20-5945

No. 20-_____

ORIGINAL

In The
SUPREME COURT OF THE UNITED STATES

SHELBY CLARMONT,
Petitioner,

v.

WILLIS CHAPMAN, Warden
Respondent.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Sixth Circuit

PETITION FOR A WRIT OF CERTIORARI

Shelby Clarmont, #299801
Petitioner, *in pro per*[*]
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[*] This document was prepared with the assistance of a non-attorney prisoner assigned to the Legal Writer Program with the Michigan Department of Corrections.

QUESTIONS PRESENTED

Is The Imposing Of A Sentence Which Was Based On Incorrectly Scored Sentencing Guidelines And Was A Departure From Applicable Advisory Guidelines Where The Sentence Violates The Principle Of Proportionality As Set Forth By *People v Milbourn*, 435 Mich. 630, 461 N.W.2d 1 (1990) And Is Unreasonable In Violation Of *People v Lockridge*, A Violation Of Due Process Pursuant To The U.S. Const. Ams. V, XIV; Mich. Const. 1963, Art. 1, §17? Thereby Entitling The Petitioner To Re-Sentencing. Pursuant To U.S Const., Ams., V, VI, XIV; Mich. Const. 1963, Art. 1, § 17

PARTIES TO THE PROCEEDING

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PETITION FOR A WRIT OF CERTIORARI

Petitioner, Shelby Clarmont respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit.

OPINIONS BELOW

The final order of the United States Court of Appeals, 6th Circuit, denying a certificate of appealability (July 13, 2020), appears at APPENDIX A to the petition and is unpublished. The final opinion and order of the United States District Court - E.D. Mich.., denying the petition for writ of habeas corpus and declining to issue a certificate of appealability appears as APPENDIX B to the petition and is reported at Shelby Clarmont v Willis Chapman, 2019 U.S. Dist. LEXIS 211079 Dk. No. 3:19-cv-13226, (E.D. Mich.., December 6, 2019).The final order from the Michigan Supreme Court is published at People v Clarmont, 504 Mich.. 903, 929 N.W.2d. 356, 2019 Mich. LEXIS 1163 (June 2, 2019). The final opinion of the Michigan Court of Appeals is unpublished, People v Clarmont, No. 347035 (Mich. Ct. App., Feb. 15, 2019). (See Appendix, filed under separate cover).

JURISDICTION

The U.S. Court of Appeals for the Sixth Circuit issued its final order on July 13, 2020. This Court has jurisdiction under 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

<u>U.S. CONST. AMEND. IV</u>: The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause,

supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. CONST. AMEND. V: No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grant Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. CONST. AMEND. XIV: All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall 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 to any person within its jurisdiction the equal protection of the laws. The Sixth Amendment of the United States Constitution states in relevant part: "In all criminal prosecutions, the accused shall...have the assistance of counsel for his defense." "The Sixth Amendment right to counsel is applicable to the states through the Due Process Clause of the Fourteenth Amendment." *People v Williams*, 470 Mich. 634, 641; 638 NW2d 597 (2004) (citing *Gideon v Wainwright*, 372 US 335, 83 S Ct 792, 9 L Ed 2d 799 (1963)).

28 U.S.C. 1254(1): Cases in the courts of appeals may be reviewed by the Supreme Court by Writ of Certiorari granted upon the petition of any party to any civil case, before or after rendition of judgment or decree.

28 U.S.C. 1915(a)(1): Subject to subsection (b), any court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees or security therefore, by a person who submits an affidavit that includes a statement of all assets such prisoner possesses that the person is unable to pay such fees or give security therefor. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that the person is entitled to redress.

STATEMENT OF THE CASE

A. Factual background and trial court proceedings

On or about January 20,2018 Defendant-Appellant Shelby Jean Clarmont was arrested and charged with one count of armed robbery, contrary to M.C.L.A. 750.529 and one count of conspiracy to commit armed robbery, contrary to M.C.L.A. 750.520(c). on or about June 11,2018 Mr. Clarmont plead guilty to count 2, conspiracy to commit armed robbery, count one was dismissed as well as was a habitual fourth offender notice. (see plea Tr.p.3). The trial court advised Mr. Clarmont of his constitutional rights pursuant to MCR 6.302, including the maximum possible sentence he faced. (id p.4-6). The trial attorney expressed satisfaction with the factual basis for the plea. (Id. P.10).

