ORIGINAL

No. 21-1363

IN THE
SUPREME COURT OF THE UNITED STATES

BRANDON S. LAVERGNE
PETITIONER

VS.

DARRELL VANNOY, WARDEN
THE LOUISIANA STATE PENITENTIARY
RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI
FOR THE UNITED STATES
FIFTH CIRCUIT OF APPEALS

PETITION FOR CERTIORARI

BRANDON S. LAVERGNE
DR CCR E-11 #424229
LOUISIANA STATE PENITENTIARY
ANGOLA, LOUISIANA 70712

QUESTIONS PRESENTED

1) Is a criminal sentence of life without parole in solitary confinement a cruel and unusual sentence?
2) If one federal district court finds I was not sentenced to life in solitary, but another federal district court finds I was sentenced to life in solitary, is that grounds to file a 60(b) petition?
3) If two federal district courts disagree on the same issue, does that create grounds to say an issue is debatable?
4) If the U.S. 5th Cir. admits I am being held for life in solitary confinement per a plea agreement, but then upholds a district court ruling that claims I was not in solitary due to a plea agreement, should the 5th Cir. have ordered me to receive habeas corpus relief?
5) If a defense attorney tells his client to plead guilty and accept an unlawful sentence, is that ineffective assistance of counsel?

LIST OF PARTIES

WARDEN DARRELL VANNOY
Former Warden

WARDEN TIM HOOPER
Current Warden

LOUISIANA STATE PENITENTIARY
State of Louisiana

TABLE OF CONTENTS **Page #**

INDEX OF APPENDIX **Page #**

TABLE OF AUTHORITIES **Page #**

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari be issued to review the judgment below.

OPINIONS BELOW

For cases from Federal Courts:

The opinion of the United States Court of Appeals appears at Appendix B to the petition and is unpublished.

The opinion of the United States District Court appears at Appendix A to the petition and is reported at [LaVergne v. Vannoy, WD of La. 14-2805]. It is not known if it is published.

JURISDICTION

For cases from the Federal Court:

The date on which the United States Court of Appeals decided my case was: October 27th, 2021. A timely petition for rehearing was denied by the United States Court of Appeals on November 16th, 2021. Appendix C.

The jurisdiction of this court is involved under 28 U.S.C. § 1254 (1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

5th amendment right to due process and equal protection

6th amendment right to counsel

8th amendment right to be free of a cruel and unusual sentence

14th amendment right to equal protection and due process

La. R.S. 15:824 (A)

La. R.S. 15:865

La. R.S. 14:30

La. R.S. 14:31 (A) (1)

La. CCR - Art. 930.4

STATEMENT OF THE CASE

Imagine having to live in your bathroom the rest of your life, but not in your master bathroom, in your small guest bathroom. For a second imagine living the rest of your life in a 6 x 10 foot area; 60 square feet. When someone hears a person has been criminally sentenced to life without parole in these conditions of confinement specifically, sentenced to life without parole in solitary confinement, that shocks the conscience.

You immediately ask yourself what did a person do to get a sentence such as this. You also ask yourself how did a person get a sentence such as this.

In 1979, a woman by the name of Lisa Pate's remains were found behind a home in rural Acadia parish, La. No cause of death could be determined. About one year later, two jail house informants came forward claiming the Petitioner, Brandon S. LaVergne, had told them he had killed the woman in question. Yet their stories were completely different. The first informant, Kent Kloster, claimed the Petitioner had sadistically beat Lisa Pate for hours with a bat, kicked her, punched her and then finally strangled her. Yet her autopsy showed NO pre-mortem injuries. The Petitioner was a highly trained active duty United States Army soldier at the time of this alleged killing. He had received years of martial arts training even before he

had entered the Army. Had Lisa Pate been beat with a bat, kicked, or punched by the Petitioner for hours, she would have had multiple broken bones, skull fractures, and would have more than likely died from those injuries alone. Yet no signs of such a beating were found on Lisa Pate's remains. Kloster also specifically said Pate had left with the Petitioner voluntarily to engage in prostitution and that the Petitioner had not kidnapped her. That is a key fact I will soon explain.

