

21-8179

No. _____

ORIGINAL

Supreme Court, U.S.
FILED

JUN 10 2022

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

Terrance Washington — PETITIONER
(Your Name)

vs.

Superintendent Somerset, et al — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

3rd circuit court of Appeal

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

PETITION FOR WRIT OF CERTIORARI

Terrance Washington (DN-3858)
(Your Name)

1111 Altamont Boulevard (Sci Frackville)
(Address)

Frackville Pa 17931
(City, State, Zip Code)

none
(Phone Number)

QUESTION(S) PRESENTED

- 1) Is there a compelling important constitutional question in petitioner's Alleyne claim, considering the conflict between the PA Superior Court (Com v Ciccone PICS # 16-0893) and the PA Supreme Court (Com v Washington PICS # 16-0953) (Com v Hopkins PICS # 15-0961)
- 2) Is there a compelling important constitutional question in a 4th amendment illegal search & seizure entry of a home without a search warrant (trial judge error)
- 3) Is there a compelling important constitutional question in a 6th amendment violation of a biased juror sitting on a jury (IAC and trial judge error)
- 4) Is there a compelling important 6th amendment constitutional violation question in a Batson violation (prosecutorial misconduct and trial judge error)
- 5) Is there a compelling important 14th amendment constitutional violation question in the prosecution relinquishing its burden to prove guilt beyond a reasonable doubt

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:

Commonwealth of Pennsylvania
Superintendent Somerset
Superintendent Tice

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CASES

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STATUTES AND RULES

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 _____ to the petition and is

- ☐ reported at U.S.C.A. 3rd circuit # 21-1882; 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☐ is unpublished.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 U.S.D.C. # 18-5638; 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 _____ to the petition and is

- ☐ reported at Supreme Ct of Pa # 37EAP 2015; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the Superior Ct of Pennsylvania court appears at Appendix _____ to the petition and is

- ☐ reported at 2015 Pa Super Unpub. Lexis 1345; 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 March 28, 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: _____, 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 July 19, 2016.
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

Mandatory Sentencing Act

42 Pa. C.S. § 9712

42 Pa. C.S. § 9743(a)(2)(i)

Batson challenge

STATEMENT OF THE CASE

Petitioner was arrested for armed robbery on June 28, 1996 in Philadelphia, Pennsylvania. Petitioner's arrest on that date was followed by an illegal search and seizure. Petitioner proceeded to a jury trial on January 8, 1998. Prior to the beginning of trial, a voir dire proceeding occurred and a biased juror was placed on petitioner's jury panel. Additionally, a Batson conference took place in the trial judge's chamber, due to the prosecutor's intentional exclusion of Black jurors from petitioner's jury panel. Petitioner's trial testimony concluded on January 12, 1998, at which time, the prosecutor committed prosecutorial misconduct by making unconstitutional comments to the jury in his closing remark(s). Petitioner was convicted and illegally sentenced to 35-70 years imprisonment under Pennsylvania's Mandatory Sentencing Act. The U.S. Supreme Court ruled on *Alleyne v U.S.* (133 S.Ct. 2151) in 2013, rendering petitioner's sentence illegal/void ab initio.

REASONS FOR GRANTING THE PETITION

Biased Juror- trial counsel was ineffective for not using a peremptory strike to remove a clearly biased juror and the trial court abused discretion for not removing said juror for cause [U.S. v Calabrese 942 F2d 218 (C.A. 3 [Pa] 1991)], in violation of petitioner's 6th amendment right to the U.S. Constitution. The juror held beliefs & opinions that prevented the performance of jury duties. Counsel neither questioned the juror & made no attempt to have her removed for cause. The juror indicated in her signed voir dire questionnaire that she couldn't be a fair juror in this case because her brother/nephew were robbed at gunpoint. The judge asked the juror if that family experience would affect her ability to be fair in this case. The juror responded "I don't know..because of the fact I still remember what happened..to my nephew two months ago". The Court further asked the juror if she would be able to put aside what happened & be fair in this case. The juror responded "I don't know- just remembering my nephew seeing his father being held with a gun on his head, you know--" [Notes of Testimony 1-8-1998, pages 125-128]. Due to her responses, she should have been removed, dismissed or excused {Strickland v Washington 466 U.S. 668}[U.S. v Martinez-Salazar 528 U.S. 304, 120 S.Ct. 774]. This issue implicates an important/compelling constitutional question & implicates a publicly important issue because biased jurors shouldn't be impaneled on jury panels, in contradiction of the 6th amendment.

