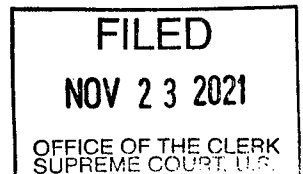


No. 21-6479

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



EARNEST LEE LANGSTON — PETITIONER
(Your Name)

VS.

DON PHILLIPS, CHAIRMAN
MISSOURI BOARD OF PROBATION RESPONDENT(S)
AND PAROLE

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

Earnest Lee Langston #23783

(Your Name)

South Central Correctional Center
255 W. hwy 32; Licking, MO 65542

(Address)

Licking, MO 65542

(City, State, Zip Code)

N/A

(Phone Number)

TABLE OF CONTENTS

| | |
|--|---|
| OPINIONS BELOW..... | 1 |
| JURISDICTION..... | |
| CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED | |
| STATEMENT OF THE CASE | |
| REASONS FOR GRANTING THE WRIT | |
| CONCLUSION..... | |

INDEX TO APPENDICES

| | |
|------------|--|
| APPENDIX A | DECISION JUDGMENT AND ORDER, COLE COUNTY CIRCUIT COURT |
| APPENDIX B | ORDER OF MISSOURI COURT OF APPEALS, DENYING PETITION |
| APPENDIX C | ORDER FROM MISSOURI SUPREME COURT, DENYING RELIEF BASED ON THE COURT'S MANDATE AND JUDGMENT |
| APPENDIX D | LETTER FROM DEPT OF CORRECTIONS CONCERNING THE POWER OF THE BOARD TO CONVERT CONSECUTIVE SENTENCES |
| APPENDIX E | RCM 558.019.5 allowing the Board to convert consecutive sentences to concurrent |
| APPENDIX F | 14 CSR 80-2.010 Code of state regulations that convert any sentence that total 45-years, to 45-years |
| APPENDIX G | INVOLVE THE GRANTING OF PAROLE ON CONSECUTIVE SENTENCES, AND HOW PAROLE IS CALCULATED ON A SINGLE LIFE SENTENCE, AND HOW CONSECUTIVE SENTENCES SHOULD BE TREATED AS ONE SENTENCE, AS WAS DONE IN THE CASE OF REGINALD CLEMONS |

QUESTION(S) PRESENTED

- 1) WHETHER THE MISSOURI BOARD OF PROBATION AND PAROLE VIOLATED PETITIONER'S SUBSTANTIVE DUE PROCESS RIGHTS BY APPLYING A NEW PAROLE STATUTE, SECTION 558.019.4(2) RSMo, IN CALCULATING PETITIONER'S PAROLE ELGIBILITY, AND EXTENDING PETITIONER'S PAROLE ELGIBILITY FROM 2005 TO 2075 OR 2080.
- 2) AND, WHETHER THE BOARD COMMITTED FRAUD IN BOTH THE TRIAL COURT AND APPELLATE COURT, DECLATORY JUDGMENT PROCEEDINGS, BY ASSERTING THAT PETITIONER'S PAROLE ELGIBILITY WAS PROPERLY CALCULATED UNDER SECTION 558.019.4(2) 75-YEAR RULE and two MISSOURI CASES THAT HAD NOT YET BEEN DECIDED.
- 3) AND, WHETHER PETITIONER WAS ENTITLED TO A HEARING IN THE APPELLATE COURT AND MISSOURI SUPREME COURT, ONCE HE PAID THE FILING FEES, IN FULL, ONLY TO HAVE HIS PETITIONS SUMMARILY DENIED BY BOTH COURTS.
- 4) PETITIONER WAS ENTITLED TO BE HEARD ON WHETHER OR NOT THE BOARD WAS IN COMPLIANCE WITH STATE STATUTE.