Sentencing was held on July 10, 2018. (see S. Tr.). Mr. Clarmont's sentencing guidelines were scored at 81-135 months by the probation department. (see PSI). Trial counsel objected to the scoring of offence variable 14. (see S. tr.p.4). Counsel stated that there was insufficient record evidence supporting a finding that Mr. Clarmont was the leader in the within offence. Counsel stated that another individual had been federally indicted or was under investigation for being the leader. (Id.). There was no one sworn to or no record evidence supporting that Mr. Clarmont was the leader. The trial court denied the objection holding that Mr. Clarmont appeared to be the leader because he was older than the two co-defendants and he had had a lengthier criminal record. (Id.p.6)

The trial court sentenced Mr. Clarmont to 108 months to 50 years in the Michigan Dept. of Corrections. (Id.p.8) Without the scoring on OV 14, Mr.

Clarmont's sentencing guidelines would have been 51-85 months, placing his sentence outside applicable guidelines.

Mr. Clarmont bases his petition on the forgoing facts.

Trial

In this case, it was an abuse of discretion for the trial court to score ten points on OV 14. Under the plain language of OV 14, defendant should have been scored 0 points because there was no evidence that he "was a leader in a multiple offender situation". MCL 777.44 (1)(b). There was no evidence placed on record that defendant was the leader in the instant offense. The trial court determined that he was the leader based on his age and his prior criminal record. (see S. Tr.). There were no specific findings as to how Mr. Clarmont was "[g]uiding, preceding, showing the way, directing, or conducting[g] the two co-defendants. Rhodes, supra. The only objective factors placed on the record was Mr. Clarmont's age and criminal record when compared to the co-defendants. The trial court never addressed the claim that fourth person as the actual leader in the operation although evidence of this was placed on record,

As stated the record reveals that there was no sworn testimony sustaining the trial court's findings as required by People v Lockridge, 498 Mich. 358; 870 N.W.2d 203 (2015). Therefore, the court erred when it assessed the 10 points on OV 14.

REASONS FOR GRANTING THE PETITION

GROUND I

I. The Trial Error In Imposing A Sentence Which Was Based On Incorrectly Scored Sentencing Guidelines And Was Departure From Applicable Advisory Guidelines Where The Sentence Violates The Principle Of Proportionality As Set Forth By *People v. Milbourn*, 435 Mich. 630; 461 N.W.2d 1 (1990) And Is Unreasonable In Violation *People v. Lockridge* Thereby Entitling The Defendant-Appellant To Re-Sentencing.

Standard of Review: The issue in this case concerns the proper interpretation and application of the statutory sentencing guidelines, MCL 777.11 et seq., both of which are legal questions that this court should review de novo for an abuse of discretion. *People v Morson 471 Mich. 248,255;685 NW 2d 203 (2002).*

The trial court's sentence imposition is reviewed on appeal for reasonableness. People v Lockridge, 498 Mich. 358; 870 NW 2d 502 (2015). the question of whether a sentence is reasonable is a question of **constitutional law**. *Lockridge, supra.*

Argument

The Defendant-Appellant was sentenced to 108 months to 50 years for the conspiracy to commit armed robbery conviction, which would be an upward departure from the correctly scored advisory guidelines. The trial court made no findings as to the property of a sentence falling outside the properly scored sentencing guidelines.

On July 29,2015 the Michigan Supreme Court in *People v. Lockridge, supra,* held in pertinent part that an Appellate court must review for reasonableness a sentence that departs from applicable sentencing guidelines as was the case in the case at bar. The supreme Court struck down the requirements that the trial court find substantial and compelling reasons to depart from applicable sentencing guidelines that carry potential prison time. The trial court must impose a sentence that is proportionate. A sentencing that falls outside the guidelines range is presumed to be unreasonable. Lockridge, supra.

Mr. Clarmont should be entitled to re-sentencing pursuant to People v. Babcock,469 Mich. 247,258;666 NW 2d 231(2003) and People v. Kimble, 470 Mich. 305,310;684 NW2d 669(2004).

CONCLUSION AND RELIEF SOUGHT

WHEREFORE, Defendant-Petitioner submits that he has presented the Court with compelling reasons for consideration and ask that this Court grant the petition for a writ of certiorari, further Petitioner ask that the Court reverse his convictions and remand this matter to the state court with appropriate instructions.

Respectfully submitted,

/s/ Shelby Clarmont

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Dated: September 15, 2020