduced into evidence a certified judgment from Lawrence County Circuit Court for a 2017 conviction of attempted bribery of a witness, a class D felony. The State argued that based on the petitioner's seven prior convictions he qualified as a career offender. On page 49 of the sentencing transcripts the state calls Kimberly McGee who works in the Attorney General's Office as a victim's witness coordinator, who testified that she asked for certified copies of judgments from St. Lucie, Florida, but the only sent emailed copied of which she printed. (see attached copies of the sentencing transcripts and her colloquy with the court, pages 49-53). This proving that the judgments in these cases used to enhance the petitioner's term were not certified.

The trial court noted that aggravated statutory rape was a Class D felony and that the petitioner had a least six prior Class D or E felony convictions in order to be sentenced as a career offender. The court found that the petitioner's six prior convictions in Florida qualified him as a career offender and sentenced him as a Range III, career offender to twelve years in confinement.

The petitioner contends that the trial court erred by considering his presentence report and the

emailed copies of the not certified judgments of conviction from Florida because the documents were hearsay. The Court of Appeals concluded that the trial court properly used the prior convictions to sentence the Appellant as a career offender.

Petitioner contends that this was in error as to **Title 28 U.S.C. § 1738** and Tennessee Code Annotated § 24-6-101.

Title 28 U.S.C. § 1738 State and Territorial statutes and judicial proceedings; full faith and credit

The Acts of legislature of any State, Territory, or Possession of the United States, or copies thereof, shall be authenticated by affixing the seal of such State, Territory or Possession thereto.

The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.

Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.

HISTORY:

Act June 25, 1948, ch 646, 62 Stat. 947.

T.C.A. § 24-6-101. Copy of judgment without entire record.

(a) In any litigation, **certified copies of final judgments** or decrees of any court of record may be used as evidence in such litigation, without the final judgment or decree being supported by the entire record upon which it is based. Such certified judgment or decree shall have the same force and effect as evidence as it would have if the entire record upon which it is based were filed with the judgment or decree, it being the intention to expedite the preparation of cases and save costs.

(b) This section shall not apply to litigation in which a direct attack is made on the judgment or decree and the proceedings upon which it is based, nor to litigation involving the validity of the judgment or decree.

(c) This section shall not prevent any of the parties to the litigation from using as evidence in such litigation the entire record upon which the final judgment or decree is based.

Acts 1919, ch. 130, §§ 1, 2; Shan. Supp., §§ 5580a1, 5580a2; mod. Code 1932, §§ 9755, 9756; T.C.A. (orig. ed.), § 24-604; modified.

Petitioner would state that this same Tennessee Court of Appeals found in Baker v Vance, Tenn. App. Lexis 493 (1988), "Appellants next complain that the Trial Court excluded evidence of an order and pleading entered in the Circuit Court of Rutherford County in a case captioned, "Dannie Leon Baker vs. Criminal Injuries Fund". Said documents have been examined and are found to be incompetent as not being certified as provided by T.C.A. § 24-6-101. Moreover, counsel for appellants stated in open court:

"For the record, Your Honor, we are not contending that this document is admissible in evidence; . . .

The Trial Judge was correct in excluding the documents. "

The Criminal Court of Appeals stated in their opinion "In our view, the better practice would have been for the State to introduce original certified judgments of conviction into evidence at the sentencing hearing in the present case." But they allowed it anyway.

As the Sixth Circuit Eastern District of Michigan found in Skyline Concrete Floor Company v Winters PLC, 2008 U.S. Dist. LEXIS 28237, April 8, 2008, " Title 28 U.S.C. § 1738 provides: The Acts of legislature of any State, Territory, or Possession of the United States, or copies thereof, shall be authenticated by affixing the seal of such State, Territory or Possession thereto. The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form. Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every {2008 U.S. Dist. LEXIS 5}court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.

Petitioner would ask the court to take judicial notice that found in Barker v Vance, Tenn. App. Lexis 493 (1988), that Tennessee adhere to Title 28 U.S.C. § 1738, when it states, “The record of Mr. Baker's prior convictions in the State of Texas is not properly certified in accordance with the Acts of Congress relating to Title 28 U.S.C. § 1738 United States Code, counsel objected on this ground, but the trial judge based his ruling on other grounds.” “The evidence of convictions was not competent, hence under objection, it should have been excluded on this ground” This is what occurred at the sentencing of the petitioner. His prior convictions that were used to enhance his term were not properly authenticated.

THEREFORE, in direct contravention of **Title 28 U.S.C. § 1738, and T.C.A. § 24-6-101**, the use of unreliable hearsay evidence being used to enhance the petitioner's term is unconstitutional and he must be resentenced to a the proper range and percentage.

IN CONCLUSION

For the above stated the petitioner would pray that this court find in the interest of justice that this should be granted and that the petitioner be resentenced to his proper sentencing range and percentage.

Larry B. Sexton

Larry B. Sexton pro se