

ORIGINAL

20-7671

IN THE
SUPREME COURT OF THE UNITED STATES

FILED
MAR 17 2021

OFFICE OF THE CLERK
SUPREME COURT, U.S.

OCTOBER TERM, 2021

RONALD E. JOHNSON EL - PETITIONER
(Your Name)

VS.

DEREK SCHMIDT, et al - RESPONDENT(S)

ON A PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

RONALD E. JOHNSON EL
(Your Name) "All Rights Reserved"

P.O. BOX 311, E.D.C.F. #79020
(Address)

EL DORADO, KS. 67042-0311
(City, State, Zip)

(Phone Number)

LIST OF PARTIES

(_) All parties appear in the caption of the case on the cover page.

(X) 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:

DEFENDANT(S)

Derek Schmidt
Attorney General for
the State of Kansas

DEFENDANT

Jennifer L. Myers
Judge, Wyandotte County
District Court

DEFENDANT

R. Wayne Lampson
Chief Judge, Wyandotte County
District Court

DEFENDANT

Dexter Burdette
Judge, Wyandotte County
District Court

DEFENDANT

Lawton Nuss
Chief Justice, Kansas
Supreme Court

DEFENDANT

Lee Johnson
Justice, Kansas Supreme
Court

DEFENDANT

Stephan D. Hill
Justice, Kansas Court of
Appeals

DEFENDANT

Kim R. Schroeder
Justice, Kansas Court of
Appeals

DEFENDANT

Gordon Atcheson
Justice, Kansas Court of
Appeals

DEFENDANT

Jerome Gorman
Assistant District Attorney
Wyandotte County District
Attorney's Office

DEFENDANT

Daniel Obermier
Assistant District Attorney
Wyandotte County District
Attorney's Office

DEFENDANT

Don Ash
Sheriff, Wyandotte County
Sheriff's Department

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<u>DEFENDANT</u>	<u>DEFENDANT</u>
Jeff Zmuda	Roger Werholtz
Secretary of Corrections	Secretary of Corrections
Kansas Dept. of Corrections	Kansas Dept. of Corrections
<u>DEFENDANT</u>	<u>DEFENDANT</u>
Jeff Cowger	Ray Roberts
Chief Legal Counsel for	Secretary of Corrections
Kansas Dept. of Corrections	Kansas Dept. of Corrections
<u>DEFENDANT</u>	<u>DEFENDANT</u>
S. Scribner	Johnnie Goddard
Re-entry Dept.	Secretary of Corrections
Kansas Dept. of Corrections	Kansas Dept. of Corrections
<u>DEFENDANT</u>	<u>DEFENDANT</u>
Joe Norwood	John/Jane Doe (1)
Secretary of Corrections	Sentence Computation
Kansas Dept. of Corrections	Kansas Dept. of Corrections
<u>DEFENDANT</u>	
John/Jane Doe (2 & 3)	
Kansas Dept. of Corrections	

QUESTIONS PRESENTED

Was **Astorga v. Kansas** remanded back to the Kansas Supreme Court for the purpose of correcting with the Mandatory Sentence modification of Hard 40/50 provisions in the Sua Sponte K.S.A. 21-4639 and K.S.A. 21-6628(c)?

Does K.S.A. 21-4639/K.S.A. 21-6628(c) provide the remedy once the term of imprisonment or any provision authorizing such term is ever held unconstitutional by the United States Supreme Court or the Kansas Supreme Court?

Is K.S.A. 21-4635 a Sixth Amendment violation which must be cured with the Mandatory Sua Sponte correction remedy that is included within the controlling law provided by K.S.A. 21-4639 & K.S.A. 21-6628(c)?

TABLE OF AUTHORITIES CITED

CASES

Apprendi v. New Jersey, 530 U.S. 466 (2000)	Pages 5, 8, 9
Alleyene V. United States, 570 U.S. 99, 133 S.Ct. 2151 (2013)	Pages 5, 8, 9
Astorga V. Kansas, 570 U.S. ___, 133 S. Ct. 2877 (2013)	Pages 5
State V. Soto, 299 Kan. 102, 322 P.3d 334 (2014)	Pages 5
State V. Baker, 281 Kan. 997, 1048, 135 P.3d 1098 (2006)	Pages 8
State V. McCaslin, 291 Kan. 697, 727, 245 P.3d 1030 (2011)	Pages 8

STATUTES AND RULES

The Hard 50 laws are all Sua Sponte, starting with K.S.A. 21-4635, 21-4636, 21-4637, 21-4638 and K.S.A. 21-4639, renumbered in 2011 to the current, K.S.A. 21-6628(c), the Mandatory Sua Sponte modification of the Hard 50 sentence once any of the prior four statutes are ever held unconstitutional. See Pages 3, 4, 5, 6, 8 and 9.

