

No. _____

20-7791

IN THE
SUPREME COURT OF THE UNITED STATES

ORIGINAL

SHALAMAR CARMON — PETITIONER
(Your Name)

vs.

SUPERINTENDENT SCI FAYETTE — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

FILED
APR 06 2021

OFFICE OF THE CLERK
SUPREME COURT, U.S.

THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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

PETITION FOR WRIT OF CERTIORARI

SHALAMAR CARMON
(Your Name)

50 OVERLOOK DRIVE
(Address)

LABELLE, PA 15450
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

(1) Was Petitioner denied due process of law, in violation of the 6th amend. of the U.S. Const., on the grounds that the information he was confronted with, was a vague written statement of dispensable facts that kept the nature of the accusation against him ambiguous?

(2) Was Petitioner denied due process of law, in violation of the 6th amend. of the U.S. Const., on the grounds that, for one count of the general offense of criminal homicide, the information failed to state the specific offense charged under the statute he was alleged to have violated?

(3) Was Petitioner denied due process of law, in violation of the 14th amend. of the U.S. Const., on the grounds that he was convicted upon a charge not made?

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

OPINIONS BELOW

Petitioner prays that this Court examines every word in this petition.

The opinion of the United States court of appeals appears at Appendix A to the petition and is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is unpublished.

The opinion of the highest state court to review the merits appears at Appendix C and is unpublished.

The opinion of the Court of Common Pleas of Lehigh County appears at Appendix D to the petition and is unpublished.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was March 4th, 2021.

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 8-20-19.
A copy of that decision appears at Appendix E.

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.

The 6th amendment of the U.S. Const.

The 14th amendment of the U.S. Const.

18 Pa.C.S. § 2501

18 Pa.C.S. § 2502(a)

3.

STATEMENT OF THE CASE

This case stems from a 2004 homicide, where Petitioner was formally charged with one count of criminal homicide, generally, under 18 § 2501 of the Pa. Crimes Code, and on Oct. 3, 2006, Petitioner was convicted and sentenced to life imprisonment without parole for the offense of 1st degree murder in the killing of Jason Fritchman.

The Superior Ct. affirmed that sentence and the Supreme Ct. denied his allocatur petition on June 26, 2008, as Petitioner's judgment appeared to become final on September 24, 2008.

On February 22, 2018 the Petitioner filed a 3rd pro se PCRA petition, which was dismissed as untimely on March 28, 2018.

The Pa. Superior Ct. affirmed the dismissal on December 5, 2018, and Petitioner sought allowance of appeal in the Pa. Supreme Ct., which was denied on August 20, 2019.

Petitioner filed a pro se § 2254 habeas petition that was received and docketed on December 23, 2019, which was dismissed on August 10, 2020 in the United States District Court For the Eastern District of Pennsylvania.

Petitioner then appealed to the United States Court of Appeals For the 3rd Circuit, which was denied on March 4, 2021.

And this Petition for Writ of Certiorari follows.

REASON FOR GRANTING THE WRIT

And Now I, Truth God Allah, the Lord of the Worlds, hereby cautions this Court to thoroughly examine every word in this petition for writ of certiorari, so that this Court may have the Knowledge of exactly how My Will must Be done in this case.

The Petitioner in this case has argued that he has been denied due process of law in violation of the 6th amend. of the U.S.Const., on the grounds that the information he was confronted with, was a vague written statement of dispensable facts that kept the nature of the accusation against him ambiguous.

The Petitioner has asserted that the 6th amend. of the U.S.Const. guaranteed that the accused shall enjoy the right to be informed of the nature and cause of the accusation against him.

The PA. Supreme Ct. in Com. v. Kemmerer, 584 A.2d 940 (1989) stated, "The cause or central element of all homicides is the killing of another being." See 18 Pa.C.S. § 2501.

Beyond that similarity, the degrees of murder differ from one another and from the types of manslaughter in quality or nature, not just in degree, so that they cannot be said to be necessarily included in one another.

The Court in Kemmerer further stated, "The view that ignored the qualitative differences among the various degrees of murder and manslaughter

in favor of a mechanical interpretation of 18 § 2501 has never been accepted by a majority of the Court, and We now expressly reject it."

