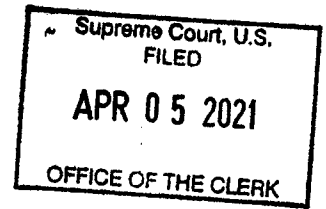


20-7744
No. _____

IN THE
SUPREME COURT OF THE UNITED STATES



Millard E. Price — PETITIONER
(Your Name)

vs.

State of Delaware — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Delaware Supreme Court
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Millard E. Price #441452
(Your Name)

H.R. Y.C.I. - P.O. Box 9561
(Address)

Wilmington, DE 19809
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

1. Is corporal punishment, sanctioned by the courts agent for administering punishment, grounds for a "collateral attack" to the sentence pursuant to Delaware Superior Court Rule 35a ?

2. Does Delaware's Writ of Habeas Corpus, 10 Del. C. § 6902, prohibiting felons, deny equal protection of the law?

3. Was denial of medications for disciplinary reasons a form of corporal punishment permitting a "collateral attack" on his sentence pursuant to Delaware Superior Court Rule 35a ?

4. Do prison conditions which violate petitioner's constitutional rights permit a "collateral attack" of ones sentence pursuant to Superior Court Rule 35a ?

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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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☐ is unpublished.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☐ is unpublished.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 Delaware Superior 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 Feb. 15, 2021.
A copy of that decision appears at Appendix A.

☐ 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. Delaware Superior Court Rule 35a.

Correction of Sentence - The court may correct an illegal sentence at any time and may correct a sentence imposed in an illegal manner within the time provided herein for the reduction of sentence.

2. 10 Delaware Code, § 6902

Persons entitled to writs; exceptions.

Every person imprisoned or restrained of liberty by an officer or person, for any cause under color or pretense, shall have remedy by the writ of habeas corpus, and may obtain relief except:

- (1) Persons committed or detained on a charge of treason or felony, the specifics thereof is plainly and fully set forth in the commitment;
- (2) Persons convicted of, or charged with, treason, felony, or any offense in another state, who ought, by the Constitution of the United States, to be delivered to the executive of such state, subject to the provisions of § 2510 of Title 11; and
- (3) Persons imprisoned by the authority of the United States.

STATEMENT OF THE CASE

Petitioner was a victim in a prison riot that occurred 2-1-2017. Petitioner was released as a hostage by rioters because Petitioner suffered from a severe medical condition. When he was released he was beaten and dragged by correction authorities. Again, on 3-9-2017, Petitioner was beaten by correction authorities. The beatings were malicious, sadistic and a wanton infliction of pain. The beatings served no statutory or penological purpose, occurred during the administering of the court's sentence by the statutory agent of the court for executing the sentence, and thereby violated petitioner's VIII Amendment Right. The violation of Petitioner's constitutional rights during administration of the court's sentence permits a "collateral attack" to the sentence pursuant to Delaware Superior Court Rule 35a.

Petitioner was isolated in the Security Housing Unit ("SHU") and denied medical attention for weeks. Petitioner submitted numerous sick call requests and weeks later was seen by medical provider Rita Miller. The provider cancelled petitioner's medication and told him if he submitted another request "things would only get worse." Subsequently, Carla Miller who wasn't even the treating provider would cancel pain medications again as a means of disciplinary unassociated with any medical purpose. Petitioner requested to see a superior and a

a Dr. Harewood came to see petitioner stating, "When your attitude improves so will your medication." The court's statutory agent for administering punishment has a statutory duty in Delaware's Criminal Code, 11 Del. C. § 6536 to provide adequate medical care, and is specifically forbidden by statute to administer corporal punishment pursuant to 11 Del. C. § 6517. The tortuous and egregious acts were corporal punishment and violated petitioner's VIII Amendment against cruel and unusual punishment. The constitutional violation occurred during execution of the court's otherwise lawful sentence giving rise to a "collateral attack" of his sentence pursuant to Delaware Superior Court Rule 35a.

