

No. **20-7155**

IN THE
SUPREME COURT OF THE UNITED STATES

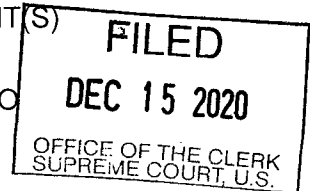
JAMES SCOTT, Jr. — PETITIONER
(Your Name)

vs.

NORM ROBINSON, WARDED — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

ORIGINAL



United State Court of Appeals for the SIXTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

James Scott, Jr.
(Your Name)

London Correctional Institution
P.O. Box 69
(Address)

London, Ohio 43140
(City, State, Zip Code)

Inmate # A665-564
(Phone Number)

Pro-Se

QUESTION(S) PRESENTED

1. Does the Petitioner have the right to Due Process Equal Law Clause and Jury Trial as guaranteed, by the 6th and 14th Amendment, United States Constitution?
2. Does a Court abuse its discretion, or Jurisdiction, by imposing on upholding a sentence, that violates a substantive rule, or Constitutional Right?
3. Is a Prisoner entitled to the right to challenge a void sentence on Judgment at any time?
4. Is a Prisoner required by law to serve a prison term that exceeds the maximum term prescribed by law?
5. Does a Federal District Court, or United States Circuit Court of Appeals decision to uphold a State Appellate Court's ruling, that is a clear violation of Federal Constitutional Law, and contrary to authoritative cases of other District Courts, Courts from other Circuits and the Supreme Court of the United States, result in a violation of Petitioner's right of Equal Law Protection as guaranteed, by the 14th Amendment, United States Constitution?

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

1. James Scott, Jr. v. Norm Robinson, *Warden*, no 20-3399, U.S. Sixth Circuit Court of Appeals, *Rehearing En Banc*. Judgment entered Oct 8, 2020. (2020 U.S. App LEXIS 32087)
2. James Scott, Jr. v. Norm Robinson, *Warden*, no 20-3809, U.S. Sixth Circuit Court of Appeals, *Notice of Appeal, Motion For COA*. Judgment entered Sept 4, 2020.
3. James Scott, Jr. v. Norm Robinson, *Warden*, no 20-3399, U.S. Sixth Circuit Court of Appeals, *Notice of Appeal, Motion For COA*. Judgment entered June 24, 2020 (U.S. App LEXIS 24314)
4. James Scott, Jr. v. Norm Robinson, *Warden*, no 1:19-cv-22, U.S. District Court For the Southern District of Ohio. Judgment entered Mar 24, 2020.
5. State of Ohio v. James Scott, Jr. (Doc 2, #6-7), Ohio Supreme Court. Judgment entered Dec 24, 2018
6. State of Ohio v. James Scott, Jr. no 2017-10-152, 12th Dist Appellate Court Warren County, Ohio. Judgment entered Sept 12, 2018
7. On August 2, 2017, Filed motion to Third Court in case no OSCR 22/06, to correct void sentence on Judgment.

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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 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 A to the petition and is

☒ reported at Scott v. Robinson, 2020 U.S. App. Lexis 32087; 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 D to the petition and is

☒ reported at 2020 U.S. Dist. Lexis 50619; 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 _____ 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 _____ 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.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was ~~October 8~~ September 4, 2020

☐ 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: October 8, 2020, and a copy of the order denying rehearing appears at Appendix A.

☐ 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 _____.
A copy of that decision appears at Appendix _____.

☐ 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 _____ (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

1. Due Process Clause, Equal Law Clause, Jury Trial, 6th and 14th Amendments, United States Constitution.

2. AE DDA

3. 28 U.S.C. § 2253 (C)(1)(A)

4. 28 U.S.C. § 2244 (d)(1)(A)

5. 28 U.S.C. § 2254 (d)(1)

STATEMENT OF THE CASE

Relevant Facts of the Case:

1. On September 30, 2011, the Ohio General Assembly enacted Ohio H.B. 86, which lowered the level of the offense of Trafficking in Crack Cocaine - R.C. 2925.03(A)(1), from a Felony 2 down to a Felony 3, resulted in a reduced sanction of a 3 year maximum prison term, pursuant to Ohio's Sentencing Statute 2929.14(A)(3)(b).
2. On May 30, 2012, the Trial Court sentenced the Petitioner to 8 year prison term on Count 1 - Trafficking in Crack Cocaine - R.C. 2925.03(A)(1) in violation of Petitioner's right of Due Process Clause, Equal Law and Jury Trial as guaranteed by the 6th and 14th Amendment, United States Constitution, and contrary to Ohio H.B. 86 and R.C. 2929.14(A)(3)(b). Additionally, Trial Court failed to state its statutory finding as required by R.C. 2929.14(C)(4), prior to ordering Count 1 sentence to be served consecutively to all other counts.
3. On October 28, 2005, at the conclusion of the Jury Trial, prior to the Jury returning its verdict the Petitioner absconded. Pursuant to Ohio Law it was now within the Trial Court's discretion to accept the Jury's guilty verdict and to impose sentence. Thus, the Trial Court accepted the Jury's guilty verdict on all counts, but declined to impose sentence.

