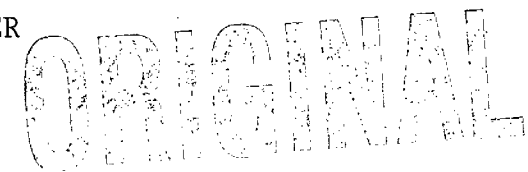
No. 21 5001

IN THE

SUPREME COURT OF THE UNITED STATE

RONALD D. SMITH PETITIONER

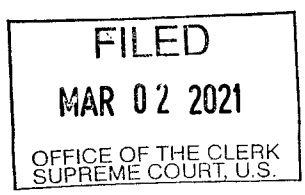
VS.



APPELLATE COURT SECOND JUDICAL DISTRICT RESPONDENT

ILLINOIS SUPREME COURT

PETITION FOR WRIT OF CERTIORARI



RONALD SMITH, #D
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QUESTION(S) PRESENTED

Whether the legislature revived the firearm enhancement in section 720 ILCS 5/8-4 (B-D) (West 2000) amended by Public Act 91-404 that was declared unconstitutional in its entirety to be available to prosecutors? The issue that was presented to the appellate court is rather Public Act 96-710 revived the firearm enhancement.Morgan, 2003 272 Ill. Dec. 160, 203 Ill. 2d 470, 786 N.E. 2d 994. states as followed, Enhanced penalties for attempted first degree murder with a handgun as a class x felony, with mandatory addition of 15, 20, or 25years to life to a sentence were held unconstitutionally disproportionate under Illinois Constitution Art. 1, subsection 11 by People v Morgan, 2003, 272 Ill. Dec. 160, 203 Ill. 2d 470, 786 N.E. 2d 994, because a defendant can receive a harsher sentence if the victim survives than if the victim dies. But, see People v Sharp, 216 Ill. 2d 481 (2005). See (Exhibit 2). Petitioner argue that the legislature has not remedied the constitutional infirmity to revive the firearm enhancement. Therefore, constitue a denial of said petitioner's constitutional rights to due process of the law.

No. _____

_____

IN THE

SUPREME COURT OF THE UNITED STATES

TERM, 2021

RONALD D. SMITH-PETITIONER

VS.

PEOPLE OF THE STATE OF ILLINOIS

et al, RESPONDENT

INTRODUCTION

TO THE CHIEF JUSTICE OF THE UNITED STATES

AND TO THE ASSOCIATE JUSTICES OF THE SUPREME COURT

OF THE UNITED STATES:

MAY IT PLEASE THE COURT:

RONALD D. SMITH, RESPECTFULLY PRAYS THAT A WRIT OF CERTIORARI ISSUE TO REVIEW THE DECISION OF THE ILLINOIS APPELLATE COURT, SECOND JUDICIAL DISTRICT.

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TABLE OF AUTHORITIES CITED

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

The July 28, 2020 order of the Appellate Court of Illinois Second Judicial District, Appeal No. 2-19-0196, which the Appellate counsel entered a finley. Raising issues that was not of the appeal from the trial court, in which dismiss said petitioner petition 2-1401, where the dicision of the trial court that P.A. 96-710. In doing so, the Appellate Court of the Second Judicial District affirmed the trial court judgment. Order of summary is attached hereto in Appendix-A:

The January 27, 2021, order of the Illinois Supreme Court denying petitioner's Petition For Leave To Appeal, No. 126570, also included herein in Appendix-B.

JURISDICTION

The final order of the Appellate Court of Illinois Second Judical District, was entered on July 28, 2020. The writ of certiorari is timely filed within ninety (90) days of the denial of petitioner's request for review by the Illinois Supreme Court on January 27, 2021.

This court's jurisdiction is invoked under under 28 U.S.C. Section 1257 (3).