LIST OF PARTIES

- [] All parties appear in the caption of the case on the cover page.
- [x] 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:

DON PHILLIPS, CHAIRMAN
MISSOURI BOARD OF PROBATION
AND PAROLE
3400 KNIPP DRIVE
JEFFERSON CITY, MO 65102

ATTORNEY GENERAL'S OFFICE
MR. ERIC SCHMITT, Esq.
P.O. BOX 899
JEFFERSON CITY, MO 65102

RELATED CASES

TABLE OF AUTHORITIES CITED

| CASES | PAGE NUMBER |
|---|-------------|
| Garner v. Jones, 120 S.Ct 1362 (2000) | 6 |
| McNary v. Stussie, 518 SW2d 630 (Mo. 1974) | 6 |
| Kory v. Gray, 478 SW3d 574 (Mo App (Mo App 2016)) | 3 |
| Langston v. Mo. Bd of Prob & Parole, 391 SW3d 483 (Mo App 2012) and 375 SW3d 744 (Mo App 2019) | 4 |
| Wolfe v. Mo. Dept of Corrections, 199 SW3d 219 (Mo App 2009) | 4 |
| Mozee v. Bd of Prob & Parole, 401 SW3d 790 (Mo. App. 2010) | 5 |
| <u>Boland</u> , 471 SW3d 703 (Mo. banc 2015) | 5 |

STATUTES AND RULES

| | |
|---|-----|
| Section 558.019.4(2) Rsmo | 3,4 |
| Section 558.019.5 RSMo | 3 |
| Section 217.690.5 RSMo | 3 |
| U.S. Const. Art. 1, Sec. 10 | 3,6 |
| Mo. Const. Art. 1, Section 13 | 3,6 |

OTHER

| | |
|---|-----|
| Missouri Parole Regulation, 14 CSR 80-2.010 | 3,5 |
|---|-----|

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 391 Sw3d 483 (Mo App 2012); or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the Missouri Court of Appeals 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 Oct 6, 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

Petitioner asserts that Art. 1, sec. 10 of the United States Constitution, and Mo. Const. Art.1, sec. 13 forbids laws retrospective in their operation.

The Missouri Parole Statute, RSMo Section 217.690.5 and the Missouri Parole Regulations, 14 CSR 80-2.010, in effect at the time of petitioner's crimes in June, 1990, and prior to the enactment of Missouri's new parole laws in 1994, calculated any consecutive sentences, that totalled more than forty-five (45) years, to be 45-years. And, for the purpose of parole, multiple life sentences, whether consecutive or concurrent, was calculated as a single Life sentence under RSMo Section 558.019.5 and RSMo Section 217.690.5.

Petitioner states that, under the 5th and 14th Amendments to the United States Constitution, he was denied substantive due process and equal protection of the law, when Section 558.019.4(2) RSMo (2000) was enacted, because under Section 558.019.4(2) consecutive Life sentences, or consecutive sentences that exceed 75-years, is calculated as 75-years, and based on this theory, the Board extended petitioner's parole eligibility date from 2005 to 2080 (or, 2082), which is retrospective because it lengthens petitioner's periods of incarceration by 75-years.

STATEMENT OF THE CASE

1) Petitioner filed for Declaratory Judgment against the Board of Probation and Parole, when the Board extended petitioner's parole hearing date from 2005 to 2080. The Circuit Court of Cole County entered judgment in favor of the Respondant-- See Appendix A.

2) Petitioner states that said Judgment was fraudulent, because the Board argued that they calculated petitioner's parole eligibility based on Section 558.019.4(2) and *Wolfe v. Mo. Dept of Corrections*, 199 SW3d 219 (Mo App 2009). The Judgment was fraudulent because at the time the Board extended petitioner's parole hearing date in 2005, Wolfe had not yet been decided.

a) Said fraud spilled over into this case when petitioner appealed the Circuit Court's decision, cited at: *Langston v. Mo. Bd of Prob & Parole*, 391 SW3d 483 (Mo. App. 2012), which caused petitioner's appeal to be denied

b) Petitioner then sought Mandamus relief in the Missouri Court of Appeals, and argued that the Board was in non-compliance with State statute, and that the Board committed fraud in a prior declaratory judgment proceeding involving this issue. The Missouri Court of Appeals denied relief without a hearing, See Appendix B

c) Petitioner then sought relief in the Missouri Supreme Court and was again denied relief without a hearing, see Appendix C.

