

In The
— Supreme Court of The —
United States

ORIGINAL

No. 21-5388

FILED

JUN 04 2021

OFFICE OF THE CLERK
SUPREME COURT, U.S.

Wilbert Kelly, Jr.
— against — (Petitioner)
State of Louisiana
(Respondent)

Petition For A Writ Of Certiorari
To The Louisiana Supreme Court

S/ Wilbert Kelly Jr. #486080
/ Wilbert Kelly Jr. #486080
Cmpc/Wb Jr. 4
La State Prison
Crapo La 70712

RECEIVED

AUG 17 2021

OFFICE OF THE CLERK
SUPREME COURT, U.S.

Table of Contents

	<u>Pages</u>
Cover Page	First Page
Motion To Proceed In Forma Pauperis	A-F
Table of Contents	i
Table of Authorities	ii
Question Presented	iii
Petition for Writ of Certiorari	i
Decisions Below	i
Statement of Jurisdiction	i
Constitutional Provision	2
Statement of the Case	2, 3
Arguments In Support of Granting Writ of Certiorari	3
a) State Courts decisions Conflict with this Court's decisions	3, 4, 5
b) Petitioner is, serving an Unconstitutional sentence	5, 6
Conclusion	7
Certification	7
Verification	7
<u>Appendix:</u>	
ABCDE	

CASES:Table Of AuthoritiesPage

In re Winship, 397 U.S. 358, 364 (1970)	3,4,5
Sullivan v. Louisiana, 508 U.S. 275, 278 (1993)	3,5
United States v. Becker, 536 F.2d 471 (1st Cir. 1976)	6
State Ex rel. Burger v. State, 95-1578 (La. 11/3/95), 661 So. 2d 1373	5
State v. Edwards, 13-2497, p.1 (La. 2/21/14), 133 So. 3d 1261, 1261-62	6
United States v. Huss, 520 F.2d 598 (2nd Cir. 1979)	6
United States v. Risenhoover, 92 F.R.D. 741 (D. Okla. 1979)	6

Constitutional Provisions:

United States Constitution

Fifth Amendment

2

Fourteenth Amendment

2

Statutes And Rules:

28 U.S.C. 1254 (1)

1

La. C. Cr. P. art. 930.8

3,5,6

La. C. Cr. P. art. 882

5,6

La. C. Cr. P. art. 872

5

United States Supreme Court Rule:

Rule 13

1

Secondary Law:

La FARE, Criminal Law, SEC. 1.8 (4th ed. 2003)

4

Mc Cormick, Evidence, SEC. 336-337 (6th ed. 2006)

4

QUESTION(S) PRESENTED

Have The Petitioner Been Provided With
Fundamental Due Process According To
The United States Constitutions By His State
Courts?

IN The
— Supreme Court of The —
United States

Wilbert Kelly, Jr.
— against —
State of Louisiana
(Warden Darrel Vannoy)

No. _____
Filed: _____

Clerk of Court

Petition For Writ of Habeas Corpus To
The Louisiana Supreme Court

Decisions Below

The decision of the Louisiana Supreme Court is attached hereto as Appendix A. The Ruling of the State First Circuit Court of Appeal is attached hereto as Appendix B. The Judgment of the 20th Judicial District Court of Louisiana is attached thereto as Appendix C. The Motion to Vacate Illegal and/or Invalid Sentences of Forty Years for two convictions of Manslaughter due to the lack of elements not being established by the State of Louisiana is attached hereto as Appendix D.

Jurisdiction

The decision of the Louisiana Supreme Court was entered on April 7, 2021. The Ruling of the State First Circuit Court of Appeal was entered on August 17, 2020. The Judgment of the 20th Judicial District Court was entered on May 28, 2020. Jurisdiction is also pursuant to the United States Supreme Court Rule 13 and other applicable laws.

Jurisdiction also pursuant to 28 U.S.C. 1257.

- Constitutional Provision -

This case involves Amendment 5 to the Constitution of the United States and made applicable to the States by way of the Fourteenth Amendment to the United States Constitution.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without Just compensation.

- Statement of The Case -

The Petitioner here was charged with two counts of second degree murder. On July 5, 2007, the Petitioner was convicted of two counts of the responsive verdicts of manslaughter and sentenced to forty years apiece on each count. Thereafter, the Petitioner took an appeal to the Louisiana First Circuit Court of Appeals and was denied relief there. Later on the Petitioner filed for writ of certiorari.

