THE
SUPREME COURT OF THE UNITED STATES
APRIL TERM 2022
NO. 21-8019

LEVELT MUSGRAVES,
Petitioner,

-against-

STATE OF WISCONSIN,et al.,
Respondents

PETITION FOR A WRIT OF CERTIORARI
TO THE WISCONSIN COURT OF APPEALS

Levelt Musgraves # 251988
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QUESTIONS PRESENTED

1. The Wisconsin state courts did not conduct a complete round of the Public Interest Justice Initiative (PIJI) sentencing issue presented before the Milwaukee county circuit court which refuses to address the issue.

2. The state of Wisconsin has attached and established that PIJI as a sentencing matter to be conducted "not unlike" the individualized nature of sentencing in Wisconsin.

3. The PIJI is a sentencing modification program for parole eligible juvenile lifers sentenced in the 1990's, but there is no law or policy within authority of the state of Wisconsin's highest court; no legislative intent or legislation and the program contains non-disclosure, violation of equal protection, and discrimination within a suspect class of the juvenile lifers sentenced in the 1990's.

4. The Wisconsin state courts decision are an unreasonable application of clearly established federal law as determined by the United States Supreme Court, and is also contrary to it's own state precedent.

PARTIES AND RELATED CASES

The petitioner is Levelt Musgraves, proceeding pro se, a juvenile lifer from the state of Wisconsin.

The Respondents are the State of Wisconsin, the Milwaukee county district attorney's office, the Legal Aid Society of Milwaukee, and Phillip Torsrud *see* https://www.jsonline.com/story/news/2020/12/28/phillip-torsruds-life-sentence-homicide-age-16-could-end-early-30-years-milwaukee-wick-field/3924062001/(accessed April 5, 2021).

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DECISIONS BELOW

The decision of the Wisconsin Court of Appeals is cited as no. 2020AP2089CR and a copy is attached in the appendix as (A.I). The order of the Wisconsin Supreme Court (2020AP2089CR) is not reported a copy is attached in the appendix as (A.II). The order of the Milwaukee County Circuit Court is attached in the appendix as (A. III). The order of the Milwaukee County Circuit Court Reconsideration is attached in the appendix as (A.IV).

JURISDICTION

Jurisdiction is conferred by 28 U.S.C. § 1257(a).

CONSTITUTION AND STATUTORY PROVISIONS INVOLVED

The case involves Amendment XIV to the United States Constitution, which provides:

Section 1. 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.

...

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

The Amendment is enforced by title 28, section 1257(a),United States Code.

STATEMENT OF THE CASE

The petitioner's complaint alleged that he presented the issue of PIJI pursuant a sentence modification to the MIlwaukee County Circuit Court. The Milwaukee County Circuit Court did not address this issue. Importantly the Wisconsin Court of Appeals and the State "conceded" that neither circuit court judge involved addressed the PIJI sentencing issue. However, the state and Wisconsin appeals court has attached and established that the PIJI program is a sentencing matter to be conducted "not unlike" the individualized nature of sentencing in Wisconsin. The PIJI is a sentencing modification program for parole eligible juvenile lifers sentenced in the 1990's. The Milwaukee County district attorney's office and the Legal Aid Society of Milwaukee asked the circuit court to vacate Phillip Torsud's 1991 conviction for first degree intentional homicide for a murder he committed when he sixteen. The parties agreed that Torsud would be resentenced to time

served. This program is conducted on a non-disclosure basis and violates equal protection and enforces discrimination within a suspect class between these juvenile lifers sentenced in the 1990's. Where Musgraves at sixteen years old in his 1991 conviction for first-degree intentional homicide is told the program is not relevant to his conviction. This is where the program which is connected to sentencing in Wisconsin but has no policy within its authority of the state's highest court, no legislator intent and no legislation. The courts issued decisions that are unreasonable applications of clearly established federal law as determined by the United States Supreme Court and contrary to its own states precedent.