REASONS FOR GRANTING THE PETITION

3) Boland, 471 SW3d 703 (Mo. banc 2015) hold that, a person whom fraudelently causes a plaintiff to lose an otherwise valid cause of action, is liable, even where the claim is barred by statute-of-limitation.

a) Kory v. Gray, 478 SW3d 574 (Mo. App. 2006) allows a person to bypass filing in the lower court, if such filing would be futile, such as in this case. Petitioner sought Mandamus relief in the higher court(s) because re-filing in the lower court, where the fraud was committed, would be futile. Mandamus is the proper form for bringing an action whereby the Board has failed to comply with state statute, or has committed fraud upon the court, APPENDIX A.

b) Mozee v. Bd of Probation & Parole, 401 SW3d 790 (Mo. App. 2010) hold that Missouri Parole Statute, Section 217.690.5 gives a Life sentence a definite number . . . that supercedes all other statutory minimums, as codified by 14 CSR 80-2.010(4)(A) which states: "At the time of the eligibility hearing, the Board may grant a parole, and consecutive parole will be granted to apply to the remaining consecutive sentences." See Appendix G.

c) Also, see Appendix D & E, where the Dept of Corrections stated that under Section 558.019 the Board do have the power to convert consecutive sentences to concurrent, under Section 558.019.5 RSMo , further evidenced by Appendix G-4 where Reginald Clemons was granted a 2020 parole hearing date on 5-consecutive Life sentences.

d) Therefore, if a Life sentence was calculated as 50-years, prior to 1994, an offender only had to serve 15-years on the life sentence before becoming eligible for parole, unless he was also found guilty of being a Prior Offender or Persistent Offender, or Class X Offender. Those offender either had to serve 20-years as a Prior Offender; 30 Years as a Persistent Offender, or 40-Years as a Class X Offender.

e) Life sentences under the Amendatory statute carry a mandatory 85%, and a life sentence is now calculated as 30-Years. As a Prior Offender, petitioner was only required to serve 40% of a life sentence, calculated as 50-years (40% of 50 is 20). Petitioner was only required to serve 20-years before becoming eligible for parole-- but the Respondant added 75-years to petitioner's parole eligibility, based on sec. 558.019(4)(2) 75 Year Rule.

f) Respondant argued, in the Wolfe case, that Wolfe would never be able to serve his consecutive sentence, because his life sentence has no end-- and that, therefore, any consecutive sentence to a life sentence (is 75-years), which means that Wolfe will never be able to live long enough to see a parole, but that if he live long enough he could become eligible for parole on his 70th birthday. See APPENDIX G.

g) The Court told the Respondant that such interpretation of statute was non-sense, that "technically, Wolfe becomes eligible for parole in 27½ years after serving 85% of his life sentence."

h) Petitioner points out, that the parole board got away with calculating his sentences in this manner, Which is an abuse of the Board's discretion to apply the wrong statute, or mis-apply the applicable statute.

Petitioner states that, under *Garner v. Jones*, 120 S.Ct 1362 (2000) he was denied due process and equal protection of the law when the Board failed to abide by Missouri Parole Statute, Section 217.690.5 RSMo which states that no mandatory minimums can exceed the minimum eligibility of an ordinary Life sentence, which supercedes all other mandatory minimums, see Appendix G-2.

U.S. Const. Art. 1, Sec. 10 and Mo. Const. Art. I, Sec. 13 forbids laws that are retrospective in increasing the amount of time a defendant must serve, such as in my case, the Board used .

CONCLUSION

Wherefore, the Petitioner respectfully prays that
The petition for a writ of certiorari should be granted.

Respectfully submitted,

Ernest Lee Langston

Date: November 22, 2021

6.

_____/In Missouri, it is a violation for the Board or Respondant to engage in any type of Concealment, which causes the court(s) to be misled, and to reach an erroneous decision, *McNary v. Stussie*, 518 SW2d 630 (Mo. 1974)