OTHER

THE August 6, 2013 "Proclamation" by the Governor of Kansas, calling the Legislature into Special Session to respond to the ruling in Alleyene, Supra, shows that the Kansas Attorney General and experts in the field recognize that the ruling by the United States Supreme Court in Alleyene, Supra, rendered the "Hard 50" law unconstitutional and will "virtually guarantee" that dozens of violent offenders will receive significantly weaker sentences.

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**Appendix E- Kansas Supreme Court Petition For Review
No. 17-117-323-A**

Appendix F- Johnson V. State, 2018 Kan. LEXIS 731

IN THE
SUPREME COURT OF THE UNITED STATES
MARCH 2021

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 from 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 published

JURISDICTION

(X) For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was
November 24, 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: December 28, 2020, and a copy of the order denying rehearing appears at Appendix C.

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).

(X) For cases from **state courts**:

The date on which the highest ~~state~~ court decided my case was
September 1, 2017. A copy of that decision appears at Appendix D.

A timely petition for rehearing was thereafter denied on the following date: September 28, 2018, and a copy of the order denying rehearing appears at Appendix F.

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).

OPINIONS BELOW

The orders of the United States District Court for the district of Kansas, as well as the order of the United States Court of Appeals for the Tenth Circuit, is attatched as Appendix A and Appendix B, **Case No. 20-3017-SAC, No. 20-3168.**

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S.C.S. Const. Amend 14

"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 the citizens of the United States; nor shall any state deprive any person of life, liberty or property without due process of the laws."

U.S.C.S. Const. Amend. 6

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the alleged crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and have assistance of counsel for his defense."

K.S.A. 21-4635

"Sentencing of certain persons to a mandatory term of imprisonment of 40 or 50 years or life without the possibility of parole; determination; evidence presented; balance of aggravating and mitigating circumstances."

(a) " Except as provided in K.S.A. 21-4622, 21-4623 and 21-4634 and amendments thereto, if a defendant is convicted of the crime of capital murder, and a sentence of death is not imposed pursuant to subsection (e) K.S.A. 21-4624, and amendments thereto, or requested pursuant to subsection (a) or (b) of K.S.A. 21-4624, and amendments thereto, the defendant shall be sentenced to life without the possibility of parole."

(b) "If a defendant is convicted of murder in the first degree based upon the finding of premeditated murder, the court shall determine whether the defendant shall be required to serve a mandatory term of imprisonment of 40 years, or for crimes committed on or after July 1, 1999, a mandatory term of imprisonment of 50 years or sentenced as otherwise provided by law."

(c) "In order to make such determination, the court may be presented evidence concerning any matter that the court deems relevant to the question of sentence and shall include matters relating to any of the aggravating circumstances enumerated in K.S.A. 21-4636 and amendments thereto and any mitigating circumstances. Any such evidence which the

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED (CONT'D.)

.....court deems to have probative value may be received regardless of its admissibility under the rules of evidence, provided that the defendant is accorded a fair opportunity to rebut any hearsay statements. Only such evidence of aggravating circumstances as the state has made known to the defendant prior to the sentencing shall be admissible and no evidence secured in violation of the Constitution of the United States or the state of Kansas shall be admissible against the defendant at any subsequent criminal proceeding. At the conclusion of the evidentiary presentation, the court shall allow the parties a reasonable period of time in which to present oral argument."

(d) "If the court finds that one or more of the aggravating circumstances enumerated in K.S.A. 21-4636 and amendments thereto, exist and, further, that the existence of such aggravating circumstances is not outweighed by any mitigating circumstances which are found to exist, the defendant shall be sentenced pursuant to K.S.A. 21-4638 and amendments thereto; otherwise, the defendant shall be sentenced as provided by law. The court shall designate, in writing, the statutory aggravating circumstances which it found. The court may make the findings required by this subsection for the purpose of determining whether to sentence a defendant pursuant to K.S.A. 21-4638 and amendments thereto notwithstanding contrary findings made by the jury or court pursuant to K.S.A. 21-4624, subsection (e) and amendments thereto for the purpose of determining whether to sentence such defendant to death."

K.S.A. 21-4639

"Same; provisions of act held unconstitutional; modification of sentence previously determined under this act."

"In the event that the mandatory term of imprisonment or any provision of this act authorizing such mandatory term is held to be unconstitutional by the Supreme Court of Kansas or the United States Supreme Court, the court having jurisdiction over a person previously sentenced shall cause such person to be brought before the court and shall modify the sentence to require **no** mandatory term of imprisonment and shall sentence the defendant otherwise as provided by law."