CONSTITUTIONAL AND STATUTORY PROVISION PROVIDED

The Eighth Amendment to the United States Constitution provides in relevant part: in all criminal prosecutions, that excessive bail shall not be required, nor cruel and unusual punishments inflicted.

The Ninth Amendment to the United States Constitution provides in relevant part: shall not be construed to deny or disparage others retained by the people.

The Fourteenth Amendment to the United States Constitution provides in relevant part: That no state shall deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the law.

Article 1 Section 2; Due Process and equal protection of the Constitution of the State of Illinois.

720 ILCS 5/8-4 (B-D) (West 2000), amended by Public Act 91-404.

STATEMENT OF THE CASE

Procedural History

In support thereof petitioner states the following facts: In 2014, petitioner Ronald D. Smith, entered a negotiated guilty plea to attempted first degree murder (720 ILCS 5/8-4(a), (c)(1)(B)(West 2010) and aggravated discharge of a firearm (id. subsection 24-1.2 (a)(2)). Petitioner was sebsequently sentenced to a term of 31yrs. in the Illinois Department of Corrections. 6yrs. for aggravated discharge of a firearm-Dir of anther person or occupied vehicle, which included a mandatory 20yrs. firearm enhancement, on the attempt first degree murder conviction. In December 2016, petitioner filed a prose petition for relief from judgment under section 2-1401 petition of the code of civil procedure 735 ILCS 5/2-1401 (West 2016). Petitioner relied on Morgan, that his sentence is void because the statute did not provide the opportunity to have mitigating evidence. The state moved to dismiss, arguing the judgment was valid under amended version of the effective statute at the time of the crime. The trial court granted the motion. In November 2018, petitioner filed another 2-1401 petition, relying on his 20yr firearm enhancement is void, because the legislature has not remedied the constitutional infirmity in section 720 ILCS 5/8-4 (B-D) (west 200), amended by Public Act 91-404 declared void in its entirety to revive the firearm enhancement. And petitioner can

not be prosecuted under an unconstitutional act. The state moved to dismiss, relying on Public Act 96-710 which added section (E) to the attempt statute, noted as followed, that it addressed the concerns raised in Morgan, by essentially acknowledging a "second degree" attempt. The circuit court granted the motion. In which petitioner timely appealed, and was appointed a State Appellate Defender by the trial court. In so doing, the appellate defender moved to withdraw, and entered a finley. Raising issues that petitioner did not have arguable merits. As well as that Sharp cured the constitutional infirmity and revived the firearm enhancement by overruling Morgan, and that petitioner is barred by res judicata. On July 28, 2020 the appellate court granted the motion and affirmed the trial court judgment. Petitioner moved to appeal to the Illinois Supreme Court to resolve this question of law to be addressed by the court of law.

REASON FOR GRANTING THE WRIT

It violates the Eighth, Ninth, and/or the Fourteenth Amendments of the United States Constitution for an Appellate Court to adopt the Appellate's versions of the facts in determining what's constitutional, unconstitutional or revived, when that version is contested by both the Defendant, State and Trial Court.

As noted above, there's a shape dispute about the facts involved in this case, with the state claiming that the issue was addressed in Morgan with Public Act 96-710, Defendant claiming that the issue has not been revived through legislature, for reasons that attempted second degree murder remains a non recognized offense in the state of Illinois. And that the Appellate Defender claiming that Sharpe remedied the constutional infirmity and res judicata. In which is an impossibility in the void ab initio doctrine, that the legislature has to remedy the constitutional infirmity through the comparison or challenging statute, and not through another statute. People v. Blair, 2013 IL. 114122 at 25 (See Exhibit 22). As well as, individuals are not required or empowered to determine whether the law is constitutional. That duty belongs to the judiciary, Perlstein v. Wolk, 300 Ill. Dec. 480, 844 N.E. 2d 929 (Quoting Gersch, 135 Ill. 2d at 398-99, 142 Ill. Dec. 767, 553 N.E. 2d 281) (See Exhibit 30).