Batson Challenge- the trial court, federal district court & the 3rd circuit court of appeals erred in ruling the Commonwealth did not violate Batson v Kentucky [106 S.Ct. 1712]. Trial Counsel pointed out, in a closed door conference in the trial judge's chambers during the voir dire process, that the Commonwealth was intentionally excluding Black jurors from the jury panel [Notes of Testimony 1-8-1998, pages 161-164]. A prima facie case of discrimination was demonstrated by the showing of the totality of the relevant facts that gave rise to the inference of discriminatory purposes [Holloway v Horn 161 F.Supp 2d 452 [E.D.Pa 2001]. This exchange took place in the judge's chambers: [defense counsel] "For the record, I'm making a Batson Challenge" [the court] "let me see the pad" [defense counsel] "I've used 5 strikes, he's used six" [the court] "you're making the challenge, right?" [prosecutor] "five whites out of six..first he has to prove a pattern, prima facie pattern" [defense counsel] "there are only 3 black males out of the 37 in the room, two thirds of them have been struck by the Commonwealth..out of the panel of 37, I count 12 Afro-Americans & my client is Afro-American..I submit that pattern has been shown" [the court] "with two-thirds of the 3 African American males..is that your complete challenge? Mr. McPherson, do you have a response?" [prosecutor] "yes, your honor..that counsel has not shown any pattern of discrimination" [the court] "your challenge, your motion is denied" [N.T. 1-8-1998, pages 161-164]. An erroneous exclusion of a juror constitutes reversible error. A single strike for constitutionally impermissible reasons is enough to establish a valid Batson claim [U.S. v Martinez-Salazar 528 U.S. 304, 120 S.Ct. 774]. The state court applied Batson in an objectively unreasonable fashion by failing to engage in a sensitive inquiry into such circumstantial & direct evidence of discriminatory intent. The trial court's inquiry into the prosecutor's use of peremptory challenges failed to provide the scope of constitutional scrutiny required of Batson. When purposeful discrimination occurs, relief may be granted, regardless of whether the discrimination produces an "unfair" jury. This issue implicates an important/compelling constitutional question & implicates a publicly important issue because the exclusion of jurors for racially discriminatory reasons violates the federal and every state constitution and the precedent set forth by the U.S. Supreme Court in Batson v Kentucky 106 S.Ct. 1712. Similarly situated petitioners should be comforted that discriminatory prosecution practices in voir dire will not be tolerated by this Court. This violation also implicates a violation of the 6th and 14th amendment to the U.S. Constitution.

Illegal Search & Seizure- petitioner had a pre-trial suppression hearing on June 16-17, 1997, seeking the suppression of evidence that resulted from a warrantless police search of a home. The police entered a premises based on a consent to search form that was signed by individuals that did not live at the premises & lacked the legal/common authority to authorize the search. The U.S. Constitution recognizes that a person (only) with common authority over, or other sufficient relationship to, the place being searched, can give a valid consent to search. The court(s) recognize common authority to consent in each person's mutual use of the property which demonstrates joint access or control for most purposes [Illinois v Rodriguez 497 U.S. 177, 181-182]. Common authority isn't to be implied from the mere property interest(s) a 3rd party has in the property. The petitioner avers a 4th amendment U.S. constitutional violation against unreasonable/illegal search & seizure. The signers of the consent to search form had no joint access/control or adequate authority over the premises searched..and had no exclusive control of, or complete access to, the premises. They had no jurisdiction or common authority to authorize the search. This U.S. Supreme Court has recognized that physical entry of a home is the chief evil against which the wording of the 4th amendment is directed. Additionally, the police had no reasonable caution with the facts available to them to believe/conclude that the consenting parties had clear common authority over the home. The petitioner had a legitimate expectation of privacy. The Philadelphia police department had abundant opportunity & time to go to a magistrate judge & obtain/ascertain a valid search warrant & there were no exigencies which required immediate entry into the home. The police seized evidence from the home they had no legal right to enter, therefore, the evidence should have been suppressed. The evidence was seized without a (valid) warrant, thereby making any seizure illegal. One prosecution witness verified that she didn't live at the premises [Notes of Testimony 6-17-1997 page 5, 17, 73] and had no keys to the premises [Notes of Testimony 6-16-1997 page 27 37, 76 and 81][Notes of Testimony 6-17-1997 pages 70 and 73]. Petitioner was denied due process & equal protection under the law & denied his 4th amendment right against illegal search(s) & seizure(s). Evidence of any kind obtained by police through an unlawful search may not be used in any respect, including as evidence at trial against the subject of the search [Wong Sun, 371 U.S. @ 484-88]. This issue implicates an important/compelling constitutional question & implicates a publicly important issue implicating the 4th amendment. Petitioner and those similarly situated should be able to take (legal) comfort in the protections of the 4th amendment to the U.S. Constitution.

