

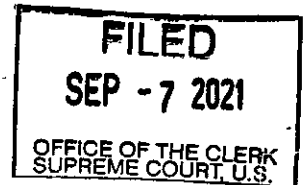
No. _____

ORIGINAL

21 - 5724

IN THE

SUPREME COURT OF THE UNITED STATES



Devin Lee Rintye — PETITIONER
(Your Name)

vs.

Warden of California Health Care Facility — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

California Court of Appeal, Fourth Appellate District, Division Two
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Devin Lee Rintye
(Your Name)

C.H.C.F. P.O. Box 32050
(Address)

Stockton, CA. 95213
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

- #1. Does a State Court violate a defendant's due process rights, right to jury and United States Supreme Court rulings in *Apprendi v. New Jersey* and *Miller v. Alabama* when the Court does not afford defendant the opportunity to submit mitigating evidence tied to defendant's youth to a jury when the Court has or is imposing aggravated upper term sentence beyond the statutory maximum?
- #2. Are newly discovered and admissible mitigating facts surrounding a criminal conviction relevant for the purpose of sentencing consideration?
- #3. Is counsel ineffective at sentencing when counsel does not argue mitigating factors or object to an aggravated sentence beyond the statutory maximum?
- #4. Does a State Court violate a defendant's due process rights and commit a structural error by ignoring its own rules of court and mandatory sentencing guidelines set forward by its State's legislature?
- #5. Does a State Court violate a defendant's right to trial by jury safeguarded by the Sixth and Fourteenth Amendments and also violate the rule of *Apprendi* when they impose a sentence beyond the statutory maximum without the benefit of due process?
- #6. If a juvenile defendant was sentenced as an adult to a discretionary sentence before mitigating evidence tied to a defendant's youth was admissible due to rulings in the high court such as *Miller v. Alabama*, should the defendant now have the opportunity to have the sentence reconsidered in light of the new legal landscape related to juveniles charged as adults?

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:

RELATED CASES

In the Matter of: Devin Lee Rintye, Superior Court Of California, County of San Bernardino Case # WHCSB2100263, Date: 4/20/2021

In re Devin Lee Rintye on Habeas Corpus, Court Of Appeal, State Of California Fourth District Division Two, Case # E077130, Date: 7/8/2021

In re Devin Lee Rintye on Habeas Corpus, In the Supreme Court of California, Case # S269941, Date: 8/25/2021

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TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
<u>Cunningham V. California (2007) U.S.</u>	<u>Page 4/5</u>
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OTHER

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

☐ 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 designated 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 designated 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 A to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the Superior Court of California, San Bernardino court appears at Appendix B to the petition and is

- ☐ reported at _____; or,
☐ has been designated 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 8-25-2021.
A copy of that decision appears at Appendix C.

☐ 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

California Penal Code § 1170.1(d): If an enhancement is punishable by one of three terms, the Court shall impose the middle term unless there are circumstances in aggravation or mitigation, and state the reasons for its sentence choice, other than the middle term on the record at the time of sentencing.

California Penal Code § 1473(b)(3): A writ of habeas corpus may be prosecuted for, but not limited to, the following reasons:

(3)(A) New evidence exist that is credible, material, presented without substantial delay and of such decisive force and value that it would have more likely than not changed the outcome of trial.

(B) For purposes of this section, "new evidence" means evidence that has been discovered after trial, that could not have been discovered prior to trial by the exercise of due diligence and is admissible and not merely cumulative, corroborative, collateral, or impeaching.

California Rule Court. 4.420(d): A fact that is an element of the crime on which punishment is being imposed may not be used to impose a particular term.

California Penal Code § 1192.5: Upon a plea of guilty or nolo contendere to an accusatory pleading charging a felony, the plea may specify the punishment to the same extent as it may be specified by the jury on a plea of not guilty or fixed by the court on a plea of guilty, nolo contendere, or not guilty, and may specify the exercise by the court thereafter of other powers legally available to it.

5th Amendment of U.S. No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, 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.

6th Amendment of U.S. In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

14th Amendment of U.S. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State 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 laws.