The second informant, Michael Ballio, claimed that Lisa Pate and the Petitioner went to meet a third man named "8-Ball" for a drug sale. It was allegedly a set up where Pate and this "8-Ball" tried to rob the Petitioner. The Petitioner according to Ballio shot "8-Ball" and then beat Pate to death. Again, Pate's remains showed no sign of that beating. No "8-Ball" was ever found and Ballio again stated Pate allegedly left with the Petitioner voluntarily to sell him drugs.

About 8 years later, an Acadia Parish grand jury declined to indict the Petitioner for second degree murder in the Lisa Pate case in April 2008. The case though took a sudden turn in 2012. On 19 May 2012, 21-year-old Michaela Shunick disappeared after a night of drinking and drug use with friends while riding her bike home in Lafayette, La. Later that day the Petitioner went to a hospital over 100 miles from Lafayette in New Orleans, La. with multiple stab wounds. These

stab wounds were declared life threatening and required surgery.

Over the next several weeks, the Petitioner became a suspect and was arrested while on his way home from working on an oil and gas production platform in the Gulf of Mexico.

The state had no evidence Shunick was dead. Nor did the state have any direct evidence the Petitioner was involved. So the state took the Lisa Pate case out of Acadia Parish, La. and moved it to Lafayette Parish with no links to Lafayette Parish, combined the Pate case with the Shunick case on the same indictment and then charged the Petitioner with two counts of 1st degree murder on the same indictment, with the underlying aggravating factor being kidnapping in both cases, but, even the two jail house informants never said a kidnapping took place in the Lisa Pate case and there was no witnesses at all in the Shunick case.

Shortly after the Petitioner's indictment, he told his lawyers Lisa Pate called him and asked him to pick her up. The two then went to Fort Polk, La. where the Petitioner was stationed. The following day Pate told the Petitioner she wanted to go back to Lafayette, about a three hour drive away. The Petitioner told Pate to wait until the following day because it was late and he would drive her home as soon as he was released from final formation about 3:00 pm. the following day. It was

about 7:00 p.m. at night when Pate was asking to leave. It would have been about a five to 6-hour round trip drive with the Petitioner having to make first formation at 6:00 a.m.

Pate agreed to wait until the next day and the Petitioner went to sleep. About an hour later, the Petitioner woke up to Pate leaving out of his barrack's room with his wallet and keys trying to steal his money and car. The Petitioner jumped up and physically stopped Pate from stealing his property. Pate told the Petitioner she was sorry and would make it up to him. She went into the bathroom to clean up and take a shower. After about 30 minutes, when Pate didn't come out or answer the Petitioner, he went check on her and found her dead from a drug overdose. She had pills, a pipe and crack cocaine in the bathroom when the Petitioner found her, her mouth and face covered in vomit.

The Petitioner was already out on bond from an arrest and didn't want his bond revoked or for him to get into any more trouble with the Army, with Pate having drugs in the barracks. He didn't have time to drive all the way back to Lafayette. So he drove Pate's remains to Acadia Parish to save himself about two hours on the round trip and never reported the incident. The house belonged to a drug dealer who had died in a car wreck and the Petitioner thought when Pate was

found, the autopsy would show she died of a drug overdose at the drug house and no one would get in trouble since the drug dealer was already dead. Pate, herself, had a long history of drug use, drug dealing, prostitution, and robberies. The Petitioner was 20 at the time and Pate was 35.

The Petitioner then told his lawyers that while he was driving home on 19 May 2012, he had a little to drink and had accidently struck Michaela Shunick on her bike. He stopped to see if she was ok. He offered to pay for her bike and drive her home. The Petitioner was now a convicted felon. He had just gotten a very good job with a company that normally didn't hire felons. He didn't want a DUI and he also knew he had a gun in his truck he kep for self defense, since he traveled so much for work. When Shunick turned down his offer of a ride, the Petitioner told her he wasn't waiting for the cops to show up and was leaving. That is when Shunick informed the Petitioner she had drugs on her and didn't want to wait for the cops either. On her own, Shunick got into the truck while the Petitioner put Shunick's bike in the back of his truck. When the Petitioner started driving, Shunick asked the Petitioner how much money he was going to give her for the bike. The Petitioner told her since only the tire was damaged, he would give her $100.00. Shunick demanded $500.00. When the Petitioner told her no, Shunick threatened to call the

cops.

