

No. 21-8097

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

FILED

JUN 01 2022

OFFICE OF THE CLERK
SUPREME COURT, U.S.

THOMAS RANDALL AINSWORTH — PETITIONER
(Your Name)

vs.

ROBERT POWELL, Warden — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE 10TH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Thomas Randall Ainsworth
(Your Name) Inmate # ~~123~~ 123835
UTAH STATE PRISON
P.O. BOX 250
(Address)

Draper, UT 84020
(City, State, Zip Code)

801-576-7000
(Phone Number)

QUESTIONS PRESENTED

I. WHETHER THE TENTH CIRCUIT'S CERTIFICATE OF APPEALABILITY (COA) ANALYSIS CONFLICTS WITH THE FIFTH CIRCUIT'S COA ANALYSIS.

II. WHETHER THE DIFFERING PENALTIES ESTABLISHED BY UTAH'S DUI AND MEASURABLE-SUBSTANCE PROVISIONS VIOLATE DUE PROCESS OR EQUAL PROTECTION.

III. WHETHER AINSWORTH SHOULD BE GRANTED A COA.

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

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RELATED CASES

State v. Ainsworth, No. 121902706,
Third District Court; Salt Lake Department
of Utah.

State v. Ainsworth, No. 20130924-CA,
Utah Court of Appeals, Judgment entered
January 7, 2016.

State v. Ainsworth, No. 20160173, Utah
Supreme Court. Judgment entered
September 5, 2017.

Ainsworth v. Benzoni, No. 2:17-CV-
1205-RJS, United States District
Court for the District of Utah.
Judgment entered March 10, 2021.

Ainsworth v. Powell, No. 21-4038,
United States Court of Appeals for the
Tenth Circuit. Judgment entered
February 7, 2022.

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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 A to the petition and is

☒ reported at See Appendix G; 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☐ is unpublished.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 See Appendix G; 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 E to the petition and is

☒ reported at 423 P. 3d 1229 UT (2017)⁶⁰; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the Utah Court of Appeals court appears at Appendix F to the petition and is UT App. 2

☒ reported at 365 P. 3d 1227 2016; 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 February 7, 2022

☐ 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: March 17, 2022, and a copy of the order denying rehearing appears at Appendix C.

☐ 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 _____.
A copy of that decision appears at Appendix _____.

☐ 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

U.S. Const. amend. V: "No person shall... be deprived of life, liberty, or property, without due process of law...."

U.S. Const. amend. XIV, §1: "No state shall... 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."

Fed. R. Civ. P., ^{60(b)} Appendix A; 12-16 Appendix D

28 U.S.C. § 2254, Appendix A; 5, 9, 10, 13

28 U.S.C. § 2244, Appendix A; 13, 14, 15, 16
" D; 13

28 U.S.C. § 1915(a)(1), Appendix A; 16

28 U.S.C.S. § 2254(d)(2021) Appendix B; 3, 5
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28 U.S.C.S. § 2244(2021) Appendix A; 12, 13, 14, 15, 16
Appendix D; 10, 11

28 U.S.C. § 1631, Appendix D; 11

STATEMENT OF THE CASE

Ainsworth drove across a median and hit another car. Two adults in the other car were seriously injured and their eighteen-month-old son was killed.

Ainsworth told police he lost control of his car when he reached for his cell phone on the floorboard of his car. A blood test showed he had 0.2 mg/L of methamphetamine in his system. Methamphetamine is a Schedule II substance.

Ainsworth was charged in Utah state court with three second-degree felony counts under the measurable-substance statute.

This case concerns two criminal offense classifications under Utah law for negligent operation of a motor vehicle causing serious bodily injury or death. The offense could be a second-degree felony under the "measurable-substance" statute if the person had any measurable

amount of a schedule I or II controlled substance in their body. Or, the offense could be a third-degree felony under the "DUI" statutory scheme if the person was under the influence of alcohol, any drug, or the combined influence of alcohol and any drug to a degree that renders the person incapable of safely operating a vehicle.

Ainsworth pled guilty to the three measurable-substance offenses but reserved his right to appeal. He was sentenced to three consecutive, indeterminate prison sentences of three to fifteen years.

Ainsworth was successful on direct appeal to the Utah Court of Appeals. The Court vacated his convictions for entry of third-degree felony convictions and for resentencing.

The state obtained review in the

Utah Supreme Court which reversed. Ainsworth then pursued §2254 relief pro se. The district court denied his habeas petition and a COA.

Raising several issues, Ainsworth filed a pro se motion for Relief under Federal Rule of Civil Procedure, 60(b). The motion was denied as was a COA.

