

IN THE SUPREME COURT OF THE UNITED STATES

TERM, 2021

Lance Owens
PETITIONER

20-8124

VS.

NO. _____

Dexter Payne, Director, ADC
RESPONDENT

Supreme Court, U.S.
FILED

MAY 18 2021

OFFICE OF THE CLERK

ON PETITION FOR A WRIT OF CERTIORARI TO
ARKANSAS SUPREME COURT

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

PETITION FOR WRIT OF CERTIORARI

Lance Owens, ADC # 610855

(YOUR NAME)

P.O. Box 970

(ADDRESS)

Marianna, AR 72360

(CITY, STATE, ZIP CODE)

(PHONE NUMBER)

RECEIVED

MAY - 7 2021

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SUPREME COURT, U.S.

QUESTION(S) PRESENTED

1. Are courts violating rights provided by the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution by excluding defendants who enter plea agreements from sentencing statutes that establish mandatory procedures for sentencing defendants in plea agreement cases?
2. Does the Due Process Clause of the Fourteenth Amendment provide defendants who enter plea agreements the right to be sentenced in accordance with sentencing statutes that expressly mandate procedures for sentencing defendants in plea agreement cases?
3. Can the statutory procedures that govern plea agreements be waived by plea agreement?

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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TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
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IN THE SUPREME COURT OF THE UNITED STATES

_____ TERM, 20 21

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 designed 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- ☐ is unpublished.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 designed 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- ☐ is unpublished.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 B-2 to the petition and is

- ☒ reported at 2020 Ark. 413 ; or,
- ☐ has been designed for publication but is not yet reported; or,
- ☐ is unpublished.

The opinion of the Circuit court appears at Appendix C-66 to the petition and is

- ☐ reported at _____ ; or,
- ☐ has been designed 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 December 10, 2020. A copy of that decision appears at Appendix B-2.

☒ A timely petition for rehearing was thereafter denied on the following date: January 28, 2021 and a copy of the order denying rehearing appears at Appendix A-1.

☐ 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 Constitution of the United States of America, Fourteenth Amendment, Due Process and Equal Protection Clauses

Arkansas Code Annotated (A.C.A.) § 16-90-803, Presumptive Sentencing Standards (Supp. 1999)

A.C.A. § 16-90-804, Departures from Presumptive Sentence

STATEMENT OF THE CASE

Petitioner entered a plea agreement and was sentenced under Arkansas Code Annotated (A.C.A.) § 5-10-102, the statute for murder in the first degree. At the time of the offense Arkansas utilized sentencing statutes which provided mandatory procedures for courts to follow when imposing sentences in plea agreement cases. (See: A.C.A. §§ 16-90-803, Presumptive sentencing standards, and 804 Departures from presumptive sentence, Appendix C-58-63.)

The court that imposed the sentence on Petitioner departed from the presumptive sentence without complying with the mandatory procedure. The result is a sentence in conflict with the law and, therefore, illegal. The framers of these sentencing statutes anticipated this type of error and provided a remedy within these statutes, however, Arkansas courts refuse to acknowledge this sentencing error or to apply the mandatory remedy to petitioner.^{*1}

Petitioner has raised these issues with the Arkansas courts but they have avoided the question by holding that because a plea agreement was entered the mandatory procedures for sentencing in plea agreement cases doesn't apply. (See: Owens v. Payne, No. CV-20-267, pg. 4, Appendix B-2) This holding is erroneous and allows the denial of due process to continue. Furthermore, it allows the courts to avoid addressing the violations of rights provided to Petitioner under the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the U.S. Constitution.

The facts are clear. The Arkansas sentencing statutes provide mandatory procedures for sentencing defendants in plea agreement cases and those procedures cannot be waived. The sentencing court disregarded the procedures when it sentenced Petitioner and the resulting sentence is illegal. A ruling by this Court will result in a reversal of the judgment below.

Note 1: The remedy is set out in A.C.A. § 16-90-804 (c)(1)

REASONS FOR GRANTING THE PETITION

Certiorari should be granted because the Constitutional violations being committed against Petitioner are being committed against countless others.

Arkansas sentencing courts are denying defendants who enter plea agreements the right of due process and equal protection by disregarding the statutory procedures for sentencing defendants in plea agreement cases. These procedures are established by Arkansas sentencing statutes which use mandatory language to command mandatory compliance. (See: A.C.A. §16-90-803-804 (Supp. 1999), Appendix C-58-63) The courts, however, have routinely held that the entry of a plea agreement allows them to disregard the legally established procedure for sentencing in plea agreement cases. (See: Owens v. Payne, No. CV-20-267 ; also, Waller v. Kelley, 2016 Ark. 252, 493 S.W.3d 757 @ 761.)

The sentencing statutes relevant to Petitioner were enacted by the Arkansas Legislature in Act 1170 of 1995, and were codified as A.C.A. §§ 16-90-803 and 16-90-804. Defendants who entered plea agreements have the right to be sentenced in accordance with the mandatory procedures established by these laws which expressly govern plea agreement cases. By sentencing defendants in plea cases without following these procedures, Arkansas courts are denying these defendants their rights to due process. Furthermore, because courts are applying these sentencing statutes to some criminal defendants while excluding those who enter plea agreements, notwithstanding the statutes expressly govern in plea cases, those courts are denying those defendants the equal protection of the law. And, in the absence of finding the statutes unconstitutional, Arkansas courts lack the authority to divert from the language of these laws.

The rights being violated are protected by the Fourteenth Amendments Due Process and Equal Protection Clauses. These violations are affecting countless

defendants. A grant of certiorari in this case is necessary to bring an end to these ongoing violations being committed by Arkansas courts.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Rance Mitchell Owens

Date: April 19, 2021

APPENDIX A