BASIS FOR FEDERAL JURISDICTION

The case raises a question of interpretation of the due process clause of the XIV Amendment to the United States Constitution. Under DCR, the court gets its jurisdiction from 28 U.S.C § 1257(a), the same as a direct appeal taken to the Supreme Court from a state court judgement. This distinction is important because it removes DCR from the realm of habeas corpus and all of its restrictions *Dunn v. Madison*, 138 S.Ct. 9 (2017); the court flipped and told the habeas petitioner that he would have better luck with a DCR petition because the AEDPA forbade the court from granting him relief. "Therefore, because the case

now comes to this court on direct review of the state courts decision (rather than a habeas proceeding), ADEPA deferential standard no longer governs." *Madison v. Alabama*, 139 S.Ct. 718 (2019), the part of the AEDPA that causes this shift from habeas to DCR is the harsh rule under § 2254(d), requiring federal courts to uphold a state court's decision - even if the courts knows it is wrong, causing significant constitutional claims to be ignored because of § 2254(d). Fortunately, a state prisoner can do both - federal habeas corpus and DCR, a petitioner Musgraves has done so within the one year limit, (2022-CV-00102-BHL). Therefore, this court is invoked under 28 U.S.C § 1257(a). As the basis to hear this direct collateral review to address the non-disclosure, violation of equal protection, and discriminatory manner in which this sentence modification program is conducted. (Note: The Solicitor General has no control over DCR cases by state prisoners.).

REASONS FOR GRANTING WRIT

A. Conflicts with Decisions of Other Courts.

The holding and refusal to adjudicate of the courts below that the PIJI is not relevant to Musgraves who fits the criteria of the sentence modification program

is directly contrary to the holding of the 9th Circuit. *See Paulsen v. Daniels*, 413 F.3d 999, 1005 (9th Cir. 2005); prisoners has standing to challenge a rule made without following the usual public rulemaking process; this failure deprived them of the "concrete interest to have the public participate in the rulemaking that made them ineligible for a sentence reduction.".

B. Importance of the Questions Presented.

This case presents a fundamental question of the interpretation of this Court's decisions in *Giglio v. U.S.*, 405 U.S. 150, 92 S.Ct. 763 (1992); *Koon v. U.S.*, 518 U.S. 81, 100 (1996); *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah,* 508 U.S. 520 (1993). This question presented is of great public importance because it affects a complete class of juvenile lifers who were sentenced in the 1990's. They are being deprived of challenging a rule of this PIJI program. In which this program that the state of Wisconsin has connected to its sentencing laws was made without following the usual public rulemaking process. This program has not been disclosed to this suspect class, it discriminates within this suspect class and violates the equal protection clause. This failure deprived them of the "concrete interest to have the public participate in the

rulemaking that made them ineligible for a sentence reduction. In view of the secrecy of the non-disclosure, and the refusal of the Milwaukee County Circuit Court to address the PIJI issue in open court. Guidance on the question is also of great importance, because it affects their ability to receive fair decisions in proceedings that may result in a violation of due process. The suspect class is not contacted, and lawyers in the case do not involve their clients, and the suspect class does not receive or hear any of the program results and have no proof if their case was even presented before a court, but the lawyers receive funds for their supposed counsel.

The issues importance is enhanced by the fact that the lower courts in this case ignored and went against their own precedent. The state of Wisconsin and the Wisconsin Court of Appeals conceded that the Milwaukee County Circuit Court did not address the PIJI issue. However in *State v. Daniels*, 160 Wis.2d 85, 103 n7, 465 N.W.2d 633, 639 (1991)(HN 4) the court noted: "if a circuit court fails to exercise discretion of an issue ... that itself is an abuse of discretion.". Additionally, in *J.I. Case Co. v. Labor and Industry Review Com'n*, 118 Wis.2d 45, 346 N.W.2d 315, 318 (1984); the Wisconsin Supreme Court declares: "a decision which on its face shows no consideration ... constitutes an abuse of

discretion ... when discretion has not been exercised, the proper avenue is to remand."

However, precedent was not followed and the circuit court never addressed the issue. This goes against *State v. Caban*, 210 Wis.2d 597, 563 N.W.2d 501 (1997); *Falter v. U.S.*, 23 F.2d 420 (C.A. 2), cert denied, 277 U.S. 590, 48 S.Ct. 528 (1928).

Furthermore, the great public importance is heightened due to the egregious fact that Milwaukee County is the "only" county from Wisconsin's 72 counties that a handful of these juvenile lifers have benefitted from the practice of the non-disclosure, discriminatory, violation of equal protection PIJI program. The district attorney walks only selected juvenile lifers into court from the suspect class and gains relief, and never contacts others.Then when the other juvenile lifers on their own present a sentence modification to the same court the district attorney's office and the court fight against that juvenile lifer that fits the criteria of the PIJI program. *See Kikumura v. Turner*, 28 F.3d 592 (7th Cir.1994); "discrimination unjustified.".