Lower Court Proceedings:

1. On June 18, 2018, the 12th District Appellate Court, Warren County, Case No 2017-10-152, State v. Scott, 2018 Ohio 236, 2018 Ohio App Lexis 2560, affirmed Trial Court's decision not to correct the void sentence or Judgment. Court held issue was tried extensively and heard by Pres Judge; On September 12, 2018, the 12th District Appellate Court denied Petitioner's motion for reconsideration; On December 12, 2018 the Ohio Supreme Court declined to accept jurisdiction.

STATEMENT OF THE CASE

2. On March 24, 2020, the U.S. District Court Southern District of Ohio Western Division, Case No. 1:19-cv-22, Scott v. Warden, Loudon Correctional Institution, 2020 U.S. Dist Lexis 50619, denied Petitioner's Petition for Habeas Corpus relief. The Court's decision that Petitioner was time barred, is contrary to Federal rule, authoritative cases and other District Courts, Court of Appeals 6th Circuit and the Supreme Court of the United States, resulted in a violation of Petitioner's right of Due Process and Equal Law as guaranteed by the 14th Amendment, United States Constitution.

3. On July 31, 2020 and October 8, 2020 The U.S. Court of Appeals for the Sixth Circuit denied Petitioner's Petition for C.O.R. and motion for Rehearing En Banc; Scott v. Robinson, 2020 U.S. App Lexis 24314 and Scott v. Robinson, 2020 U.S. App Lexis 32082

REASONS FOR GRANTING THE PETITION

1. The Petitioner pursued to both the Supreme Court of Ohio and Supreme Court of the United States was entitled to the right to challenge the void sentence and judgment, at any time. The Ohio Supreme Court has set the standard that it is axiomatic that imposing a sentence outside the statutory range, contrary to statute is outside a Court's jurisdiction, as a result the sentence and the ensuing judgment is void ab initio; the void sentence, judgment is not precluded from appellate review by principles or res judicata and may be reviewed at any time, as direct appeal or by collateral attack, pursuant to *State v. Billiter*, 134 Ohio St 3d 103, 2012 Ohio Lexis 2725; *Parsons v. Hunley*, 102 Ohio St 3d 81, 2004 Ohio 1980.

In case at bar the state's Trial Court failed to adhere to the mandated terms of Ohio R.C. 2929.14(C)(4), by failing to state its statutory findings prior to ordering Court / to serve consecutively with all other counts. Additionally, the Trial Court imposed a 8 year prison term on Court / - Trafficking in Cocaine - R.C. 2925.03(A)(1), which is outside the statutory range, pursuant to H.B. 86 and R.C. 2929.14(A)(3)(b). The Trial Court's error is more than administrative or clerical error, it is an act that lacks both statutory and constitutional authority, as clearly the Court lacked jurisdiction to impose a sentence contrary to law. Thus, the state Appellate Court application of res judicata and the Federal District Court and Sixth Circuit Court's current position is contrary to *State v. Beavell*, 140 Ohio St 3d 209, 2014 Ohio 317, 2014 Ohio Lexis 1934; *Gonzalez v. Thaler*, 565 U.S. 134, 141, 132 S. Ct 641; *Montgomery v. Louisiana*, 136 S. Ct 718, 2016 U.S. Lexis 862; *United States v. Cotton*, 535 U.S. 625, 630, 122 S. Ct 1781; *United States v. Miller*, 471 U.S. 130, 144 (Held jurisdiction error can be noticed by the Court at any time). Moreover, R.C. 2931.02, R.C. 2931.03 and Ohio Constitution Article IV § 4, provides Common Pleas Court has jurisdiction to correct a void sentence, and has a duty to correct the error, to ensure the Defendant has a valid Final Appellate Judgment Entry as required by Crim R. 32(c).