The Petitioner then pulled over the truck and told her to exit his vehicle. Shunick refused and again demanded the $500.00. The Petitioner again told her to get out of his vehicle. Shunick then grabbed her phone saying she would call the cops. The Petitioner didn't want Shunick to know he had a gun, just in case the cops become involved, so he pulled out a knife to scare her into getting out of his truck. But Shunick froze in fear and didn't move. The Petitioner realized he had over-reacted and put down the knife, told Shunick he was sorry, that he only wanted to go home, and would give her the $500.00 she wanted and that he wouldn't hurt her and that he put the knife down to show her he was de-escalating.

Shunick didn't say anything and the Petitioner started to drive away. Shunick then suddenly sprayed the Petitioner with mace in his face, blinding him. Then she picked up the knife the Petitioner had put down to defuse the situation, and started repeatedly stabbing him in his neck, shoulder, arm, hand, chest and back, all on his right side.

Still blinded, the Petitioner took the knife from Shunick and when she continued to strike and attack him, he stabbed her, he believes twice, to get her off him and because he did not know if she had other weapons. The Petitioner didn't stab her further because

Shunick stopped attacking him and because he realized what he was doing. He threw the knife down and asked Shunick why did she attack him when he told her he was going to give her the money she wanted and had disarmed himself to show her he wasn't going to hurt her. She said nothing and suddenly fell over.

The Petitioner was a trained combat life saver in the Army and had taken extensive first aid and first responder training for his job in the oil and gas industry. He checked Shunick for a pulse and felt nothing. The Petitioner then drove Shunick to a nearby hospital and checked her for a pulse the second time and still felt nothing.

The Petitioner thought Shunick was dead and knew his blood was all over her. He didn't know how to explain the situation and was in shock. He panicked also because he had lost custody of his beloved daughter by going to prison the first time. A friend of his, that he had a short fling with, was pregnant with his second child. The Petitioner could only think about losing another child if he went to prison for the gun. The Petitioner didn't believe he had done anything wrong with Shunick up to that point.

The Petitioner knew he needed medical attention, but, also knew he couldn't show up the hospital with what he thought was a dead body. So he drove to a field northwest of Lafayette near his home. Along the way,

he pulled out the gun, still in a state of shock and disbelief, thinking about killing himself. When the Petitioner stopped the truck, Shunick, who had either passed out or was playing dead, had gotten ahold of the knife the Petitioner had thrown down. She suddenly popped up and stabbed the Petitioner in the chest. Up to that point the Petitioner thought she was dead. So, in complete surprise, he shot once hitting her in the head killing her instantly. Had he known she was alive, he would have brought her to the hospital.

The Petitioner then told his lawyers the shooting itself cemented that he couldn't call the police, because he would then have had to admit he had a gun which he knew could have led to prison and the possible loss of another child. The Petitioner still believed he acted completely in self defense. The Petitioner then went to a graveyard, not wanting to just place Shunick's body just anywhere. Then he drove to New Orleans. He told the police he had been stabbed in a robbery, and received medical treatment. He then went back the next day and buried Shunick and later destroyed his truck.

Without even looking at any evidence and considering even a manslaughter defense, the Petitioner's lawyers immediately told him he had committed a murder. The Petitioner protested their statement and had told his lawyers what happened to aid in his defense and not as a confession. The

Petitioner thought his only crime was obstruction of justice and having the gun.

Without the Petitioner's knowledge or permission, his lawyers went to the DA asking for a plea and basically told the DA everything the Petitioner said. The lawyers then came back to the Petitioner with a plea agreement already written out saying he would give full statements to police, give the bodies' locations, and accept a sentence of life in solitary confinement. He objected to the sentence and that he was being asked to plead guilty in the Lisa Pate case. He told his lawyers he had not killed Pate and would never say he did.