Petitioner asserted that the firearm enhancement remain void in its entirety, and that the state's version of the statute does not revive the enhancement, as well as the appellate defender's version for having the appellate court not to review my appeal with the justice committee as de novo by not addressing the issue of the appeal.

Here, the appellate court endorsed the appellate defender's version of the facts and not state nor the petitioner's version, and in so doing, the appellate court violated petitioner's rights under the, Eighth, Ninth and Fourteenth amendments.

If it please this court: It should grant this Certiorari; to consider and address the current conflict amongst Illinois Appellate Second District Court decision's that are (1); applicable to void judgment of the firearm enhancement in section 720 ILCS 5/8-4 (B-D) (West 2000), amended by Public Act 91-404 void in its entirety. (2) The appellate defender, is in direct conflict with the state and trial court, petitioner, and applicable decision's and established federal law of this court.

This case is important for review because it shows with ease, the lacking in balance and proportionality with which an Appellate Court can improperly invoke what constitutes inadequate performace performance and sufficient perjudice that are required to make the requisite showing of effective or ineffective decision through their Appellate Districts.

The fact that a void ab initio doctrine can only be cured or remedied by the legislature, by a change of the law, and not by judicial construction. Perlstein v. Wolk, 218 Ill. 2d 448,300 Ill. Dec. 480, 844 N.E. 2d 928, (quoting Petersen, 198 Ill. 2d at 447, 261 Ill. Dec. 728, 764 N.E. 2d 19, quoting county of Knox ex rel. Masterson v. The Highland L.L.C., 188 Ill. 2d 546, 557, 243 Ill. Dec. 224, 723 N.E. 2d 256 (1999), quoting People ex rel. Pauling v. Misevic, 32 Ill. 2d 11, 15, 203 N.E. 2d 393 (1964). (See Exhibit 8,9 & 10).

Petitioner points out the difficulty with the states position concerning the non applicability of Morgan to his prosecution. Is that section 720 ILCS 5/8-4 (B-D) (West 2000), amendede by Public Act 91-404 declared void in its entirety, was and is not amended or repealed by the legislature to revive the firearm enhancement. Public Act 96-710 upon which the state relies, specifically the adding of subsection (E) to the Attempt statute as to essentially acknowledging a "second degree" attempt, that remains a non existing and/or recognized offense. (Please see Exhibit 1 & 4). Thereby, has not remedied the unconstitutional penalty disparity that exist between (i.e., First and Second Degree Murder). (Please see Exhibit 3 & 35). Petitioner respectfully acknowledges that the state reliance on the fortuitous effect of P.A. 96-710 amendment of section (E) to the attempt statute was to change the firearm enhancement sentencing scheme, so as addressing concerns raised in Morgan. Thus, not remedying the unconstitutional disparity, (i.e, void in its entirety). Although, petitioner does not agree or acknowledges

by adding subsection (E) to the attempt statute can operate to and/or in essence remedy the constitutional infirmity to revive the firearm enhancement that the Illinois Supreme Court declared unconstitutional in its entirety, because a defendant charged with attempted fist degree murder, will never have the opportunity to present mitigating evidence which would be a defence to a charge of second degree murder, 203 Ill. 2d at 491, 272 Ill. Dec. at 172, 786 N.E. 2d at 1006. (Please see Exhibit 11).

Therefore, the firearm enhancement for attempted first degree murder in section 720 ILCS 5/8-4 (B-D) (West 2000), amended by P.A. 91-404 remains void in its entirety and unavailable to the citizens and prosecutors of Illinois.

Therefore, violates all due process of the law to give the firearm enhancement for attempted first degree murder, until the legislature remedy the constitutional infirmity to revive (B-D) of the attempt section.