(K.S.A. 21-4639 was simply renumbered to the following:)

K.S.A. 21-6628 (c)

"Provisions of certain sentencing rules held unconstitutional; modification of sentence previously determined."

"In the event the mandatory term of imprisonment, or any provision of **Chapter 341 of the 1994 Session Laws of Kansas** authorizing such mandatory term is held to be unconstitutional by the Supreme Court of Kansas or the United States Supreme Court, the court having jurisdiction over a person previously sentenced, shall cause such person to be brought before the court and shall modify the sentence to require **no** mandatory term of imprisonment and shall sentence the defendant as otherwise provided by law."

STATEMENT OF THE CASE

In 2013, the United States Supreme Court remanded Astorga v. Kansas, 570 U.S. ___, 133 S.Ct. 2877 (2013) to the Supreme Court of Kansas for correction in light of Alleyne v. United States, 570 U.S. 99, 133 S. Ct. 2877 (2013). This Court held Alleyne is an extension of Apprendi v. New Jersey, 530 U.S. 466 (2000), which is long before Petitioner's sentencing in 2003. Eight months after this Court remanded Astorga to the Supreme Court of Kansas, the same Court held K.S.A. 21-4635 unconstitutional, stating that it violates one's sixth amendment constitutional due process protections, finding that K.S.A. 21-4635 allowed a judge to increase one's sentence, without the fact-finding of a jury. This goes against the two cemented principles of law that the Apprendi decision had announced for criminal sentencing:

1. If the state is seeking an upward departure sentence, it **must** include that particular fact in the charging document.
2. Any fact-finding required for imposition of a upward departure sentence **must** be done by a jury, not a judge.

Both of these Supreme Court principles of law were violated in the Petitioner's case-at-hand. Even though the mandatory correction provision K.S.A. 21-4639/21-6628(c) is the Color of State Law/provision for correction of any violations of the Hard 50 Act, the Kansas Courts, along with the defendants named previously, have all ignored their own Sua Sponte provision, which has been in place since 1994 to correct any violations that followed afterward.

The 1994 Session Laws of Kansas, Chapter 341, made the Hard 40/50 Act law, starting with K.S.A. 21-4635, K.S.A. 21-4636, K.S.A. 21-4637, K.S.A. 21-4638 and K.S.A. 21-4639, the latter is the mandatory correction provision in the event that any of the proceeding four provisions are ever held unconstitutional by this Court, or the Supreme Court of Kansas.

The Supreme Court of Kansas has held K.S.A. 21-4635 unconstitutional in State v. Soto (2014), stating that K.S.A. 21-4635 violates one's sixth constitutional amendment due process protections. The mandatory correction provision K.S.A. 21-4639, which is now K.S.A. 21-6628(c), is the Sua Sponte duty of the Kansas Courts, as well as Defendant/Attorney General Derek Schmidt's

STATEMENT OF THE CASE, (CONT'D.)

as the entire Hard 40/50 Act is Sua Sponte—which is the absolute core of why K.S.A. 21-4635 is a sixth constitutional amendment violation.

The Kansas Courts and Defendant Derek Schmidt have lost all jurisdiction to the present case after refusing to enact and enforce the mandatory correction of Color of State Law and the provisional correction remedy that is set forth in K.S.A. 21-6628(c), formerly known as K.S.A. 21-4639.

K.S.A. 21-6628(c)/21-4639 is/are the predetermined provision which was enacted in 1994, nor has it ever been changed to date. The provisions that are set out in K.S.A. 21-4639 and K.S.A. 21-6628(c) are superseding provisions that circumvent all judicially conducted analysis—it is for the correction of any of the four preceding statutes that may at some time in the future be held to be unconstitutional. As is the case here, K.S.A. 21-4635 was found to be unconstitutional well over seven years ago, almost eight years ago to the current date.

Petitioner invoked K.S.A. 21-4639/21-6628(c) in a KSC 6.09 authority letter to the Kansas Court of Appeals on May 12, 2017. This fact, along with the law was ignored by that court and the Petition For Review denied on September 28, 2018. Petitioner then invoked his mandatory right to this Color of State Law provision in the District Court of Wyandotte County, Kansas on October 4, 2018. This is currently pending review in the Kansas Supreme Court (Please see all exhibits and affidavits on record). As the Kansas Courts—at the urging of Defendant/Attorney General of Kansas Derek Schmidt—have become more and more indifferent of their own statutes and laws, while remaining indifferent to Petitioner's Civil rights, Statutory rights and protections, as well as his constitutional rights and protections, while ignoring the provisions and protections afforded by the Color of State Laws/Statutes and Constitutional provisions, violating all of the aforementioned, rights, provisions and protections, Petitioner was left with no viable choice but to file the Ku Klux Klan Act/1983 Civil Claim before this Honorable Court at this time:

WHEREFORE, Petitioner humbly asks this Honorable Court to grant his Writ for Certiorari and issue a **declaratory judgment**, as well as an **injunction for relief**.