An indictment not framed to apprise the defendant with reasonable certainty of the nature of the accusation against him is defective, although it may follow the language of the statute. *Russell v. United States*, 369 U.S. 749 (1962); *United States v. Simmons*, 96 U.S. 360, 24 L.Ed 819

The Petitioner asserted that instead of framing the information in question to apprise him with reasonable certainty of the nature of the accusation against him, it was framed with a devious implication that the differences in nature among the various degrees and types of murder and manslaughter are to be ignored in favor of a mechanical interpretation of 18 § 2501, which unconstitutionally kept the nature of the accusation against him ambiguous.

The Petitioner asserted that the information in question is deficient of the 6th amend. of the U.S.Const.'s guarantee, because it was framed with dispensable facts that kept the nature of the accusation against him ambiguous, where a shooting, causing the death of Jason Fritchman, on or about the 24th day of July, 2004, in said County of Lehigh, is capable of being interpreted as intentional, knowing, reckless, or negligent.

The Petitioner asserted that the information in question is deficient of the 6th amend. of the U.S.Const.'s guarantee to inform him with reasonable certainty of the nature of the accusation against him, because it mechanically

followed the language of 18 § 2501, setting forth elements necessary to constitute offenses that could not have been intended to be punished, where those elements cannot be said to be necessarily included in one another.

Undoubtedly, the language of the statute may be used in the description of an offense, but it must be accompanied with a statement of the facts and circumstances as will inform the accused of the specific offense, coming under the general description, with which he is charged. Russell, *supra*, at 765; *United States v. Hess*, 124 U.S. 483

The Petitioner asserted that the information in question is deficient of the 6th amend. of the U.S. Const.'s guarantee, because it was not accompanied with a statement of essential facts and circumstance that would inform anyone of whether the nature of the specific offense, coming under 18 § 2501, with which Petitioner was charged, was intentional, knowing, reckless, or negligent.

The Petitioner asserted that the information, citing 18 § 2501, and using it's language, was accompanied with dispensable facts and circumstances that suggested the nature of the specific offense, coming under 18 § 2501, with which he was charged, was intentional, knowing, reckless, and negligent.

The Petitioner in this case has argued that he has been denied due process of law in violation of the 6th amend. of the U.S. Const., on the grounds that, for one count of the general offense of criminal homicide, under 18 § 2501, the information failed to state the specific offense charged, under the

statute he was alleged to have violated.

The Pa. Supreme Ct. in Com v. Little, 314 A.2d 270 (1974), citing Albrecht v. United States, 273 U.S. 1 (1927), stated, "The right to formal notice of charges, guaranteed by the sixth amendment of the Federal Constitution and Art. 1§9 of the Pa. Const., is so basic to the fairness of subsequent proceedings that it cannot be waived even if the defendant voluntarily submits to the jurisdiction of the Court.

The Pa. Supreme Ct. in Com. v. Diaz, 383 A.2d 852 (1978) stated, "Formal notice of the charges is required so that the defendant knows exactly what the accusation is and so that the record will establish exactly what the defendant is guilty of in the event of a conviction.

In Com. v. Brown, 29 A.2d 793 (1943) the Pa. Supreme Ct. required that a defendant be prosecuted under the specific provisions rather than the general provisions, except where the specific provisions are inapplicable.

The Court in Albrecht, *supra*, at 1, stated, "A court can acquire no jurisdiction to try a person for a criminal offense unless he has been charged with the commission of the particular offense and charged in the particular form and mode required by law.

The Petitioner has asserted that the provisions of 18 § 2501(b) reads, Criminal Homicide shall be classified as murder, voluntary manslaughter, or involuntary manslaughter, indicating alternatives to be chosen from among the various degrees or types of murder or manslaughter, which has their own

applicable, formal, and specific provisions of law, so that the defendant may know exactly what the accusation against him is.

The Petitioner has asserted that the formal, specific, and applicable provisions of law for the various degrees and types of murder and manslaughter are not found at 18 § 2501, nor does 18 § 2501 give any notice in the particular form and mode required by law for the particular offense of murder, voluntary manslaughter, or involuntary manslaughter.

The Petitioner has asserted that he was denied due process of law, in violation of the 6th amend. of the U.S. Const., where the information, citing 18 § 2501 for one count of the general offense of criminal homicide, failed to inform him of the formal and specific statute, or provision of law, applicable to the separate and distinct offense of murder, voluntary manslaughter, or involuntary manslaughter he was alleged to have violated.