Alleyne Claim- petitioner avers the Commonwealth violated his 14th amendmet due process right by failing to inform of its intent to proceed under Pennsylvania's Mandatory Sentencing Act, which renders/rendered petitioner's sentence illegal. Due process mandates reasonable notice shall be provided after conviction & before sentencing and/or before a defendant pleads guilty. When petitioner raised the issue, before the Pennsylvania Superior Court, of the prosecution's failure to inform related to the Mandatory Sentencing Act, the PA Superior Court, sua sponte, raised an Alleyne v U.S. 133 S.Ct. 2151 (2013) claim. Petitioner avers a mandatory minimum sentencing claim that invokes the reasoning of Alleyne implicates the legality of the sentence & a challenge to the legality of the sentence may be raised as a matter of right & is non-waivable. Petitioner was sentenced under a sentencing regime that Alleyne rendered unconstitutional & should be held void ab initio (invalid from the time it was enacted). The petitioner should be able to use a timely filed PCRA petition to remedy an illegal sentence handed out under a mandatory minimum scheme found to be unconstitutional by the U.S. Supreme Court. When an unconstitutional mandatory minimum sentencing statue results in an illegal sentence under the 6th and 14th amendment, that illegal sentence should be able to be corrected via a timely PCRA petition, irrespective of whether retroactive application of the underlying constitutional ruling is required. Petitioner was sentenced under Pennsylvania statue 9712. Following the Alleyne decision, the Pennsylvania Superior Court held statue 9712 unconstitutional & any sentence imposed there-under is illegal. The legislative intent of the PCRA is to provide collateral relief to persons with illegal sentences. Petitioner is currently serving a facially illegal mandatory minimum sentence via Alleyne & should be able to obtain relief pursuant to federal law. On collateral review, the appropriate remedy in a case where a defendant is serving a sentence pursuant to a statue that is no longer constitutional is to vacate the sentence. A court has jurisdiction to decide whether a sentence is illegal if a PCRA petition has been timely filed. Petitioner raised his claim in a timely filed PCRA petition, therefore he is entitled to relief. The non-waiver illegal sentencing doctrine applies even to issues a court decides are without merit. The Court possesses a rare inherent power to correct illegal sentences. Under the law, an unconstitutional statue such as 9712 is a nullity; it is as if it were never enacted. Its unconstitutionality dates from the time of its enactment & not merely from the date of the decision holding it so. In enacting the PCRA, the PA legislature made it clear that defendants serving illegal sentences are entitled to relief under the PCRA. All Pennsylvania mandatory minimum statues have been declared nonseverable & void..hence, substantive rights, as well as procedural rights, are implicated. Petitioner asserts Alleyne expresses a fundamental break from precedent; it announced a new

