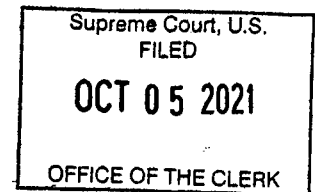


No. 21-6774



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IN THE  
SUPREME COURT OF THE UNITED STATES

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BRANDON SHANE HARRIS – PETITIONER

VS.

STATE OF OKLAHOMA – RESPONDENT

---

ON PETITION FOR A WRIT OF CERTIORARI TO  
THE OKLAHOMA COURT OF CRIMINAL APPEALS

---

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ORIGINAL

## LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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## **QUESTION PRESENTED**

IN JANUARY 2021, PETITIONER WAS SENTENCED TO TWENTY-SEVEN (27) YEARS IN THE CUSTODY OF THE OKLAHOMA DEPARTMENT OF CORRECTIONS FOR TRAFFICKING PURSUANT TO 63 O.S., § 2-415, WHICH BECAME EFFECTIVE ON NOVEMBER 1, 2018, SPECIFICALLY SETTING THE MAXIMUM PENALTY FOR TRAFFICKING TO TWENTY (20) YEARS, WHICH IS CLEARLY STATED IN 63 O.S., § 2-415(D)(1)). THE SENTENCING COURT SENTENCED PETITIONER TO A TERM OF IMPRISONMENT THAT IS GREATER THAN THE MAXIMUM ALLOWED BY OKLAHOMA LAW, WHICH NOT ONLY CREATES A SEVERE VIOLATION OF EX POST FACTO LAW, BUT HARMS PETITIONER'S DUE PROCESS RIGHTS AS STATED IN UNITED STATES CONSTITUTION AMENDMENTS 4, 5, 6, AND 14.

**SHOULD PETITIONER'S SENTENCE OF TWENTY-SEVEN (27) YEARS BE VACATED AND/OR REDUCED TO A TERM THAT IS EQUAL OR LESS TO THE CURRENT MAXIMUM PENALTY OF TWENTY (20) YEARS?**

# **IN THE SUPREME COURT OF THE UNITED STATES**

## **PETITION FOR A WRIT OF CERTIORARI**

Petitioner, BRANDON SHANE HARRIS, respectfully prays that a Writ of Certiorari issue to review the judgments below:

### **OPINION BELOW**

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is reported at PC-2021-359

### **JURISDICTION**

The date the Oklahoma Court of Criminal Appeals decided this case was on September 3, 2021. Petitioner's Appeal was denied. The jurisdiction of the Court is invoked pursuant to 28 U.S.C. 1354(1).

### **CONSTITUTION AND STATUTORY PROVISIONS INVOKED**

Oklahoma Law (63 O.S., § 2-415, specifically 63 O.S., § 2-415(D)(1))

United States Constitution Amendments 1, 4, 5, 6, and 14

Federal Due Process Law

## STATEMENT OF THE CASE

In Petitioner's Application for Post-Conviction Relief filed in February 2021 with the Canadian County District Court of Oklahoma, and was specific in his claim as to the excessive sentence he received in January 14, 2020 (*see*, Proposition V) regarding the 2018 change in Oklahoma Law (63 O.S., § 2-415, specifically 63 O.S., § 2-415(D)(1)) which limits the maximum penalty for Trafficking, a first violation to a term of imprisonment in the custody of the Department of Corrections not to exceed twenty (20) years.

In the State's Response, the Prosecution claims Petitioner's Proposition V does not relate because the issues of the matter occurred *prior* to the plea and should be waived by the entry of the guilty plea. The State is in error by asking the Court to bar Proposition V because, due to the *after the fact* change in Oklahoma Law, Petitioner did qualify for sentence equal or less than the maximum as amended in 63 O.S., § 2-415(D)(1). The Court accepted the State's recommendation to deny Petitioner's Application for Post-Conviction Relief in March 2021.

Petitioner timely appealed the Oklahoma Court of Criminal Appeals and was specific in his claim as to the excessive sentence he received in January 2020 (*see*, Issue I, sub-section C – Excessive Sentence). The Court denied his appeal September 3, 2021, stating that the issue could have been raised in his Application for Post-Conviction Relief (*Petitioner did raise the matter as Proposition V*) and that there was no error by the Trial Court and that Petitioner was not entitled to relief.

The Oklahoma Law is clear.

**63 O.S., § 2-415 (D)** Any person who violates the provisions of this section with respect to a marijuana, cocaine, coca leaves, cocaine base, heroin, amphetamine or methamphetamine in a quantity specified in paragraphs 1, 2, 3, and 4 of subsection C of

this section shall, in addition to any fines specified by this section, be punishable by a term of imprisonment as follows:

(1) For trafficking, a first violation of this section, a term of imprisonment in the custody of the Department of Corrections not to exceed twenty (20) years;

On November 1, 2018, the Oklahoma Legislature amended 63 O.S., § 2-415 reducing the maximum penalty for non-violent Trafficking (specifically 63 O.S., § 2-415 (D)(1)) to a term of twenty (20) years or less, and setting a parole date earlier than currently scheduled to Petitioner. Petitioner's term of twenty (27) years violates the 2018 version of 63 O.S., § 2-415 (D)(1) and creates a severe Ex Post Facto violation of Petitioner's United States Constitution Amendments 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, and 14<sup>th</sup> Rights. ***Collins v. Youngblood***, 497 U.S. 37, 110 S.Ct. 2715, 111 L.Ed.2d 30 (1990), REVERSED, through which United States Supreme Court Justice STEVENS, with whom Justice BRENNAN and Justice MARSHALL join, the "Ex Post Facto" Clause of the Constitution has been construed to: "(1) embrace any law that deprives a person accused of a crime of a "substantial protection" that the law afforded at the time of the alleged crime"; ***Malloy v. South Carolina***, 237 U.S. 180, 35 S.Ct. 507, 59 L.Ed. 905 (1915) it is stated, "that even with regard to procedural changes, the *ex post facto* Clause was 'intended to secure substantial personal rights against arbitrary and oppressive legislative action.'"

## **REASONS FOR GRANTING THE WRIT**

Petitioner's sentence of twenty-seven (27) years should be VACATED as unconstitutional in violation of Federal Due Process Law and Oklahoma Law 63 O.S., § 2-415, and/or be REMANDED to District Court for sentence modification or resentencing to a term equal or less than the current statutory maximum for non-violent Trafficking, which is twenty (20 years or less as allowed in 63 O.S., § 2-415(D)(1). This matter not only affects Petitioner, but shows that the case is of such imperative public importance as to justify deviation and will affect others similarly sentenced to terms greater than allowed by current law.

## **CONCLUSION**

The Petition for a Writ of Certiorari should be GRANTED..

Respectfully submitted,

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