Petitioner sought to submit a Writ of Habeas Corpus to challenge the constitutional violations which occurred during his sentence by the court's agent responsible for administering punishment in accordance with the laws and constitution of the United States. Petitioner was barred by Delaware's statutory Writ of Habeas Corpus. Subsequently, Petitioner sought review of his sentence pursuant to Delaware Superior Court Rule 35a because Delaware case law specifically and "plainly" states that the Rule, *supra*, is specifically offered in lieu of Delaware's Writ of habeas corpus. Petitioner submitted a Motion

to vacate his sentence. The Delaware Supreme Court failed to rule on petitioner's Motion to vacate for an abuse of discretion by the Delaware Superior Court. Conversely, and in error interpreted on its own volition petitioner's pleadings as abuse of discretion for a Motion for Modification of Sentence pursuant to Delaware Superior Court Rule 35(b) as opposed to Rule 35(a).

In further error, the Delaware Supreme Court failed to remand the case to the Delaware Superior Court for a determination of any adverse effect upon the petitioner consistent with the decision in *Conner v. State*, 196 A.2d 399, 400 (Del. 1963) or to make any determination regarding the lower court's failure to determine whether petitioner's rights pursuant to VIII Amendment had occurred.

REASONS FOR GRANTING THE PETITION

I. Purpose of Delaware Superior Court Rule 35a is to afford a remedy in lieu of habeas corpus. Traditionally, an inmate incarcerated within the United States who challenges a sentence due to a constitutional violation seeks address by way of a Writ of Habeas Corpus. Delaware's writ of habeas corpus bars anyone with a felony conviction. A challenge was made in Delaware's Supreme Court to the limited powers of Delaware's Writ 10 Del. C. § 6902 in *Curran v. Woolley*, 104 A.2d 771 (Del. 1954). The Delaware Supreme Court held that it complied with the Federal Mandate because it provides adequate remedy through promulgation of Rule 35a stating:

... the state has complied by promulgation of Rule 35a... Rule 35a - Correction of an Illegal Sentence. It permits that a court may correct an illegal sentence at any time. If the court finds that the judgement was rendered without jurisdiction or that the sentence imposed was illegal or otherwise subject to "collateral attack", or that there was a denial or infringement of the constitutional rights of the prisoner so as to render the judgement subject to "collateral attack", the court shall set aside the judgement subject to "collateral attack",... *Id.* @ 774.

Seventeen years later, the Delaware Supreme Court affirmed in *Johnson v. State*, 280 A.2d 712, 713 (Del. 1971) that Rule 35a is to afford a remedy

in lieu of Habeas Corpus or Coram Nobis to a defendant who claims his conviction or sentence violates his rights. The Delaware Supreme Court's refusal to permit review of petitioner's sentence pursuant to Rule 35a and to bar him statutorily by way of 10 Del.C. § 6902 because he has a felony conviction is to deny him Equal Protection of the law in violation of petitioner's XIV Amendment Right to the United States Constitution.

II. Corporal punishment (punishment of or relating to the body) in any form is unconstitutional and violates the VIII Amendment to the United States Constitution. The infringement of petitioner's constitutional rights are two-fold and give rise to a "collateral attack" within the meaning of Delaware Superior Court Rule 35a to wit:

A. The petitioner was beaten twice. The State of Delaware having full knowledge thereof, by sanctioning same, refuses to investigate, prosecute or remedy the sadistic, tortuous actions under color of law administering the court's sentence, or to permit petitioner review. In *Wilkins v. Gaddy*, 559 U.S. 34, 130 S.Ct. 1175 (2010) this Court stated: "... when prison officials maliciously and sadistically use force to cause harm, contemporary standards of decency always are violated (emphasis added). This Court did not distinguish only in civil cases, as opposed to criminal, it said "always." Delaware would marginalize *Wilkins* and infer that a constitutional violation

has not been rationalized because the case at hand is criminal (Appendix A, pp 2 and 3). Wilkins substantiated that the beatings petitioner complained were unconstitutional and violated the VIII Amendment irrespective of the contextual form of litigation. Secondly, the abuse of discretion was the Superior Court's refusal to conduct an evidentiary hearing to ascertain whether a constitutional violation had occurred and the Delaware Supreme Court's failure to rule. In any event, the Delaware Supreme Court should have remanded to the lower court to discern whether the beatings had an adverse effect upon the petitioner and thereby determine whether the sentence was excessive.