rule of law. A new rule of law is if the decision overrules, modifies or limits any previous opinions of the Court. Before Alleyne, it was universally accepted that facts which increase the minimum sentence didn't run afoul of any constitutional guarantee. Alleyne ended that universal acceptance of *McMillian v Pennsylvania* 477 U.S. 79 and *Harris v U.S.* 536 U.S. 545. Federal decisions have recognized a general rule of retroactivity for the constitutional decisions of the Court. When the Court applies a rule of federal law, it must be given full retroactive effect as to all events, regardless of whether such events predate or postdate the announcement of the rule. New rules that invalidate existing statutes are presumptively retroactive [*Harper v Virginia* 509 U.S. 86, 94][*Schrino v Summerlin* 124 S.Ct. 2519]. This issue implicates an important constitutional question & presents a conflict between the PA Superior Court and the PA Supreme Court. The PA Superior Court ruled in *Com v Ciccone* PICS # 16-0893 that a criminal defendant can use a timely filed PCRA petition to remedy an illegal sentence handed out under a mandatory minimum scheme found unconstitutional under Alleyne (July 12, 2016). The court concluded "the Court had jurisdiction to correct the sentence, irrespective of whether retroactive application of the underlying constitutional ruling is required. Regardless of whether Ciccone's sentence was illegal when issued or later rendered illegal by the courts, it stands as illegal & requires a remedy". However, on July 19, 2016, the PA Supreme Court ruled in *Com v Washington* PICS # 16-0953, that "Alleyne does not apply retroactively to cases pending on collateral review", negating the Superior Court's ruling in Ciccone. The 2 decisions are legally irreconcilable. Due to this conflict and the important 6th amendment question(s) implicated, petitioner avers this issue is ripe for this Court's review

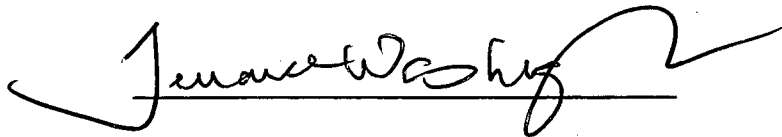
REASONS FOR GRANTING THE PETITION [page 5]

Prosecutorial Misconduct: The district attorney committed prosecutorial misconduct by making an inappropriate/unconstitutional comment to the jury during his closing remarks by telling the jury he did not have to prove the defendant guilty beyond a reasonable doubt. The prosecutor said "I don't have to prove- its not my burden to prove it beyond a reasonable doubt, but to a mathematical certainty" [Notes of Testimony 1-12-1998, page 133]. This comment misled the jury & violated petitioner's 14th amendment due process constitutional right, which forbids a state to convict/incarcerate a person without proving the elements of that crime beyond a reasonable doubt [Stocker v Warden 2004 U.S. Dist. Lexis 5395]. The burden always rests with the Commonwealth to prove guilt beyond a reasonable doubt. The Commonwealth relinquished its responsibility/burden & misled/confused the jury via this comment. The prosecutor intentionally misconstrued the very crux/foundation of a criminal trial & prejudiced the petitioner to a fair trial. Petitioner's trial counsel was ineffective for not objecting to this comment, seeking a curative instruction or requesting a mistrial [Strickland v Washington 466 U.S. 668]. Petitioner alleges a 5th, 6th & 14th amendment violation to the U.S. Constitution. The due process clause protects the accused except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime charged [Winship 90 S.Ct. 1068, 397 U.S. 358] [Jackson v Virginia 443 U.S. 307, 99 S.Ct. 2781]. When the prosecutor argues on the basis of facts outside the record, he becomes an unsworn witness, diverts the jury from its proper function & denied petitioner a fair trial. The prosecutor's opinion(s)/statements(s) carry with it the imprimatur of the government & induces the jury to trust the government's judgment rather than its own [U.S. v Young 470 U.S., 105 S.Ct. 1038][Donnelly v DeChristoforo 416 U.S. 637, 94 S.Ct. 1868]. This issue implicates an important/compelling constitutional question & implicates a publicly important issue because prosecutors shouldn't be allowed to totally abdicate its responsibility to a jury without consequence. This issue goes to the very heart of criminal trials in America. Similarly situated petitioners should be comforted that this type of prosecutorial misconduct will not be tolerated by this esteemed Court.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "J. M. Washington", is written over a horizontal line.

Date: June 7th 2022