A day later, his lawyers came back and showed him a new plea claiming the solitary had been removed and that he could take a "best interest" plea in the Pate case where he was not admitting to anything and just taking the time on the charge. At sentencing, the Petitioner was sentenced to the entire plea agreement which included a vaguely worded solitary confinement clause written intentionally to hide what it meant to the Petitioner. Additionally when the Petitioner later challenged the jurisdiction of the Lisa Pate case, the courts ruled he had admitted to the facts of the Lisa Pate case despite it saying in the transcript he was "unwilling or unable" to admit to the facts.

The same day he was sentenced to life in solitary confinement at the Louisiana State Penitentiary. He was

taken to the Louisiana State Penitentiary and put in solitary confinement exactly as he was sentenced.

When the Petitioner filed post conviction applications, he filed a complaint with the attorney disciplinary board against J. Clay LeJeune and Burleigh Doga, his attorneys. They both admitted in affidavits the state didn't have jurisdiction of the Lisa Pate case, but never filed motions to quash. They also admitted to knowing the solitary confinement was in the plea, but didn't think the state would actually carry the sentence out. The district court denied the post conviction without an evidentiary hearing and the state appeals court denied his appeal 18 days after it was filed, allegedly for it not having a "certificate of service." Then the state Supreme Court in [LaVergne V. State, KH-40-2014 (La. 2014)] denied that first application as being "repetitive" under La. CCP Act. 930.4.

When the Petitioner went to the U. S. Western District of La., that court ruled in his habeas application that he had admitted the facts in the Lisa Pate case and based on that alone was jurisdiction established. The U. S. District Court also ruled he was not sentenced to solitary confinement, even though in Document 53-1 pg. 9 of [LaVergne V. Vannoy, WD of La. 14-2805] the state said the Petitioner "agreed" to the solitary confinement while taking the plea.

It is a provable fact this plea agreement had been

rewritten from its original form to hide the solitary confinement language, making the Petitioner believe the solitary confinement clause had been removed. The U. S. Western District ruled the Petitioner needed to file a 1783 constitutional tort challenge to the conditions of confinement and denied his habeas application. The U. S. 5th Cir. denied his COA. The Petitioner sought review from this court but the clerk refused to file his petition claiming he had not filed it properly.

The Petitioner went ahead and filed that 1983 [LaVergne V. Stutes, et al., MD of La. 17-1696] and that court ruled the Petitioner was barred under [Heck V. Humphry, 114 S. Ct. 2364 (1774)] and ruled this is in fact a sentencing issue. Therefore the Petitioner went back to the U. S. Western District and filed a 60 B alleging fraud in both establishing jurisdiction and in the solitary confinement issue. That 60 B was denied and the Petitioner sought a COA with the 5th Cir. [LaVergne V. Vannoy, U. S. 5th Cir. #19-30912 while #17-30712 was pending in a separate suit [LaVergne V. McDonald, et al., MD of La. 19-709] that court on 3 Dec. 2020 in Document 15 pgs. 21, 22 and 26 F/N 134, 135, 153 found the Petitioner was in fact sentenced by the criminal court to life in solitary confinement and that the Petitioners was probably the only prisoner in the entire state of Louisiana with a sentence like that. See Appendix G.

Then in [Escobarriverria V. Vannoy, et al., MD of La. 17-478] Document 56 pg. 143 Appendix H. The Petitioner's custodian Warden Darrell Vannoy through La. Ass. Attorney General Kendale Thompson admitted the Petitioner was being held in solitary confinement for life per his plea agreement. The Petitioner attempted to supplement McDonald's ruling and the admission by Warden Vannoy into U. S. 5th Cir. #19-30912. Judge Haynes blocked that supplement and then she ruled against the Jurisdictional claim only and never addressed the illegal sentence at all. Therefore the Petitioner was forced to file a second 60 B petition into the U. S. Western District using the McDonald ruling and Warden Vannoy's admission to show where the original ruling denying habeas corpus relief claiming he was not sentenced to solitary confinement had been rejected as false by the U. S. Middle District in McDonald and admitted to by Warden Vannoy. The U. S. Western District denied that 60 B Appendix A and the U. S. 5th Cir. denied the COA [LaVergne V. Vannoy, U. S. 5th Cir. #21-30133] Appendix B. Claiming the issue wasn't debatable.