In *Canon v. State*, 196 A.2d 399 (Del. 1963) upon which petitioner relied in his appeal, the court stated:

... we have little doubt that a sentence excessive in the sense that it has an entirely unwarranted adverse effect upon a prisoner may be attacked collaterally under 35a...

Canon made a constitutional challenge to his corporal punishment. The challenge failed because the whipping was authorized by Delaware's statute. However, the court remanded to determine whether the sentence had an "unwarranted adverse effect" due to Canon's underlying mental health issues. The relevance of Canon was not his

challenge per se but the courts remand to determine if the "effect" resulted in an excessive sentence. Conversely, in petitioner's case, the beatings (corporal punishment) were prohibited by Delaware statute and the United States Constitution. Albert's finding has never been determined by either Delaware court, but have been swept under a rug and labeled a prison condition. More importantly, the "beatings" being categorized as "prison conditions" as opposed to a form of corporal punishment is a nuance and factor such "beatings" still occur in our maturing society. A more poignant stance by this Court, permitting collateral review would most certainly facilitate the string of "Lady Justice" as opposed to meaningless words on paper.

The Delaware Supreme Court should have remanded to the lower court for a determination of whether the sentence was "excessive in the that [the beatings] had an entirely unwarranted adverse effect." The appellate court's logic that petitioner could enlist D.O.C. to submit a modification of sentence pursuant to 11 Del.C. § 4217 drops of judicial avoidance as opposed to judicial consistency (Appendix A, pp 4). The court's logic presupposes that D.O.C. would be willing to submit a motion pursuant to § 4217; two, that D.O.C. would somehow admit that they beat your petitioner; three, that the beatings have had an "adverse effect; and

four, require a parole board to affirm a convicted murderer is no longer a threat to the community before the motion could ever be presented to a Delaware court for ruling.

B. The deliberate, sadistic and tortuous denial of medication for petitioner's serious medical condition as a tactic to administer discipline was a most egregious form of corporal punishment. Medical provider Carla Miller stopped his medication because he submitted too many sick call requests after the beatings and was told it would only get worse if petitioner continued. Dr. Harewood told petitioner, "when your attitude improves so will your medication." This Court in *Estelle v. Gamble*, 429 U.S. 97, 104 S.Ct. 285 (1976) quoted in *Erickson v. Pardue*, 551 U.S. 89, 127 S.Ct. 2197 (2007) spoke on the VIII Amendment principles of a civilized standard of humanity and decency for those punished in prisons stating:

These elementary principles establish the government's obligation to provide medical care for those whom it is punishing by incarceration. An inmate must rely on prison authorities to treat his medical needs; if the authorities fail to do so those needs will not be met. In the worst cases, such failure may actually produce physical torture...

Is not "physical torture" a form of corporal punishment, and is

not corporal punishment a prohibition and cause for review of ones sentence? The words in Estelle, 47 years ago, are merely words on paper without "sting". Today, before this Court is an opportunity to effect change, to empower the 8th Amendment and to ripple change throughout America's prisons. A real opportunity to put a nail in the coffin of corporal punishment in any form. An opportunity to effect the consequence of "collateral review" of ones sentence should his/her 8th Amendment right be compromised.

CONCLUSION

Wherefore, and for the foregoing reasons your petitioner prays:

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Michael [Signature]

Date: April 6, 2021