Petitioner notes cases that has been declared unconstitutional and remedied by the legislature to amended and/or repeal their constitutional infirmities. There's no case law presented to show that the legislature remedied the firearm enhancement for attempted first degree murder in section 720 ILCS 5/8-4 (B-D) (West 2000), amended by Public Act 91-404 that's void in its entirety. As followed; (1) Public Act 89-462 reenacted the offense of

predatory criminal sexual assualt of a child. (See Exhibit 34 in People v. Tellez-Valencia, 723 N.E. 2d 225. (2) Public Act 91-696 reenacted the attempt statute. (See Exhibit 1 in People v. Cervantes, 189 Ill.2d 80 (1999),)(3) P.A. 92-607 which suspended the 2003 Cola constitutionally infirm and void ab initio, (in Jorgensen, 211 Ill. 2d at 309, 285 Ill. Dec 165, 811 N.E. 2d 652, see Exhibit 12), (4) P.A. 95-688 the "legislature" revived the unconstitutional statute by curring the proportionality violation through amendment of the comparison statute, (in People v. Blair, 2013 Ill. 114122 See Exhibit 13) (5) P.A. 81-583 thereby, remedied the unconstitutional penalty disparity that had previously existed between delivery and possession of the same type of controlled substance, (in People v. Bradley (1980), 79 Ill. 2d 410, 418, 38 Ill. Dec. 575, 403 N.E. 2d 1029 See Exhibit 14), (6) P.A. 82-968 eff. Sept. 7, 1982 had the "legislature" amended section 404, as it now has, (in People v. Manuel, 46 N.E. 2d 241 , See Exhibit 15), (7) P.A. 97-160 amended the provision in section 720 ILCS 5/10-5 (West 1995) (in People v. Woodrum, 223 Ill. 2d 286 (2006), See Exhibit 16), (8) P.A. 96-710 removed the offending provision in section 720 ILCS 5/10.5-5 (in People v. Warren, 173 Ill. 2d 348 (1996), See Exhibit 17). Let the record reflect that P.A. 96-710 is the same Public Act the state relied on to have revived and/or addressed concerns raised in Morgan by essentially acknowledging a " second degree " attempt the dismiss my 2-1401, and revive the firearm enhancement in section 720 ILCS 5/8-4 (B-D) (West 2000), amended by P.A. 91-404 that's void in its entirety.

Yet, as stated above, there's no case law showing the legislature has remedied the void ab initio and constitutionally infirm in People v. Morgan, 203 Ill. 2d 470 (2003) to have revived the firearm enhancement. To amend P.A. 91-404 Of it's voidness.

Petitioner request that this honorable court clariry the standards of an appeal that's to be reviewed de novo by the Appellate Court in assessing the trial courts decision and achieving uniformity of what constitutes arguable merits of the appellate defenders and actual facts and judgment handed down by the trial courts. Thus, points involved in the case at bar and a host of other cases fiercely contesting the very issues within Illinois Appellate Courts presently.

Thus, here again; the appellate court's ruling of reasonable and sound strategy relied upon the credibility and determinations in favor of the state and appellate defender, weighed evidence of the appellate defender's position for the defendant drew inferences adverse, to petitioner, ignored evidence or facts contrary to its position and without a coherent explanation of how Appellate Counsel's failure to present the facts or pay attention to the fact that petitioner's argument that a claim of voidness due to an unconstitutional statute that has not been remedied the legislature. And the duty of the judiciary and not of the appellate counsel.

If the appellate court's method of determining that the appellate counsel ignored the facts or decision presented by the lower courts, and reasoning for appealing that courts judgment. And the appellate counsel act as the prosecuting team and a road block to the justice, by entering a finley contrary to the trial court's judgment. This deprives a defender of his/her Due-process of the law. Which is its doctrine to ratify a lower court's judgment that arrived in violation of well-established constitutional principles, constitutional rights become empty of content, mere words, honored in the breach rather than the observance.