Ainsworth then filed a pro se combined COA application and opening brief seeking review of both district court denials. The Tenth Circuit denied both requests for a COA. He filed a timely pro se petition for rehearing and rehearing en banc. The petition was denied.

Ainsworth now respectfully petitions The United States Supreme Court for a writ of certiorari.

REASONS FOR GRANTING THE PETITION

The United States Supreme Court should grant Ainsworth's petition because this matter involves, among other issues, conflicting decisions between the Tenth Circuit Court of Appeals (Tenth Circuit) and the Fifth Circuit Court of Appeals (Fifth Circuit) at the certificate of appealability (COA) stage. This matter concerns a class of individuals found in all fifty (50) states; prisoners seeking a COA, and their right to equal protection.

This case involves the unfair and arbitrary treatment of similarly situated defendants in Utah. This issue could affect defendants in all fifty (50) states.

Unfortunately, Ainsworth has been "asked to make these showings in the face of the heightened standards and related hurdles that attend many post-conviction proceedings. See, e.g. 28 U.S.C. §§ 2254, 2255." *Garza V.*

~~II~~

Idaho, 139 S.Ct. 738, 749 (2019).

I. Although a prisoner has no right to appeal the dismissal of a habeas corpus petition, he or she does have the right to request a COA. The only requirement for granting a COA is to determine only if the Federal district court's decision is debatable. See *Buck v. Davis*, 137 S.Ct. 759 (2017) (holding that Court of Appeals was required to determine only if district court's decision was debatable at COA stage).

In part, the Federal District Court concluded that "the narrow question before the Utah Supreme Court was whether there was a 'rational basis' for punishing individuals who have any measurable amount of controlled substance in their bodies more harshly than individuals who have an incapacitating amount of the substance in their

bodies" (see Appendix B, page 6).

Whether this "narrow question" is the correct question is debatable. The question itself is debatable.

"Having examined the [Utah Supreme Court's] reasoning and taking into account the leeway the rational-basis test affords courts, [the Tenth Circuit] conclude[d] that not all fairminded jurists would agree that the [Utah Supreme Court] 'got it wrong' when it concluded that schedule I and II drugs are those viewed as having a greater potential for abuse and a greater risk of dependence than other controlled substances..." (see Appendix A, page 12).

"[The Tenth Circuit] should limit its examination at the [COA] stage of a habeas proceeding to a threshold inquiry into the underlying merit of the claims, and ask only if the district

court's decision was debatable. 28 U.S.C.A. § 2253 (c)(1). "Buck v. Davis at Westheadnote 7. "When a Court of Appeals sidesteps the [COA] process by first deciding the merits of an appeal in a habeas proceeding, and then justifying its denial of a COA based on its adjudication of the actual merits, it is in essence deciding an appeal without jurisdiction. 28 U.S.C.A. § 2253 (c)(1). "Buck v. Davis at Westheadnote 5.

The Tenth Circuit raised another debatable issue: "[a]rguably, the only 'governing legal rule' here is the rational-basis test." (See Appendix A, page 11.) It could be debated that the Federal District Court applied the wrong "governing legal rule". For example, this case may trigger strict scrutiny.

II. Utah imposes different penalties upon defendants who commit the same or similar offenses. Compounding this problem, defendants, after receiving unfair penalties, are subjected to Utah's unfair and arbitrary indeterminate sentencing.

In this case, its Utah's DUI and measurable-substance provisions. "In describing the DUI and measurable-substance offenses, the district court characterized them as 'analogous'. R., Vol. II at 33." (See Appendix A, page 8.) These "analogous" offenses may operate contrary to the tenets of statutory construction, trigger strict scrutiny, or trigger the Rule of Lenity (also called the rule of strict construction). See *Gordon V. State*, 334 Ga. App. 633, 780 S.E. 2d 376 (Ga. App. 2015).

The "[Anti-Terrorism And Effective Death Penalty Act] sets a high bar but not an insurmountable one". Dunn

V. Reeves, 141 S.Ct. 2405 (2021). The dismissal of a habeas corpus petition or the denial of a COA does not rule out the existence of a constitutional violation.*

Federal habeas relief is supposed to "guard against extreme malfunctions in the state criminal justice systems".

Green v. Fisher, 565 U.S. 34, 38 (2011).

The deprivation of defendants' rights to equal protection and due process by the State of Utah is, among other things, an "extreme malfunction".¹

¹ The constitutionality of Utah's Plea Withdrawal Statute, Utah Code Ann. § 77-13-6, is being challenged in the Utah Supreme Court. See State of Utah v. Stephen Rippey; case no. 20200917-SC.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Thomas R. Ainsworth

Date: May 30, 2022