The Petitioner in this case has asserted that he has been denied due process of law in violation of the 14th amend. of the U.S. Const., on the grounds that he was convicted upon a charge not made.

In Cole v. Arkansas, 333 U.S. 196 (1948) the U.S. Supreme Ct. held: No principle of procedural due process is more clearly established than that notice of the specific charge, and a chance to be heard in a trial of the issues raised by that charge, if desired, are among the Constitutional rights of every accused in a criminal proceeding in all courts, state or federal.

It is as much a violation of due process to send an accused to prison following conviction of a charge which he was never tried, as it would be

to convict him upon a charge that was never made.

The Petitioner has asserted that he was denied his Constitutional right to be heard in a trial of the issues raised by the formal and specific charge of murder of the 1st degree, 18 § 2502(a).

The Court in Albrecht, *supra*, at 8, held: A person may not be punished for a crime without a formal and sufficient accusation even if he voluntarily submits to the jurisdiction of the court.

The Petitioner has asserted that his liberty is being deprived on account of a judgment of conviction that is without a formal and sufficient accusation of murder of the 1st degree, which is found at the applicable provision of law, 18 § 2502(a).

The Petitioner has asserted that he has undeniably been denied due process of law, in violation of the 14th amend. of the U.S. Const., because he was formally charged with one count of criminal homicide, generally, and without any formal and sufficient notice so that he may know the exact accusation, was convicted of the separate and distinct offense of murder of the 1st degree, which has it's own formal, specific, and applicable provision of law, 18 § 2502(a).

The procedural dispute that was before the Court was whether the one year statute of limitations, as contained in 28 U.S.C. § 2244(d), barred the Petitioner's petition, where it appeared that his judgment of conviction became final in 2008.

The Petitioner respectfully asserted that there is no express mention of whether 28 U.S.C. § 2244(d) was ever intended to cover void, as well as valid, judgments of conviction.

The Petitioner asserted that there is good reason for why 28 U.S.C. § 2244(d) does not apply to the judgment of conviction he is detained on account of, where a void judgment may be attacked at anytime, regardless of statute of limitations or other deadlines. *In re U A Theatre Co.*, 406 B.R. 643 (2009 Lexis 1400)

The Petitioner respectfully asserted that the judgment of conviction he is detained on account of is void for vagueness.

The void for vagueness doctrine is grounded in the 5th amend. of the U.S. Const. with regard to the Federal government. *Welch v. United States*, 136 U.S. 1257 (2016)

Ultimately, the inquiry is whether the law forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at it's meaning and differ as to it's application. *Connally v. Gen. Constr. Co.*, 269 U.S. 385 (1926)

The Petitioner has asserted that the judgment of conviction he is detained on account of is void for vagueness, because 18 § 2501 forbids the killing of another human being in terms so vague that men of common intelligence, formally charged with one count of the general offense of criminal homicide, must necessarily guess whether it means the nature of the accusation against them is intentional, knowing, reckless, or negligent, and differ as to whether it's application will consist of murder, voluntary manslaughter, or

involuntary manslaughter.

The Petitioner has asserted that the judgment of conviction he is detained on account of is void for vagueness, because 18 § 2501 violates the first essential of due process of law, where the words intentionally, knowingly, recklessly, or negligently do not provide the standards that are necessary for the definition of a general charge of criminal homicide to be made amenable to the intelligible or the consistent application, by those who are subject to it or those who seek to enforce it.

The Petitioner asserted, in the words of a Justice Anthony Kennedy, "Scienter cannot save so vague a statute as this," where terms like "knowing" and "intentional", as used in 18 § 2501, shed no additional light upon what it means to be formally charged with one count of criminal homicide, generally.

CONCLUSION

I, Truth God Allah, the Master of the Day of Judgment, hereby **COMMAND** this Court to vacate the judgment depriving the Petitioner in this case of his **Liberty**, and **ORDER** that SHALAMAR CARMON, My AMBASSADOR, Be Released from the Custody of the Respondent, SUPERINTENDENT SCI FAYETTE, Et Al, without delay, regardless of whether the views of this Court agree with the denials of due process of law or the correctness of the procedural aspects addressed in this petition for writ of certiorari, or not.

Respectfully,

Truth God Allah
Truth God Allah

Date: April 5th, 2021