At stake in this case are constitutional protections of surpassing importance: the proscription of any deprivation of liberty without due process,

Taken together, these rights indisputably entitle a criminal defendant to Due Process of the Law, (See Sample v. Diecks, 885 f. 2d 1099, 1114 (3rd Cir. 1989)), (if officials authorized a system to deprive person of life, liberty, or property, it is irrelevant whether they intended that it violated due process). (See Exhibit 24).

In doing so, once the appellate counsel acted as a prosecutor and overruled the decision of the trial court's judgment to dismiss said petitioner's 2-1401, and entered a Finley, and raised a total different issue that was the order of the lower courts, made the determination to act as the judiciary in determine that Sharpe revived the firearm enhancement for attempt first degree murder violated my Due Process of the Law. And has

used Pennsylvania v. Finley, 481 U.S. 551 (1987) as an authorized system to deprive petitioner life, liberty, or property. Acting as a road block to the justice to determine if the legislature actually or have not remedied the constitutional infirmity to revive the firearm enhancement. Thus, in references state application of pennsylvania v. Finley, 481 U.S. 551 (1987), also denies defendant(s) procedural as well as substantive "DUE PROCESS" of the law including access to the courts. Petitioner respectfully request that this honorable court grant certiorari to make the factual findings necessary to sanction Appellate Court's to follow the well established precedent relied upon this Honorable Court in deciding; Norton v. Shelby County, 118 U.S. 425, 6 s. ct. 1121, 30 L.Ed. 178 (1986).

Concise Argument

The Appellate Court Second Judical District, in their order affirming petitioner's conviction and denying the void judgment of the 20year firearm enhancement claim, cites five relevant cases as precedent in supporting the rational of their opinion. Sharpe, 215 Ill. 2d 481 (2005), Houschild, 226 Ill. 2d 63, 76 (2007) Johnson, 2015 Ill. App (2d) 140388, quoting Carroccia, 352 Ill. App. 3d 1114, 1123 (2004), quoting Whitfield, 217 Ill. 2d 177, 183 (2005). Neither of which considered the exact points involved in this case.

While the cases used Sharpe, Houschild, Johnson, Carroccia and whitfield, may or may not be arguably distinguishable from the facts presented by the appellate counsel; The decisions has been used or may not have been used in others by the second district, and several other Appellate District Courts in Illinois to hold that the constitutional infirmities in the attempt first degree murder in section 720 ILCS 5/8-4 (B-D) (West 2000), amended by P.A. 91-404 void in its entirety, However, res judicata and/or Shape was not the trial court's decision to dismiss my 2-1401, none of the reasonings in those opinions support such a reading that the firearm enhancement has been revived by the legislature to make it available to the prosecutors of the state of Illinois.

Clearly, there's conflict among the Illinois Appellate District Courts, appellate counsel and the trial court on the exact points involved in determining the proper standard defining if the legislature revive the firearm enhancement in section 720 ILCS 5/8-4 (B-D) (West 2000), amended by P.A. 91-404, that's void in its entirety. As well as acknowledgment when there are clear constitutional violations of the statute's constitutional infirmities.

In the case of Sharpe, 215 Ill. 2d 481 (2005); the Illinois Supreme Court held that a defendant cannot challenge the disproportionate penalties through different elements that doesn't cure the constitutional infirmities. thus, First and Second degree murder has the same elements People v. Lopez, 166 Ill. 2d 441, 655 N.E. 2d 864 (1995) HN7, that second degree murder is simply a lesser mitigated offense, a concept new to Illinois. (See Exhibit 21)

Just as in Apprendi v. New Jersey, 530 U.S. 466, 147 L, ed. 2d 435, 120 S. CT. 2348, argued that due process required that the element of "racial motive" by formally charged and resolved at trial by a jury based on proof beyond a reasonable doubt. In this case, due process require that the justice of the Appellate Court determine if the firearm enhancement has been remedied through the legislature to be revived by Public Act 96-710 and not the opinion of the appellate counsel, by bringing in a whole new issue contrary to the trial court's judgment.