STATEMENT OF THE CASE

The facts of this case are that I pleaded guilty per a plea agreement for the charge I was factually guilty of. The crime resulting in the charge happened when I was a minor. When I was pleading guilty per plea agreement the Judge did not tell me the state was presenting aggravating factors nor did the Judge establish a factual basis to accept any factors of aggravation and to the best of my memory did not state anything about aggravating facts at all. The plea agreement I signed was in the form of a Declaration and in this plea agreement/declaration I did not agree to 16 years, aggravated sentence, or any aggravating factors. I placed my initials on certain boxes to signify that I adopt as my own each statement which corresponds to those boxes. I did not place my initials in box "9C" of the plea agreement I placed a 'X' or my lawyer placed a 'X' in box "9C" to signify that I do not agree to to the statement which corresponds to that box "9C" of the declaration was a statement of a 16 year term which was beyond the statutory maximum. I did place my in box "3" of the declaration which stated "to which plea to be made and the maximum sentence: At the time the contract/plea agreement was entered the maximum statutory sentence was the middle terms of 6 and 4 years respectively as held in The Supreme Court Of The United States in Cunningham V. California and Apprendi V. New Jersey, al held in California Penal Code § 1170.1. At sentencing the Judge ask me to waive 1 year credit as part of the plea deal which I did (as advised by my lawyer). The Judge then sentenced me to the "mid" term of 6 years for Voluntary manslaughter and the aggravated "upper" term of 10 years for the person use of a firearm enhancement. The Judge did not state anything about aggravating factors at this time. The Judge lacked fundamental jurisdiction to sentence me to the "upper" term of 10 years + the personal use of a firearm enhancement because it was beyond the statutory maximum. My lawyer did not object and told me I had no right to appeal. At the time I was sentenced the Court was not allowed to consider the mitigating factors tied to my youth. later I found out my Sentence was not authorized by law but was told by the court it was "too late" to appeal. I then, after getting mental health treatment, found California laws of exemptions that would allow me to file a writ of Habeas Corpus. I invoked the exemptions but they were not considered by the court in my first writ of Habeas Corpus round in the state. Before I started my 2nd round I received a "Franklin Social History" report from the San Bernardino County Public Defenders office. I was told the report was to establish the mitigating factors tied to my youth on the record in the sentencing court to be later used by a parole board. This was the first time the mitigating factors tied to my youth was allowed on the record in the sentencing court. I immediately started this writ of Habeas Corpus as the mitigating factors relate directly to the grounds and prove that I am factually innocent of circumstances of aggravation. The Superior Court denied my writ using many unreasonable applications of law, erroneous conclusions of law, and unreasonable applications of fact. The Court ignored my grounds and stated I failed to state a prima facie claim, they then erroneously stated that I was attacking my plea agreement, erroneously concluded the court had fundamental jurisdiction to sentence me beyond the statutory maximum in violation of Cunningham and Apprendi erroneously stated I was no longer serving time on my San Bernardino Sentence and ignored the state law exemptions I invoked to overcome any timeliness issues. The Appellate Court denied my writ without explanation. The California Supreme Court denied review.

REASONS FOR GRANTING THE PETITION

The reasons this petition should be granted are clear. The Superior Court issued a sentence that was unauthorized by California Sentencing guidelines set by the legislature resulting in both a structural error and a violation of State and federal rights of due process. This unauthorized sentence is also in conflict with the decisions of The Supreme Court Of The United States rulings in Cunning V. California and Apprendi V. New Jersey. The Superior Courts argument that the sentence was authorized because it came after a plea agreement is erroneous because no aggravating factors were alleged or stated in the plea agreement and aggravating factors are the only way to elevate a sentence past the statutory maximum "mid" term per California law, therefore the State failed to give real notice of the true nature of the "charge" against me which is the first and most universally recognized requirement of due process, the charge in reference being a factor or factors in aggravation. The States argument thus flies in the face of Smith V. O'Grady, 312 U.S. 329. If the Superior Court did offer a plea agreement for a aggravated sentence with no factual basis for aggravation and referred to it as simply a "upper" term to a defendant in a attempt to add more time to the agreement, it is nothing short of a deception against the defendant and violates the defendants right to fundamental fairness under the due process clause. Because the judge sentenced me beyond the statutory maximum my right to jury trial safeguarded by the sixth and fourteenth Amendments were violated. My lawyer erroneously told me that I had no right to appeal after he failed to object. My lawyer was unable to present the mitigating factors of my youth at sentence and because of that I did not have effective assistance of counsel.

Another important consideration for granting this petition is the mitigating factors tied to my youth have only recently been acknowledged by the Superior Court and the mitigating factors of my youth can show any reasonable fact finder that the aggravated sentence is not in the interest of justice. However the Superior Court denied my petitions to resentence me in light of the now acknowledged mitigating factors of my youth. The high Court rulings related to juveniles charged as adults assuring them constitutional rights as a class, such as Miller V. Alabama (2012) 567 U.S. 460, ~~which~~ had not yet been ruled on when I was sentenced. But the high Courts rulings show now that children are, as a class constitutionally different from adults.

This petition has national importance for all juveniles sentenced as adults before the passing of laws and rulings such as Miller V. Alabama to aggravated sentences who could not yet benefit from the Constitutional protections of juvenile defendants. Courts nationwide have changed the way children are treated when charged as adults, why then shouldnt children sentenced to aggravated terms like I was not be afforded such difference? This is a rare case where the outcome can effect a whole class of people. The Superior Court and higher state courts decided this was not important enough to merit change and rather upheld a sentence not in the interest of justice. I say to this Honorable Court that when the state courts lose sight of the constitutional protections of a class of citizens in favor of upholding a sentence, This Honorable Court has every right and reason to intervene to assure such protections are upheld. This is why I ask this Honorable Court to grant this petition.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Devin Lee Rintye

Date: 9-2-2021