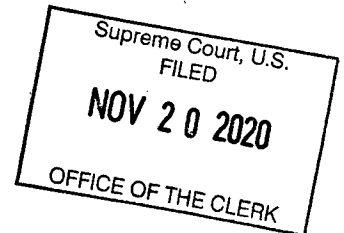


20-7401

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



RONALD J. BRANDON — PETITIONER
(Your Name)

vs.

JAY FORSHEY, WARDEN — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR SIXTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

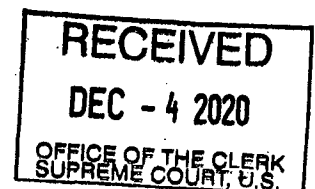
PETITION FOR WRIT OF CERTIORARI

Ronald J. Brandon #739-226
(Your Name)

15708 McConnelsville Road
(Address)

Caldwell, Ohio 43724-8902
(City, State, Zip Code)

N/A
(Phone Number)



QUESTION(S) PRESENTED

Based upon the handling of the handling of the habeas petition below, Brandon seeks to put the following issues/questions before this Honorable Court.

- Pursuant to this Court's holding in Coleman v. Johnson, 566 U.S. 650, 655 (2012) (Federal courts must look to state law for the substantive elements of a criminal statute), is it reasonable to ignore well-settled state law that concludes that the degree of the offense and specific statutory subsection must be listed in the text or body of the indictment, otherwise the defendant has only been effectively charged with the least degree of the offense? See, State v. Fairbanks (2007), 172 Ohio App.3d 766, P24.

- Does a State's contemporaneous objection rule overrule this Court's precedent that holds that an accused's ignorant failure to claim a right does not remove the protection of the Constitution, Johnson v. Zerbst, 304 U.S. 458, 464 (1938), especially where issue involves confrontational right's affect on proof beyond a reasonable doubt? Stated different-

ly, can a State avoid the Fifth Amendment burden of proof beyond a reasonable doubt simply by labelling an out-of-court statement, used to establish or prove past events, as non-testimonial?

- Does state law, in accordance with this Court's precedent, have any standings in federal habeas relief?

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:

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of Appeals, 2020 U.S. App. LEXIS 27790
(6th Cir. Aug. 31, 2020)

Appendix B - Opinion of the Southern Dist. of Ohio,
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16, 2020)

Appendix C - Report and Recommendation of the
Southern Dist. of Ohio, 2020 U.S. Dist.
LEXIS 10426 (S.D. Ohio Jan. 22, 2020)

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 _____; 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 B 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 _____ 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 August 31, 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: _____, 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 _____.
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).

STATEMENT OF THE CASE

This case arises from a petition for federal habeas corpus relief, under color of 28 U.S.C. § 2254, filed on June 14, 2019. In his petition, Brandon raised: (1) denial of effective assistance of appellate counsel; (2) ineffective assistance of trial counsel; (3) insufficient indictment; (4) denial of confrontation rights; and (5) use of juvenile record to support consecutive sentences denied due process and equal protection of the law.

Thereafter, the State responded by urging that ground one was without merits, thereby procedurally defaulting other claims.

Brandon filed a traverse that further expounded on his claims.

The magistrate judge issued a report and recommendation urging, basically, that contended by the State of Ohio. Appendix C.

Brandon objected to the report and recommendation, concentrating pleadings on the merits of grounds three, four and five, in further support of ground one.

The district court found that: (1) neither the degree

of the offense nor specific statute qualified as an element of the crime, notwithstanding Ohio law establishes different; (2) Ohio's contemporaneous objection rule is an adequate ground to preclude habeas review of confrontation issues; and (3) Oregon v. Ice permitted use of juvenile record to support consecutive sentences, when state law found such offensive to due process. Thereupon, the court overruled objections, adopted report and recommendation, and dismissed petition with prejudice. Appendix B.

Thereafter, Brandon filed a notice of appeal that was construed as an application for a certificate of appealability and denied. Appendix A.

REASONS FOR GRANTING PETITION

When determining whether the indictment was sufficient in charging a third-degree felony for count three, Brandon relied on Ohio law that found the degree of offense or the specific subsection make up enhancement element for multi-level crimes and must be plead in body of indictment. See, State v. Fairbanks (2007), 192 Ohio App.3d 766, P24. This is in accord with United States v. Cook, 84 U.S. 168 (1872) (every criminal defendant has a right to clear and accurate allegations that contain every ingredient which composes the offence.) and United States v. Cruikshank, 92 U.S. 542, 558-59 (1875) (relying on Cook to further find precedent critical in a decision on the best way to proceed or for the court to determine whether facts sustain the indictment). The courts below believe these governing principles to be inconsequential in a sufficiency of the indictment analysis, even though this stance offends United States v. Miller, 471 U.S. 130, 144-45 (1985) (a variance between the charge and evidence and jury instructions at trial that broadens the basis of the conviction beyond that contained in indictment is an impermissible constructive amendment).

The next point of interest deals with the sufficiency

ency/reliability of evidence to sustain conviction for engaging in a pattern of corrupt activity (Ohio's RICO law). It is Brandon's position that confrontation rights play a vital role in whether a state has produced sufficient evidence to sustain every element beyond a reasonable doubt, especially where testimonial evidence of a non-testifying codefendant is used. The courts below believe that a contemporaneous objection rule can waive a confrontation challenge, even though the declarant wasn't made available for cross-examination.

Lastly, the courts below never gave due deference to state law on use of juvenile record to support consecutive sentences. They reason that such factor did not play a major role in decision, notwithstanding the Supreme Court of Ohio reasoned that the significance of such a factor could not be determined. See, State v. Hand, 149 Ohio St.3d 94, 2016-Ohio-5504.

This Court should accept jurisdiction to remind the courts below of not only their roles in federal habeas review; but to discern whether state law dictates the ingredients of a criminal charge; variances that broadens indictment constitutes constructive amendment; sufficient evidence exists when Confrontation

Clause is violated; and does a state court decision that use of a defendant's juvenile record to support consecutive sentences violates due process have any bearing on federal habeas review.

Brandon believes all of these issues will be resolved in his favor.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Ronald Brandon

Date: November 16th, 2020