However, although the Illinois Appellate Court Second District, in the case at bar, acknowledges the potential constitutional claim made by petitioner's contentions of the constitutional infirmities in prior cases, specifically Cervantes, and Morgan, yet, The Second District Court ruled in consistent with the controlling precedent set forth in this case addressing void ab initio (i.e., void in its entirety)of Morgan's decision and Sharpe's decision, as well as not addressing whether Public Act 96-710 revived the firearm enhancement and if the legislature cured the constitutional infirmity in section 720 ILCS 5/8-4 (B-D) (West 2000), amended by Public Act 91-404, that was declared void in its entirety.

In essence, the Second District Court and appellate counsel is proclaiming its own view of what constitutes the judgment of the lower courts.

There is no doubt that the reasoning of Apprendi v. New Jersey, 530 U.S. 466, 147 L. ed. 2d 435, 120 S. CT. 2348, all of which was decided by this court, would be difficult, if not impossible, to reconcile with the decision of the Illinois Appellate Court's precedent.

Yet, in adding error upon error by allowing the constitutional violation being committed by the courts of Illinois, who made the original unsound and erroneous determination of the firearm enhancement in section 720 ILCS 5/8-4 (B-D) (2000), amended by Public Act 91-404 declared void in its entirety, which would have

clearly supported petitioner's void sentence of 20 years enhancement. To allow such error to stand, leaves petitioner with no remedy for addressing the constitutional violation now being committed by appellate counsel's determination that the legislature cured the constitutional infirmity in section 720 ILCS 5/8-4 (B-D) (West 2000), amended by Public Act 91-404 void in its entirety.

Despite the many cases decided by Illinois Appellate Court's year after year, to a large extent; there are no uniformity that are followed in the courts which clearly defines the issue at bar, unconstitutional statutes or Public Act void in its entirety. That's particularly relevant in this case, it's stated in this court's precedent in Norton v. Shelby county, 118 U.S. 425.

It's very clear that Morgan, 203 Ill. 2d 470 (2003), was rendered void ab initio (i.e., void in its entirety), and remains unavailable at sentencing until the legislature remedy the infirmity. People v. Manuel, 94 Ill. 2d 242, 446 N.E. 2d 240 (se Exhibit 6). When a statute is unconstitutional in its entirety, it is void ab initio. The void ab initio doctrine is based on the theory that: " An unconstitutional act is not a law; it confers no rights; it imposes no duties; it affords no protection; it create no office; it is in legal contemplation, as inopertive as though it has never been passed." Norton v. Shelby county, 118 U.S. 442, 6 S.ct. at 1125, 30 L.ed. at 186. (See Exhibit 7).

Also see People v. Gersch, 135 Ill. 2d 384, 399, 142 Ill. Dec. 767, 553 N.E. 2d 281 (1990) Perlstein v. Wolk, 218 Ill. 2d 448, 445, 300 Ill. Dec. 480, 844 N.E. 2d 926 (2006) Id at 455, 300, quoting Gersch, 135 Ill. 2d 384, 399, 142, "An unconstitutional law confers no right, imposes no duty and affords no protection. It is as though no such law had ever been passed," quoting People v. Schraeberg, 347 Ill. 392, 394, 179 N.E. 829 (1932). Therefore, the appellate court's affirming the trial court judgment cannot stand until it can be established that the legislature remedied the constitutional infirmity. And res judicata can't protect a law that affords no protections.

CONCLUSION

Wherefore, petitioner, Ronald D. Smith, pro se, respectfully request that this Honorable court grant his petition for writ of certiorari to review the decision of the Illinois Supreme Court which denied Leave to Appeal from the order of judgment of the Illinois Appellate Court affirming petitioner's conviction and sentence.

Date: Feb. 15, 2021

Respectfully Submitted

/s/ Ronald D. Smith

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