

AUG 12 2021

OFFICE OF THE CLERK

No. _____

21-6379

IN THE

SUPREME COURT OF THE UNITED STATES

Keith Gomez

— PETITIONER

(Your Name)

vs.

Ron Haynes

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States District Court for the Western District of

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

Washington

PETITION FOR WRIT OF CERTIORARI

Keith Gomez

(Your Name)

Stafford Creek Corrections Center

(Address)

191 Constantine Way - Aberdeen, WA 98520

(City, State, Zip Code)

(Phone Number)

ORIGINAL

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SUPREME COURT, U.S.

QUESTION(S) PRESENTED

1. Whether petitioner had a constitutional right to be informed and or notified of "right to appeal" after erroneously being resentence via "correction order" and not afforded a "resentencing Hearing" based on "Blakely Error" under "State v. Williams-Walker"?
2. Whether failure to give petitioner notice of his constitutional "right to appeal" was a "Manifest Injustice/Fundamental Miscarriage of Justice" and should be considered an "exception" under Sec. 2244(b) and or afforded "equitable tolling".

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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STATUTES AND RULES

Sec. 2244(b)

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☐ is unpublished.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 Gomez v. Haynes, 2020 U.S. District ^{W.D.S. 232509}; 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☐ is unpublished.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 _____ 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☐ is unpublished.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 _____ 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.

JURISDICTION

☐ For cases from federal courts:

The date on which the United States Court of Appeals decided my case was May 17, 2021

☒ 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 9-25-19.
A copy of that decision appears at Appendix _____.

☒ A timely petition for rehearing was thereafter denied on the following date: 12-3-19, 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

Fifth amendment U.S. Constitution

Sixth amendment U.S. Constitution

Fourteenth amendment U.S. Constitution

Washington State Constitution Art. I sec. 21 and 22

STATEMENT OF THE CASE

The Thurston Superior Court Judge exceeded his statutory Authority by erroneously imposing 2 60 month "Firearm Enhancements" based on the Jury's findings that the petitioner was armed with a "deadly weapon" which violated petitioner's sixth amendment to Jury trial. No 04-1-683-3, (9-7-04)

On April 13, 2011, the trial Court filed an "Order Correcting Judgment and Sentence" imposing 2 24 month "deadly weapon Enhancements" which failed to notify Petitioner of his constitutional right to appeal the Order.

After learning Petitioner had a right to appeal the Order in 2019, petitioner petitioned the Washington State Court of appeals Division II, and the Washington State Supreme Court. All 3 petitions/motions were denied, Court of Appeals No. 63258-1-II, WA Supreme Court No. 97175-7 denied September 25, 2019, Motion to Modify denied December 3, 2019. Petitioner then filed a Habeas Corpus Petition to the United States District Court for the Western District of Washington. Case No. 3:20-cv-05108-BHS-BAT, which was denied.

Petitioner then filed a request for a "Certificant of appealability" to the United State Court of Appeals for the Ninth Circuit No. 20-36103 which was denied on May 17, 2021.

REASONS FOR GRANTING THE PETITION

1. Petitioner had a Constitutional right to be notified of his appeal rights after his sentence was structurally changed from 791 months to 719 months do to the trial Judge exceeding its statutory authority imposing 2 60 month firearm enhancements where only 2 deadly weapon enhance ment (24 month each) were authorized by the jury. State v. Recuenco 163 Wn.2d 428 (2008) State v. Williams-Walker, 167 Wn.2d 889 (2010) which creates a new Judgement and sentence.

In Magwood v. Patterson, 561 U.S. 320 (2010) the ninth circuit directs district courts to look at the applicable state law to determine whether a change in a state criminal sentence creates a "New Judgement" Colbert v. Haynes 954 F.2d 1232, 1236 (9th cir. 2020)

Critical to this inquiry is whether the State Court "replaces an invalid sentence with a valid one". The court of Appeals (Ninth circuit) states: "In Washington, only sentencing errors stemming from a trial court exceeding its "statutory ^{authority}" renders a sentence judgement invalid.

In Williams-Walker, the Washington Supreme Court stated: "The trial Courts imposition of a firearm enhancement where only a "deadly weapon" enhancement has been charged by the state or authorized by the jury - was Unauthorized and therefore in error."

Petitioner was erroneously resented via "correction Order" which did not include his appeal rights.

The sixth amend. of the U.S. constitution,
along with the Washington State Constitution
Art. I sec. 21 and 22 requires that a sentence be
authorized by a jury's verdict. In re pres restraint of
Coats, 173 Wn.2d 123 (2011) Appendi v. New Jersey,
530 U.S. 466, 490 (2000) Blakely v. Washington, 542 U.S. 296
(2004) Fourteenth amend. Fifth amend. const.

The laws of Washington State contends that
"remand for resentencing renders the prior judgement and
sentence void and results in a new final judgement,
which is appealable as a matter of right. Washington
cases like wise recognize that remand and resentencing
means that a defendants entire sentence is reversed,

or vacated the finality of the Judgment is destroyed." Petitioner has demonstrated that his Judgment is in fact, and law a new Judgment, and should have been notified of his federal, and state constitutional right to appeal. RCW

2. The sentencing courts failure to give petitioner notice of his constitutional rights to appeal after being resentenced is a fundamental miscarriage of justice and should be considered an "exception" under sec. 2244(b).

The district denied ~~para~~ petitioners petition and stated: "The court rejects petitioners argument that the lack of notice of right to appeal is new evidence, or an exceptional circumstance" (under sec. 2244(b))

Gomez v. Haynes, 2020 U.S. District Lexis 232509.

To overcome procedural bar petitioner must show cause and prejudice to excuse default, or that a fundamental miscarriage of Justice would ~~occur~~ occur if the court did not consider claim Coleman v. Thompson, 501 U.S. 722 (1991)

Petitioner respectfully presents this question to the court:

Does the sentencing Court's failure to notify petitioner of his appeal rights excuse default, and or amounts to a fundamental miscarriage of Justice?

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Heith Gomez
Kurt J. O.

Date: August 12, 2021