Shortly after #21-30133 was denied. The U. S. 5th Cir. admitted in [LaVergne V. Stutes U. S. 5th Cir. #19-30842] pg. 3 sec. I paragraph 1 that the Petitioner was being held in solitary per his plea agreement. See Appendix I. Based on the ruling the Petitioner asked for

a rehearing of #21-30133 and the rehearing was denied. Appendix C. The Petitioner now comes to this court.

Also of note, the Petitioner represented himself at a federal jury trial in 2016 [LaVergne V. Cain, et al., MD of La. 13-233] and the jury found former Warden N. Burl Cain had violated the Petitioner's 8th amendment right by refusing to give him medical treatment for sleep apnea because he was in solitary confinement. So the Petitioner has already proven he has been injured by this illegal sentence being carried out.

Reasons for Granting the Petitioner

The criminal sentence of life in solitary confinement is cruel and unusual. When I initially brought this issue to the U. S. Western District and U. S. 5th Cir., these courts denied that was my sentence. Then when I brought to those courts clear evidence that I am in fact sentenced to life in solitary confinement per my plea agreement, both courts refused to change their original rulings. This is also taking into account the state said I "agreed" to the solitary confinement. As this court knows, I can't knowingly and intelligently agree to an illegal sentence or plea agreement.

This court found in [Wilson V. Seiter, 111 S. Ct. 2321 (1991)] that condition of confinement are not punishment unless it was imposed as part of a criminal sentence. Therefore the 8th amendment violation found in [LaVergne V. Cain, et al., MD of La. 13-233] is a part of my punishment since I was denied medical treatment due to my solitary confinement housing being part of my criminal sentence.

Additionally, I have been exposed to the following atypical conditions of confinement due to my criminal sentence and plea agreement:

A) I am held in 23 hours a day lock down by myself in a 6 x 10 foot cell (60 square feet), while Louisiana's general population is held in open doors. Even Louisiana's death row is not held in solitary.

B) I only get 3 hours of outside rec. by myself in a cement dog cage like area with no grass, weights or water coolers. I am chained up and walk by myself to this cage and then walk by myself back. General population gets hours of rec. per day in open yards and gyms. I am being held in the same building as death row. Even death row walks together as a group without chains to a yard about 50 x 100 feet in size, where they have weights, water coolers, and grass in their yard. They also rec. together and have basketball games against general population. My rec. area used to be 15' x 40'. The prison actually cut my rec. area in half to expand death row's rec. area. The prison is currently building new rec. cages for solitary confinement that are even smaller than the ones we currently have.

C) I am not offered any free educational programs in solitary confinement. General population has free college programs and votech programs. Any education I take must be done by correspondence and only at my own expense. Even death row get GED classes and other cognitive therapy classes like anger management, substance abuse, etc. Solitary confinement doesn't have access to any of these programs. Education programs are mandated under state law.

D) I am not allowed to attend any religious services or bible studies. General population has church access 7 days a week. Even death row are allowed to attend

weekly church services as a group.

E) In general population all men are required to have jobs and are paid for these jobs. These jobs pay up to $1.00 an hour. That is $40.00 a week, $160.00 a month. I am not allowed to have a job or get paid.

F) The lights in the cell blocks are dimmed, but never turned off. I eat alone. I have no direct access to the law library or regular library. My access to visits are two a month that must be preapproved in advance. Many times they are denied. General population gets up to 20 visits a month that are not needed to be preapproved. Also, general population and death row do not eat alone, with better library access.

G) While in "Max Custody," I cannot apply for a pardon, which having a life without parole sentence is my only administrative means of release. Those with parole are also denied while in solitary.

H) Anytime I leave my cell area, I have to be in chains. General population is never put in chains except to leave the prison itself.

I) The prison also holds a number of violently mentally ill men in solitary with me. They throw urine, feces, batteries, and boiling water on people. They stab people, expose themselves and openly masturbate. They talk and scream 24 hours a day. I'm trapped in a cell without a way to walk away or stay away from them.

J) In the cells I am exposed to excessive heat and again I can't find a way to cool down in the Louisiana summers being trapped inside the cells in solitary confinement.