BASIS FOR FEDERAL JURISDICTION

This case raises questions about the interpretation and application of the Fifth, Sixth, Eighth and the Fourteenth Amendments of the Constitution of the United States of America within the sentencing proceedings in State Court and the proper Due Process afforded in the sentencing Statutes that govern the Mandatory correction of impositions of sentencing violations that are found to be unconstitutional at the State and Federal levels, as well as any and all violations of the United States Constitution in general.

This Honorable Court obtains Federal Jurisdiction under 28 U.S.C. § 1257.

IMPORTANCE OF QUESTIONS PRESENTED

As the Court in Alleyene instructed, it did not announce a new rule, the decision is only an extension of Apprendi; stating that all elements that could result in an increase in one's sentence **must** be presented to a jury.

In the State of Kansas, 78 out of 140 Hard 40/50 cases (at least), Apprendi was raised, therefore preserving the issue for future review, as is the case which is now before this Court (**State v. Johnson** 2007).

The Kansas Supreme Court held that K.S.A. 21-4635 is a violation of the Sixth Amendment. The Kansas Supreme Court also held that K.S.A. 21-4635 authorizes the Hard 50 sentence; See: **State v. Baker**, 281 Kan. 997, 1018, 135 P.3d, 1098 (2006); **State v. McCaslin**, 291 Kan. 697, 727, 245 P.3d 1030 (2011); citing **Baker** at 1081 ("Hard 50 sentencing is authorized by K.S.A. 21-4635, which requires the Court to weigh evidence of any mitigating circumstances against evidence of any aggravating circumstances").

Baker and **McCaslin** both contradict the State's argument and the ruling in **State v. Coleman** (2020) that K.S.A. 21-4635 through K.S.A. 21-4637 merely outline the conditions necessary for imposing the Hard 50 sentence. As **Baker** explains that K.S.A. 21-4635 authorizes the imposition of the Hard 50 sentence. The United States Federal District Court for the District of Kansas nor the United States Court of Appeals for the Tenth Circuit have never addressed these issues of contradictions. How will the Due Process be affected when State Court Judges act without jurisdiction or with an indifference to the Statutes which govern these cases? And to then proceed with a Judicial Retroactive Analysis-when they know and recognize that they are out of jurisdiction?

REASONS TO GRANT PETITION

The Kansas Courts and Defendant/Attorney General Derek Schmidt, et al, all have chosen to ignore their very own Sua Sponte Mandatory provision to correct the erroneous Hard 50 sentence, which the Petitioner is presenting here.

The Defendants knew that K.S.A. 21-4635 authorized the Hard 50 sentence. The Defendants also had to be aware that the Kansas Supreme Court has held K.S.A. 21-4635 as being unconstitutional.

REASONS FOR GRANTING PETITION (CONT'D)

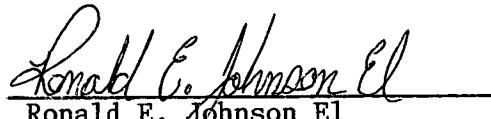
The Defendants were aware that they proceeded without jurisdiction once they ignored the proper authority and only Mandatory Sua Sponte correctional provision contained within K.S.A. 21-4639 and K.S.A. 21-6628(c), which requires sentence modification pursuant to the wording and guidance contained therein. Which will be within the correct principles of law this Court set forth in Alleyne v. United States, 570 U.S. 99 (2013) and Apprendi v. New Jersey, 530 U.S. 466 (2000). In light of the fact that this is a violation of the Sixth Amendment-without question-Petitioner prays that this Honorable Court grant the relief requested.

CONCLUSION

Because the Kansas Courts, along with many other Courts are improperly denying the Mandatory Correction Remedy provided for in K.S.A. 21-4639 and K.S.A. 21-6628(c), after the Kansas Supreme Court has held for several years that K.S.A. 21-4635 is indeed unconstitutional.

For the aforementioned reason, Petitioner has the utmost faith that this Honorable Court will grant this petition and issue a Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit, the United States Federal District Court for the District of Kansas and the Supreme Court of Kansas with declaratory and injunctive orders to the Courts.

Honorably and Humbly Submitted,


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