On April 1, 2010, the Petitioner herein filed a timely Application for Postconviction Relief into the 20th Judicial District Court, Parish of West Feliciana, State of Louisiana. On August 20, 2013, the 20th Judicial District Court denied the Application for Postconviction Relief. Thereafter, the Petitioner sought writ to the First Circuit Court of Appeals and writ was denied by that Court. Next the Petitioner took writ to the Louisiana Supreme Court and thereafter the Louisiana Supreme Court denied writ.

Petitioner on October 23, 2019 filed into the District Court a motion styled "Motion to Vacate Illegal and/or Invalid Sentences of forty years apiece for two convictions of Manslaughter due to lack of elements not being established." (See Appendix "D")

Thereafter, on May 28, 2020, after converting said Motion into that of Application for Postconviction Relief, the District La. C. Cim. P. 930.8. (See Appendix "C")

Petitioner on July 9, 2020 sought writs with the First Circuit in respect to the District Court's dismissing the Petitioner's pleading. On August 17, 2020, the First Circuit denied writ. (See Appendix "B")

Petitioner, on September 14, 2020 filed writ of Certiorari with the Louisiana Supreme Court, which said Court on April 7, 2021 denied the writ. (See Appendix "A")

The Petitioner now seeks a timely Petition for writ of Certiorari with this Honorable Court.

Argument In Support Of Granting Writ Of Certiorari

A. Conflicts with decisions of this Court

Petitioner avers in *In re Winship*, 397 U.S. 358, 364 (1970) addressed that elements of a crime must be proven by the State. The Winship standard applies in both state and federal proceedings. See *Sullivan v. Louisiana*, 508 U.S. 275, 278 (1993). The standard protects three interests. First, it protects the defendant's liberty interest. *Winship*, 397 U.S. at 363. Second, it protects the defendant from the stigma of conviction. *Id.* Third, it encourages community confidence in criminal law by giving "concrete substance" to the presumption of innocence. *Id.* at 363-64.

Petitioner contends that the burden of proof consists of two parts: the burden of production and the burden of persuasion. Indeed, the party bearing the burden of production must produce enough evidence to allow a factfinder to deter-

mine that the facts in question occurred. The party who first pleads the existence of a fact not yet in issue usually has the burden of production, but this burden can shift from one party to another. If a party fails to sustain its burden of production, that party is subjected to an adverse ruling by the court. For example, it is correct to expect (to believe) that the prosecutor has the burden of production on every element of the offense charged. Should the prosecutor fail to prove any elements of the offense—well, the prosecutor would have failed to have carried its burden in respect to that offense. See generally LaFare, Criminal Law, Section 1.8 (4th ed) (2003); McCormick, Evidence Sections 336–337 (6th ed) (2006).

With the above authorities in mind, the Petitioner was charged with two counts of second degree murder. At a Jury Trial, the Jury found the Petitioner guilty of the responsive Verdicts of manslaughter, where the District Court sentenced the Petitioner to two forty years sentences for each manslaughter convictions. The Petitioner thereafter took direct appeal to the First Circuit, where within its October 14, 2008 Judgment, Paragraph 1, page 22, the First Circuit said the following:

"... Arguably, the crime of Manslaughter was not proven because there was no evidence of heat of blood or sudden passion, the mitigating factor which reduce a charge of murder to manslaughter...."

(See First Circuit's Judgment of October 14, 2008 mark here to as Appendix E)

Wait a minute! If the crime of manslaughter was not proven, why in the world the Petitioner is serving two forty years sentences each for crimes (manslaughters) that the State failed to prove the elements of, United States Supreme Court? Your cases, United States Supreme Court, *Cinre Winship, supra*, and its companioning cases) dictates that the prosecutor must establish all the elements of the crime; otherwise, there can be no conviction and sentence for the crime.

Petitioner submitted the same claim to all these criminal state courts only to have them avoid the issue by converting the Petitioner's Motion to Correct Illegal Sentence into that of an Application for Postconviction Relief in order that they can apply the procedural bar (La. C. Cr. P. art. 930.8) against the Petitioner.²

Nevertheless, what the Petitioner want to stress to this Honorable Court more than anything else and hope it not forget in the considering of this Petition is that the 20th Judicial District Court of Louisiana, and the First Circuit Court of Appeals of Louisiana as well as the Louisiana Supreme Court have all decided to ignore to really even look closely at the very common sense of the Petitioner's Argument and how it is equal to a violation of the Petitioner's fundamental principle of due process of law.

