

21-7472

No. 21-3137

ORIGINAL

Supreme Court, U.S.  
FILED

JAN 04 2022

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

For The Tenth Circuit

Earnest Eugene Walker, Jr. — PETITIONER  
(Your Name)

vs.

State of Kansas, et. al — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for The Tenth Circuit.

1823 Stout St., Denver, Co 80202

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

PETITION FOR WRIT OF CERTIORARI

Earnest Eugene Walker, Jr.  
(Your Name)

260 Iris St.  
(Address)

Broomfield, Co 80020  
(City, State, Zip Code)

(316) 259-4527  
(Phone Number)

### QUESTION(S) PRESENTED

The Appellant is questioning the statute K.S.A. 22-3504 Correction of Sentence AND AS the same the Habeas Corpus to be construed as the same to correct an illegal sentence after sentenced has been served; when a manifest injustice has occurred that WAS NOT fixed during the time the sentence was active. This is all on the record and this shows in fact the Petitioner was violated by 18 USC 242, due process Clause and the 14<sup>th</sup> Amendment was violated. (Depriving the Rights of the Petitioner having a fair and impartial Judgment.) See *McGirt v. Oklahoma*, 140 S.Ct 2452 (2020). Justice Gorsuch, writing for the majority stated: "unlawful acts, performed long enough and with sufficient vigor, are never enough to amend the law. To hold otherwise would be to elevate the most brazen and longstanding injustice over the law, both rewarding wrong and failing those in the right. *Id.* at 2482. After reviewing all the forms for a motion for illegal sentence; there is no proper form in the Federal Court for correcting the sentence after it has been served when the case should have been remanded back to the Kansas Supreme Court to rule on the matter. Whether sentence was <sup>illegal or</sup> <sub>not</sub>.

### 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

- a) *Goldberg v. Kelly*, 397 U.S. 254, 267, 270 (1970).
- b) *Garcia v. Ball*, 303 Kan. 560 Syl. 114, 363 P.3d 399 (2015).
- c) *State v. Higby*, 210 K. 554, 558, 502 P.2d 740.

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## TABLE OF AUTHORITIES CITED

### CASES

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Goldberg v. Kelly,	397 U.S. 254, 267, 270
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### STATUTES AND RULES

K.S.A. 22-3504

### OTHER

No. 91CR891, 93CR1193, 11CR2558 And Court of Appeals No.  
18-120036-A.

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 A to the petition and is

[ ] reported at United States Court of Appeals No. 21-3137<sup>(10th Circuit)</sup>; 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 B to the petition and is

[ ] reported at Walker vs. Kansas No. 21-3150; 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 C to the petition and is

☒ reported at State of Kansas v. Earnest E. Walker; 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 10/04/2021.

☒ 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 08/31/2020.  
A copy of that decision appears at Appendix B.

[ ] 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**

14<sup>th</sup> Amendment Violations, 8<sup>th</sup> Amendment Violations,  
6<sup>th</sup> Amendment Violations, and Due Process Clause Violations.



### STATEMENT OF THE CASE

Petitioner States that the U.S. District Court of Kansas indeed had Jurisdiction to hear the Petition of Writ of Habeas Corpus due to the Kansas statute K.S.A. 22-3504(1): the Court may correct an illegal sentence at any time. The Court did not have Jurisdiction to Revoke a probation sentence that had already expired and imposed a prison sentence. Therefore, the prison portion of the sentence was in fact illegal. The Kansas Supreme Court denied the Petition for Review; the only order was from Sedgwick County Courthouse stating that the motion was moot. Petitioner's argument is that the Appeal of the sentence is not moot because a judgment stating that the sentence was illegal is necessary in order to sue the Attorney's who failed to represent the Petitioner. Where is the fairness in a statute if the Court does not follow or apply it? Using, *Goldberg v. Kelly*, 397 U.S. 254, 267, 270 (1970); A fundamental requisite of due process of law is the opportunity to be heard and the right to be heard would be of little avail if it did not comprehend the right to be heard by counsel. As noted in: The Due Process Clause requires a judge to base a decision solely on the evidence presented during a hearing. The decision maker's action must rest solely on the legal rules and evidence adduced at the hearing. "Goldberg, 397 U.S. at 271. More to fact, to demonstrate compliance with this elementary requirement, the decision maker should state the reasons for his determination and indicate the evidence he relied on; though his statement need not amount to a full opinion."

"Freedom Without Due process."

## REASONS FOR GRANTING THE PETITION

Petitioner is requesting this matter as a question of law to correct the situation AND to address the statute to its clearest reading to what it really says. So, the Petitioner can stand corrected on what the statute actually says AND for the state of Kansas to follow the nature of the statute. This statute applies to all similar situated individuals or persons in this position.

### CONCLUSION

The Petitioner compiled several legal documents which support the overall chain of events that has occurred after the violations of his Right. This offense should be challenged, released or removed from Petitioner's Record.  
The petition for a writ of certiorari should be granted.

Respectfully submitted,

E  
Earnest E. Walker Jr ✓

Date: 3/10/2022