In *State v. Musgraves,* 2020AP2089-CR (April 8, 2021), the respondents brief (A.V)

at page 6, it is quoted: "the Public Interest justice Initiative is a joint project between the Milwaukee County district attorney's office and the Legal Aid Society of Milwaukee to review cases of persons "sentenced" to life imprisonment for offences committed as juveniles (https://wilawjournal.com/2019/11/27/milwaukee-da-legal-aid-society-review-juvenile-life-sentence/(accessed April 5, 2021)... For example, under this program, the district attorney's office and lawyers for Phillip Torsrud recently asked the circuit court to vacate Torsrud's 1991 conviction for first-degree intentional homicide for a murder he committed when he was sixteen. *See* https://www.jsonline.com/story/news/2020/12/28/phillip-torsruds-life-sentence-homicide-age-16-could-end-early-30-years-milwaukee-wick-field/3924062001/(accessed April 5, 2021).

Because the the above stated facts the State of Wisconsin are asserting that this PIJI program is "not unlike" the individualized nature of sentencing in Wisconsin, asserting they have no obligation to disclose, they can engage in selective discrimination, and that they is no equal protection for the suspect class of juvenile lifers sentenced in the 1990's. (Quoting) "The case-by-case review being conducted under this program is "not unlike" the individualized nature of

sentencing in Wisconsin." *See State v. Gallion*, 2004 WI 42, 270 Wis.2d 535, 678 N.W.2d 197(2004). (April 8, 2021) Respondents brief at page 8. (A.VI)

The State of Wisconsin's position is completely unconstitutional. It is secretly pulling some into court and granting relief while putting up a false narrative that the complete suspect class is under review. In a quest to keep the whole thing out of open court none of the suspected class are contacted about the program or any status of each persons case. However, the Legal Aid Society of Milwaukee receives funds to represent the suspect class but they do not contact or make awareness to its clients, like Musgraves and countless others.

In the very fact that the State of Wisconsin cities in *Gallion,* Musgraves and the other non contacted suspect class has a due process right under the United States Constitution to challenge. The State of Wisconsin relies on *Gallion* even though there is no legislator intent, legislation, nor any authority for the PIJI program. "There is a divide in the MIlwaukee juvenile lifers from the 1990's suspect class, and juvenile lifers from the other 71 counties in Wisconsin are completely shut out."

This Court decided "such a right considered as an issue or claim created in or

involving a particular situation or thing." *See Marshall v. Jerrico, Inc.*, 446 U.S. 238 (1980). Only one court out of the three Wisconsin state courts weighed in, and that court went against state law that all three courts must address the issue. The Wisconsin Court of Appeals "cannot affirm" a decision when the issue in the decision was not addressed by the circuit court. As this Court has observed in *Jeffries v. Turkey Run Consol. School Dist.*, 492 F.2d 1, 4 (1974); *Board of Regents v. Roth*, 408 U.S. 564 (1972). Petitioner Musgraves has a Fourteenth Amendment right, as well as the shutout juvenile lifers from the other 71 counties because the PIJI program has excluded them.

This Court should correct this actual concrete dispute. *See Renne v. Geary*, 501 U.S. 312, 315-16, 111 S.Ct. 2331 (1991); U.S.C.A. Const. Art. III § 2, cl. 1. The Constitution of the federal courts may resolve "cases" or "controversies". *Preiser v. Rodriguez*, 411 U.S. 475, 500, 93 S.Ct. 1827 (1973); *Martin v. Hunter's Lessee*, 14 U.S. 304 (1816); *Powell v. State of Ala.*, 287 U.S. 45 (1932).

Additionally, in a continued effect, a life sentence on parole is extremely adverse ~~to~~ Musgraves and others that is ongoing for the rest of their lives. Therefore, there is standing to pursue. *See Kerr v. Farrey*, 95 F.3d 472 (7th Cir.1996); *Spencer v.*

Kemna, 523 U.S. 1, 8-9, 118 S.Ct. 978 (1998). This Court decided: "even if released is an ongoing detriment ... from the adverse determination .... " "moot shall not apply."

CONCLUSION

For the foregoing reasons this certiorari should be granted in this case.

...

I, Levelt Musgraves, declare pursuant to 28 U.S.C.A. § 1746, under penalty of perjury, that the foregoing is true and correct, [redacted]

originally filed February 17, 2022

April 30, 2022
Respectfully submitted,

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Appendix