

ORIGINAL

No. 20-7338

Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

In the Supreme Court of the United States

FOSTER LEE TARVER, PETITIONER

v.

ATTORNEY GENERAL OF PENNSYLVANIA; AND
DAUPHIN COUNTY COURT OF COMMON PLEAS

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the Third Circuit Court of Appeals' Judgment, that affirmed an illegal mandatory maximum life sentence imposed upon the Petitioner by the arbitrary application of an invalid state statute held in Miller v. Alabama, 567 U.S. 460, 132 S.Ct. 2455 (2012) to have violated 8th and 14th Amendments Rights of juveniles like himself convicted of first degree murder then who was mandatory sentenced to life, has denied him due process to equal protection of statutory construction by judicial abuse of discretion or Ex Post Facto Clause violations?

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18 P.S. § 4701 and § 4703	4, 5

RELATED PROCEEDING

1.

United States Court of Appeals (3rd Cir.):
Foster Tarver v. Attorney General of Pennsylvania; and
Dauphin County Court of Common Pleas
Petition for Certificate of Appealability
C.A. No. 20-1923 (Panel's denial October 6, 2020)
Petition for Rehearing En Bane
Sur Petition For Rehearing denied November 20, 2020.

2.

United States District Court for Middle District of Pennsylvania:
Foster Tarver v. Attorney General of Pennsylvania; and
Dauphin County Court of Common Pleas.
Habeas Corpus Petition M.D. Pa. Civ. No. 1:20-cv-00199
Magistrate Judge's Memorandum Opinion March 31, 2020.

3.

Superior Court of Pennsylvania for the Middle District:
Foster Tarver v. Commonwealth of Pennsylvania
Docket No. 875 MDA 2018
Appellate Court's decision: February 5, 2019

4.

In Common Pleas Court of Dauphin County Pennsylvania
Foster Tarver v. Commonwealth of Pennsylvania
Post Conviction Relief Act (PCRA): No. 43 O. & T. September Sessions, 1968
PCRA Court's decision: May 3, 2018.

JURISDICTION

The judgment by the Third Circuit Court of appeals' panel was entered on October 6, 2020. A Petition for Rehearing En Bane was filed October 20, 2020. The court denied Sur Petition for Rehearing on November 20, 2020. The deadline for filing a Petition for a Writ of Certiorari is on or before February 18, 2021.

(i) The Petition for a Writ of Certiorari is file pursuant to Supreme Court **Rule 10 (c)**, the United States Court of Appeals for Third Circuit has decided an important federal question in a way that conflicts with relevant decisions of this Court.

(ii) The statutory jurisdiction of this Court is invoked under **28 U.S.C. 1254(1)**.

(iii) Notification required by the **Supreme Court Rule 29.(b)(5)** has been made.

CONSTITUTIONAL AND STATUTORY PROVISIONS

The United States Constitution **Article I, Section 10**; the Fourteenth **(14)** Amendment. The Pennsylvania Constitution **Article 1, Section 17**. The Act of **June 24, 1939, P.L. 872, Sections 701 and 703, 18 P.S. § 4701 and § 4703**.

CONCISE STATEMENT OF CASE

1. The United States Court of Appeals for the Third Circuit Judgment that denied petition for rehearing by the panel and by the court en bane for issuance of a Certificate of Appealability was abuse of discretion that violated the Petitioner's due process rights to assistance of counsel to demonstrate that the

habeas corpus court failed to give claims fair considerations and ignored request made for counsel's assistance. The record demonstrates the Magistrate Judge's conclusion denied an independent review of the record and of the state appellate court's decision to challenged invalid statute breadth. Petitioner's judgment to illegal mandatory maximum sentence was affirmed at Commonwealth v. Tarver, No. 875 MDA 2018 in Pennsylvania Superior Court which addressed illegal sentence claim challenge to statute breadth by asserting being bounded by **Commonwealth v. Batts**, 640 Pa. 401 (2017). Magistrate Judge's decision failed to indicate any judicial investigation made of the **Batts'** case. No independent investigation was made of how Pennsylvania Courts had applied new construction of statute that although not applicable to his sentence status was used as authority for guideline to deprive Petitioner of substantive protections and vested rights set forth in **Act of June 24, 1939, P.L. 872, Section 701 and 703, 18 P.S. § 4701 and 4703** and by applicable contract law protections processes.

The Magistrate Judge's failed to consider counsel's assistance for Petitioner to articulate impact on sentence proceedings wherein was applied statute which sentence provisions were held unconstitutional and the General Assembly had not enacted replaced provisions. The decision conflicts with other judicial authorities that addressed denied "due process," "fair warning rights," and "separation of power" principles' application. The magistrate denied Due Process Clause relief

when it ignored, failed to address or answer, presented concerns in motion for counsel's assistance. Petitioner Habeas Corpus petition presented claim that his constitutional rights to a legal sentence was denied by Pennsylvania Appellate Courts by violation of vested rights preserved in accords clauses of murder statute under what he was indicted (above at **18 P.S. §4701** and **§ 4703**) and was originally sentenced. Petition challenged to degree of murder statute presented rights to be resentence in accords of vested process. The process involved substantial showing of the denial of constitutional rights protection.

The third circuit court failed to, also address, motion for counsel's assistances, when Petitioner made substantial showing of constitutional due process rights denial of an imposed illegal mandatory maximum sentence.

Federal jurisdiction was first sought in the Court of Common Pleas in Dauphin County, Pennsylvania, during Resentence Hearing when Petitioner communicated belief to counsel that the Court lacked statutory authority to impose any minimum sentence beyond ten (10) years or a maximum sentence beyond twenty (20).

a. On October 30, 2017, during the resentence proceeding the court imposed a minimum of 40 years and a mandatory maximum of life sentence.

b. The resentence court imposed minimum and maximum denied the Petitioner due process protection of Pennsylvania statute vested rights applicable in affect at time the alleged crime was committed: **Act of June 24, 1939, P.L. 872, sections 701 and 703, 18 P.S. Sections 4701 and 4703.**

c. The Petitioner was denied equal protection of due process right to **Pennsylvania Constitution Article 1, Section 17 and the United States Constitution Article I, Section 10** respectively from proscribed **Ex Post Facto** abuse.

REASONS FOR GRANTING THE PETITION

The Court in **United States v. Davis**, 139 S.Ct. 2319 (2019) held “respect for due process and constitutional separation of powers suggests a court may not, in order to save Congress the trouble of having to write a new law, construe a criminal statute to penalize conduct it does not clearly proscribe ... the rule of lenity teaches that ambiguities about a the breadth of a criminal statute should be resolved in the defendant’s favor.”

CONCLUSION

The Court should grant the petition for a writ of certiorari, the Court should appoint counsel to assistance and for protection of Petitioner’s substantial showing of the denial of a constitutional right pursuant to **§2253(c)(2)**.

This date February 18, 2021

Respectfully submitted,

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