REASONS FOR GRANTING THE PETITION

The Sixth Circuit Court of Appeals, Federal District Court and Ohio Courts, objectively unreasonable decision not to correct, or order appropriate court to correct Petitioner's void sentence on bond, as Judgment, constitutes a violation of Petitioner's right of Due Process Clause, Equal Law Clause and Jury Trial as guaranteed, by the 6th and 14th Amendment, United States Constitution and contrary to authoritative case of the Supreme Court of the United States, which held the procedures used by the State in adjudicating constitutional issues on Appeal, or collateral attack must comport with the demands of the Due Process Clause and Equal Law Clause of the 14th Amendment, United States Constitution. *Gaspard v. Illinois*, 351 U.S. 12, 18, 76 S. Ct 585; *Reed v. Plores*, 567 U.S. 292, 302, 113 S. Ct 1439; *Snyder v. Massachusetts*, 89 U.S. 97, 105, 54 S. Ct 330; *Apprendi v. New Jersey*, 530 U.S. 466, 120 S. Ct 2348.

2. The Petitioner is not required by law to serve a prison term that exceeds the maximum term prescribed by law. Because, when a sentence exceeds the maximum prescribed by statute it is obvious that the misapplied sentence presents an error sufficiently grave to be deemed a miscarriage of justice or a fundamental defect and relief is due. *United States v. Prezent*, 190 F.3d 279, 284 (4th Cir 1999); *Johnson v. United States*, 623 F.3d 41, 46 (2nd Cir 2010); *Wentzell v. Neuen*, 674 F.3d 1124, 1127-28 (9th Cir 2012); *Narvaez v. United States*, 674 F.3d 621, 628-29 (7th Cir 2011); *United States v. Pearson*, 526 F.3d 331, 336 (6th Cir 2008).

REASONS FOR GRANTING THE PETITION

In case of bar the 8 year prison sentence, exceeds the 3 year maximum prison sentence authorized by the law and the Jury; see *Alleyne v. United States*, 570 U.S. 99, 133 S.Ct. 2151. Although the offense of Trafficking in Cocaine, a violation of Ohio's R.C. 2925.03(A)(1), the Trial Court only had jurisdiction, or power to impose a maximum of a 3 year prison term upon the Petitioner at the May 30, 2012 sentencing hearing. Although the Petitioner's offense took place over 7 years prior, and the Petitioner absconded from the Court on October 28, 2005. Because, the Trial Court made the decision on its own initiative to not sentence the Petitioner on October 28, 2005, as authorized by Ohio Law. Now, because of the Ohio General Assembly enactment of H.B. 86, on September 30, 2011, a law that eliminated the difference between Crack and Powdered Cocaine, pursuant to R.C. 2950.01. The Court had a duty to impose a sentence within the statutory range of a Third degree Felony, pursuant to R.C. 2929.14(A)(3)(b), as May 30, 2012, a 3 year prison sentence was the maximum prison term, that the Trial Court could impose upon the Petitioner, irrespective of the Sentencing Judge's good, or not good "conscious". The substantive Ohio rule governing in this matter is R.C. 1.58(A), which provides if the penalty, or punishment for any offense is reduced by enactment or amendment of a statute, the penalty, or punishment, if not already imposed, shall be imposed according to the statute as amended.

Moreover, the authoritative case of the Supreme Court of Ohio set the standard that if a statute conveys a meaning, which is clear,

REASON FOR GRANTING THE PETITION

unequivocal and definite, at that point the interpretative effort is at an end, and the statute must be applied accordingly. *Provident Bank v. Wood*, 36 Ohio St 2d 101, 304 N.E. 2d 378, 1973 Ohio Lexn 286. In the case of bar H.B. 86, R.C. 2929.14(a)(3), R.C. 1.58(a) and R.C. 2950.01, each conveys a meaning, which is clear, unequivocal and definite. The authoritative case of the Supreme Court of the United States set the standard that when a state lacks the power to impose a sentence upon a Petitioner, it cannot constitutionally insist the Petitioner remain in prison based on the unlawful sentence. *Teague v. Lane*, 489 U.S. 248, 109 S. Ct 1060; *United States v. United States Coin and Currency*, 401 U.S. 715, 91 S. Ct 1041; *Perry v. Lynaugh*, 492 U.S. 302, 330, 109 S. Ct 2934, 106 L. Ed 2d 556, 1989 U.S. Lexn 3148.

The Petitioner's Absconding did not Finally Foreclose the State's Trial Court from imposing sentence at the conclusion of the 2008 Trial. Because Ohio law clearly permits the Court to proceed in the absence of a Criminal Defendant, upon the Defendant's Absconding. Though both Ohio Law and the United States Constitution, and authoritative cases of the Supreme Court of the United States, does Finally Foreclose the State's Trial Court from imposing a sentence, or requiring a Prisoner to serve a sentence, that is unauthorized by law. Therefore, the Sixth Circuit Court of Appeals, Federal District Court and Ohio Courts, objectively unremovable decision to require the Petitioner to serve the 8 year prison term on Court constitutes a violation of Petitioner's right of Due Process Clause, Equal Law Clause and Jury Trial as guaranteed, by the 6th and

REASON FOR GRANTING THE PETITION

14th Amendment, United States Constitution and contrary to authoritative cases of the Supreme Court of the United States. A sentence imposed in violation of a substantive rule is not just erroneous but is contrary to law and, as a result void. Siebold, 100 U.S. at 376.

