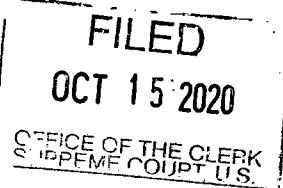


No. 20-6206 ORIGINAL



IN THE

SUPREME COURT OF THE UNITED STATES

Travis Johnson — PETITIONER
(Your Name)

People of the vs.
State of Illinois "et al" — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Appellate Court of Illinois
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Travis Johnson
(Your Name)

2268 East Morton Ave.
(Address)

Jacksonville, IL 62650
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

1. Is *Solem v. Helm*, 463 U.S. 277 (1983) binding case law?
2. Must Illinois Appellant Courts be required to follow the United States Supreme Court's opinion in *Solem v. Helm*, 463 U.S. 277 (1983), when analyzing a sentence under the Illinois Constitution's Proportionate Penalties clause?

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

People v. Johnson No. 15 CR 06695 Circuit Court of Cook County, Illinois. Judgement Jan. 20, 2017.

People v. Johnson No. 1-17-2094 Appellant Court of Illinois. Judgement Feb. 14, 2020.

People v. Johnson No. 12583 Supreme Court of Illinois. Judgement May 27, 2020.

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OTHER

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 _____; 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[] is unpublished.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 _____; 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[] is unpublished.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 Illinois Circuit 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 _____.

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: _____, 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 _____ (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 May 27, 2020. A copy of that decision appears at Appendix C.

A timely petition for rehearing was thereafter denied on the following date: _____, 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 Oct. 24, 2020 (date) on Mar. 19, 2020 (date) in Application No. ___ A _____. Appendix D

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Ill. Const. 1970, art. I, § 11, Limitation of Penalties after Conviction

All penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship.

U.S. Const. amends. VIII and XIV

720 ILCS 5/24-1.7 (2015)

STATEMENT OF THE CASE

Police encountered Travis Johnson when investigating a traffic offense. Police approached him for a field interview because his vehicle was blocking an alley. Upon approach, they smelled cannabis, saw a cigarette in Johnson's hand, and arrested Johnson. Police then conducted a custodial search and recovered a gun from Johnson's person.

The State charged Johnson with Class X armed habitual criminal (AHC) for possessing a gun, predicated on his convictions for unlawful use of a weapon by a felon (UUWF) in case 94 CR 0832501 and UUWF in 98 CR 1306, and other gun crimes. Johnson plead guilty to AHC. In exchange, the trial court sentenced him to serve seven years in prison, at 85%, and State dismissed all remaining counts.

Johnson subsequently filed a pro se section 2-1401 petition alleging that the AHC statute violated the proportionate penalties clause and seeking resentencing. Johnson cited the particular facts of his arrest. Johnson attached information from the Illinois Department of Corrections identifying his specific, prior predicate convictions and sentences. And Johnson asked the trial court to resentence him using the Class 2 sentencing range of three to seven years in prison, to be served at 50%. The trial court denied Johnson's petition.

Johnson appealed, seeking resentencing. He argued that the sentencing requirements for an AHC conviction were disproportionately applied to him, in violation of the Illinois Constitution's proportionate penalties clause, when applying the three criteria articulated in *Solem v. Helm*, 463 U.S. 277 (1983). *People v. Johnson*, 2020 IL App (1st) 172094-U.

The appellate court would not apply *Solem v. Johnson*, 2020 IL App (1st) 172094-U. The court concluded that *Solem* "has been the subject of much debate" and

that "its exact status remains somewhat disputed." It concluded that Illinois Courts would not use the *Solem* criteria to assess the constitutionality of a sentence pursuant to the Illinois proportionate penalties clause because this Court "has long utilized its own test." It concluded that using the *Solem* criteria would be equivalent to the cross-comparison analysis that this Court rejected in *People v. Sharpe*, 216 Ill. 2d 481 (2005). Johnson, 2020 IL App (1st) 172094. And while it recognized that other appellate courts applied *Solem*, it did not find them persuasive. Rather, the Court refused to apply *Solem* and affirmed the denial of Johnson's Section 2-1401 petition.

Johnson subsequently filed a timely petition for leave to appeal to the Illinois Supreme Court asking the Court to review the correctness of the Appellant Court's decision. The Illinois Supreme Court denied Johnson's petition for leave to appeal.

Johnson now files a petition for a writ of certiorari in United States Supreme Court.

Reasons For Granting this Petition

This Court should grant writ of Certiorari to resolve a conflict between Illinois appellate Courts regarding whether the United States Supreme Court's opinion in *Solem v. Helm*, 463 U.S. 277 (1983), is binding law that Illinois Courts are required to follow when analyzing a sentence under the Illinois Constitution's proportionate penalties clause.

The *Solem* Court held that to assess whether a penalty is proportionate as required by the eighth amendment, Courts should consider three objective criteria: (1) "the gravity of the offense and the harshness of the penalty," (2) "the sentences imposed on other criminals in same jurisdictions," and (3) "the sentences imposed for commission of the same crime in other jurisdictions." Travis Johnson argues that the sentencing requirements for an armed habitual criminal (AHC) conviction were disproportionately applied to him, in violation of the Illinois proportionate penalty clause, when applying the *Solem* criteria. But the appellate court concluded that *Solem*'s "exact status remains somewhat disputed," did not believe that *Solem* applied to an Illinois proportionate penalties clause analysis, and refused to apply *Solem*. *People v. Johnson*, 2020 IL App (1st) 172094-U.

This conclusion reflects a conflict between Illinois appellate courts regarding the applicability of *Solem*. Courts disagree regarding whether *Solem* is binding law. The third district and one division in the First District acknowledge that it is. *People v. Cetwinski*, 2018 IL App (3d) 160174; *People v. Fernandez*, 2014 IL App (1st) 120508. But the Second District and a different division in the First District think that it is not. *People v. Hindson*, 301 Ill. App. 3d 466 (2nd Dist. 1998); *Johnson*, 2020 IL App (1st) 172094-U. And there is a split within the First District regarding whether *Solem* applies to an Illinois proportionate penalties clause.

analysis. The Fourth division acknowledges that it does, Fernandez, 2014 IL App (1st) 120508, but the Fifth division here believed that it does not, Johnson, 2020 IL App (1st) 172094-U.

Illinois courts must follow United States Supreme Court precedent on constitutional issues. *People v. Washington*, 171 Ill. 2d 475, 485 (1996). The Illinois proportionate penalties clause is at least as broad as the eighth amendment. *People v. Clemons*, 2012 IL 107821 ¶ 40. And using the *Solem* criteria in a proportionate penalties clause analysis does not conflict with this Court's precedent.

Applying the *Solem* criteria here shows that the sentencing requirements for an ATC conviction were disproportionately applied to Johnson. The gravity of his conduct—possessing a weapon without committing or threatening violence—is minor when compared to the harshness of his penalty—a Class X sentence to be served at 85%. Illinois punishes more serious, violent crimes less severely. And other jurisdictions would punish Johnson's conduct less severely. Therefore, this Court should grant writ of certiorari to resolve the conflict between Illinois appellate courts regarding the applicability of *Solem* and to hold that Johnson's sentencing is disproportionate under *Solem*.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Travis Johnson

Date: Oct 15, 2020