Petitioner contends that all too often Louisiana Courts refuse to clean up their own mess, like this, and make people like your Petitioner who Constitution rights have been violated sit in prison for years until a federal court actually looks at the unfairness and provides Justice.

In the instant case, the State of Louisiana through its office of its district attorney has failed to prove any elements of the crime of murdering time for. The First Circuit of Louisiana has the Petitioner say that the State of Louisiana failed to prove any elements of murdering; yet, the Court will not order the Petitioner release. The failure of the state to prove the elements of the charge and still imprison an individual for said charge is in direct conflict with this Honorable Court's opinions of *In re Winship*, *Supra*; *Sullivan v. Louisiana*, *Supra*.

B. Petitioner is serving an Illegal sentence

The following logic of this Argument would not only apply to Louisiana criminal jurisprudence but to any states and federal criminal jurisprudence, which is, a sentence is the penalty imposed by the court on a defendant upon a plea of guilty, upon a verdict of guilty, or upon a judgment of guilty. This would be considered so obvious by anyone in our civilized society that the Petitioner does not believe that any supporting law in respect to this logic is even necessary. Nevertheless, the State of Louisiana says that for a sentence indictment; and 3) verdict, judgment or plea of guilty. See La. C. Cr. P. art. 872.

² *State Ex Rel. Burger v. State*, 661 So. 2d (La. 95); *State v. Edwards*, 133 So. 3d 1261, 1262 (La. 14); and La. C. Cr. P. art. 802 says that La. C. Cr. P. art.

Petitioner is aware that he cannot come before this Honorable Court asking about state laws, rules, or procedures unless he can show that such state laws, rules, or procedures also violate the federal Constitution. This is exactly what he will show with this Argument.

In the case before the Court, the Petitioner filed into the state Court a motion to correct illegal sentence pursuant to La. C. Cr. P. art. 882. As stated earlier herein, the state courts converted the Petitioner's motion to correct illegal sentence into that of an Application for Post Conviction Relief in order—more than anything—to hit him with a La. C. Cr. P. art. 930.8 time bar. Actually, the Petitioner believe he submitted a true motion to correct illegal sentence. The substance of the motion was that Petitioner had received two 40 years sentences apiece for two convictions of manslaughter. These two convictions for manslaughter and the two 40 years apiece that derived from them cannot be! These two 40 years sentences cannot be legal for the simple fact the state failed to prove the elements of manslaughter. (See the Petitioner's Appendices "D" "E") The State of Louisiana through its district attorney cannot have its cake and eat it too. The State of Louisiana has failed to prove the elements of manslaughter against the Petitioner, United States Supreme Court, and thus any sentence (or sentences) that he received from the State's failure to prove the elements of manslaughter—said sentence would be illegal. An illegal sentence is one that is in excess of the statutory time provisions or otherwise contrary to the applicable statute. See *United States v. Risenhoover*, 92 F.R.D. 741 (D. Okla. 1979); *United States v. Becker*, 536 F.2d 471 (1st Cir. 1976); and *United States v. Huss*, 520 F.2d 598 (2nd Cir. 1979). Surely, a sentence received by way of a criminal offense which the elements of that offense were not established—said sentence is illegal, United States Supreme Court. There is no other correct way for this Court to see it.

Due to the uniqueness of this case, this Honorable Court should issue the writ as well as grant the Petitioner any other relief this Court believe he is entitled to.

930.8 procedural bar does not apply to a Motion To Correct An Illegal Sentence.

- Conclusion -

Wilbert Kelly, Jr., prays that after all due proceedings are had, this Honorable Court would grant the instant writ.

s/ Wilbert Kelly Jr. #486080
Wilbert Kelly, Jr. #486080
Camp C/Wolf-4
La. State Prison
Angola, La 70712

- Certificate of Service -

I certify that a copy of the foregoing has been sent to the office of the District Attorney, Parish of West Feliciana, State of Louisiana, on this 2 day of June, 2021, properly addressed and postage by me.

s/ Wilbert Kelly Jr. #486080
Wilbert Kelly, Jr. #486080

- Verification -

I verify that I have read the foregoing and all statements therein are true and correct to the best of my knowledge, information and belief.

s/ Wilbert Kelly Jr. #486080
Wilbert Kelly, Jr. #486080