3. The Petitioner's Petition filed in the U.S. District Court in James Scott, Jr. v. Norm Robinson, Warden, Case No. 1:19-cv-22, 2020 U.S. Dist. LEXIS 50619, Federal Grounds are not barred by res judicata and are not time barred, thus Petitioner was entitled to a fair and full review on the merits to each Federal Ground. Because, 28 U.S.C. § 2244(d)(1)(D), is applicable. Thus, the statute of limitations date is December 12, 2019. The Petitioner clearly demonstrated above in (Remedy #1) pursuant to Ohio Law, authoritative cases from both the Supreme Court of Ohio and Supreme Court of the United States, that Petitioner was permitted to challenge the void sentence and judgment at anytime. Therefore, the fact that 5 years elapsed from the judgment date and Petitioner's challenge is not relevant. The Ohio Supreme Court on December 12, 2018 declined to accept jurisdiction, in State v. James Scott, Jr., Case No. 2018-1424, 2018 Ohio Lexis 2912. Thus, pursuant to 2244(d)(1)(D) the Petitioner had until December 12, 2019 to file the Petition in the U.S. District Court. The Petitioner on December 24, 2018 filed a Federal Habeas Petition to the U.S. District Court, James Scott, Jr. v. Norm Robinson, Warden, Case No. 1:19-cv-22.

The State's 12th District Appellate Court, in State v. Scott, Warren County, C.A. 2017-10-152, 2018 Ohio 2361, 2018 Ohio App. Lexis 2560, as clearly demonstrated above in (Remedy #1) violated Petitioner's constitutional rights by upholding the

REASON FOR GRANTING THE PETITION

unlawful seizure as Court 1 - Trafficking in Cocaine offense R.C. 2925.03(a)(1). The authoritative case of the Supreme Court of the United States set the standard that Congress expressed no intention to allow a State's procedural error to bar vindication of substantial Constitutional right as Appr'l. Williams v. Taylor, 529 U.S. 362, 420, 484, 120 S. Ct 1479, 146 L. Ed. 2d 389, 435 (2000).

The U.S. District Court and Sixth Circuit Court, objectively unreasonable decision to hold Petitioner's petition as time barred, and not grant Petitioner his entitled Habeas relief is contrary to the provisions of the AEDPA, 28 U.S.C. § 2254(d)(1), and 28 U.S.C. § 2253(c)(1)(C), which provides a Habeas Court should grant a COR, when a substantial showing of the denial of a substantive Constitutional right is demonstrated. The petition has clearly demonstrated that the seizure on Court 1 - R.C. 2925.03(a)(1), constitutes a clear violation of Petitioner's right of Due Process Clause, Equal Law Clause and Jury Trial as guaranteed, by the 6th and 14th Amendment, United States Constitution, is contrary to authoritative cases of the Supreme Court of the United States.

The mere fact that the State of Ohio, prior to the enactment of H.B. 86 in 2011, punished Defendants Trafficking in Cocaine Locave for more harsher than Defendants Trafficking in Powder Cocaine, cast a dark shadow over Ohio's Judicial Process and raised a grave concern of Social Inequality. Moreover no reasonable jurist would agree with the ~~the~~ Sixth Circuit Court of Appeals decision not to grant a COR, or U.S. District Court's decision not to provide Petitioner Habeas relief; see Miller El v. Cockrell, 537 U.S. 322, 327, 336, 123 S. Ct 1029; Stock v. Mc Daniel, 529 U.S. 473, 484, 120 S. Ct 1595. In case it be a miscarriage of justice is obvious and obvious.

CONCLUSION

The Due Process interest in this case is significant. Additionally, the U.S. District Court for the Southern District of Ohio and Sixth Circuit Court of Appeals decision, upholding Peterson's sentence and not granting relief, results in a clear conflict with authoritative cases of other U.S. District Courts, Circuit Court of Appeals and the Supreme Court of the United States. The risk of injustice to the petitioner and other prisoners with the same constitutional issue, is substantial and a decision, by that Court will either undermine, or gain the public confidence in the judicial process. Thus, the petition for a writ of Certiorari should be granted, to meet the ends of justice.

Respectfully Submitted,

James Scott 605564

James Scott, Jr.

Laudon Correctional Institution

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Petitioner, Pro-Se

Date: 12 12 20