Every other prisoner in Louisiana must go through a classification process to be placed in solitary. I didn't go through a classification process at all. A state district court judge and district attorney decided where and how I would serve my sentence without the jurisdictional powers to make that choice. My sentence is solitary at the Louisiana State Penitentiary. Under La. R. S. 15:865 solitary confinement cannot be used for non-disciplinary reasons. Under La. R. S. 15:824(A) a judge cannot name a person's prison. The judge can only sentence you to the state department of corrections. Under Louisiana Administrative Cove Title 22, all prisoners must be properly classified by a prison classification board made up of two members. I didn't even get that.

My placement in solitary for life violated this court's rulings in both [Wilkerson V. Austin, 543 U. S. 209 (2003)] that mandates I must receive due process before being placed in solitary. And this court's ruling in [Sandin V. Conner, 515 U S. 472 (1995)] where a lifetime of solitary confinement is so "atypical" to ordinary incidents of normal prison life, that due process is required before being placed in it.

Under Louisiana State case law in [State V. Johnson, 53 So. 2d. 782-220 La. 64 (1951)] an illegal sentence is no sentence at all. It doesn't exist in the eyes of Louisiana law. In [State V. Blue, Sup. 1995, 315 So. 21 281 La.] and [State V. Lisenby, (La. App. 3rd) 1988 So. 22. 976] just naming the state penitentiary is illegal and the entire sentence must be vacated to correct the illegal part. Under Louisiana contact law, if a single provision of a contract is illegal, the entire contract is void. Therefore under Louisiana law by me being sentenced to life in solitary at the Louisiana State Penitentiary is in violation of La. R. S. 15:865 and La. R. S. 15:824(A). My sentence and plea agreement never existed in the eyes of Louisiana law and I've been held under an illegal custody order for nearly 10 years. The only remedy is to vacate the sentence and plea agreement entirely.

Further, the plea agreement itself was intentionally written to make me believe the solitary confinement demand was no longer in the plea agreement due to me vehemently objecting to it stating, "I'd rather be executed then live the rest of my life in a cell." So the state claiming I "agreed" to that sentence is a lie.

Additionally, I was represented by counsel the entire plea process. My counsel did the following:

A) They never told me the solitary confinement clause was still in the plea.

B) They never objected to the solitary confinement being in the plea.

C) The did not object to the court sentencing me to solitary at the sentencing hearing.

D) The did not appeal the sentence of solitary once it was imposed.

E) They told me to sign that plea in the first place.

In [Johnson V. Vribe, 700 F.3d 1243 (9th Cir. 2012)] amend on issue of rehearing by [Johnson V. Vribe, 700 F.3d 413 (5th Cir. 2012)] the court found counsel was ineffective when he allowed the defendant to plea to an unlawful sentence. Sep also [United States V. Conley, 349 F.3d 837 (5th Cir. 2003)] and [United States V. Smith, 454 Fed. Apex. 260, 261-62 (5th Cir. 2011)]. These are the same lawyers who told me to plea to crimes I had not committed, never challenged the jurisdiction, and never attempted to mount any type of defense. Overall, they were ineffective under [Strickland V. Washington, 466 U. S. 668 (1984)].

Debatability:

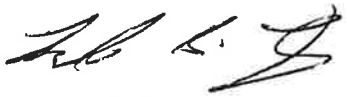
Even when I showed the U. S. District Court and U. S. 5th Cir there was a conflict of rulings between two separate U. S. District Courts on the same issue of if, I had been criminally sentenced to life in solitary. Appendix D and G. Both courts refused to even hold an evidentiary hearing on the issue. See Appendix A

and B. Then the U. S. 5th Cir. itself admitted in 17-30842 pg. 3 Appendix I, that I was being held in solitary per my plea agreement. And that court still refused to grant my motion for rehearing when I pointed that out. Appendix C. According to this court's ruling in [Miller-El V. Cockrell, 537 U. S. 322 (2003)] I met my "threshold" requirement to have the original 60B granted and my COA granted.

In Conclusion

This petition for a writ of Certiorari should be granted.

Respectfully submitted by
Brandon S. LaVergne Pro Sp



8 Jan. 2022