

FILED
AUG 12 2022

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES

ORIGINAL

No. 22-5405

IN THE
SUPREME COURT OF THE UNITED STATES

Perry Sawano — PETITIONER
(Your Name)

vs.

The State of Colorado — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Colorado State Supreme Court

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

PETITION FOR WRIT OF CERTIORARI

Perry Sawano, #169563

(Your Name)

Colorado State Penitentiary
P.O. Box #777

(Address)

Canon City, CO. 81215-0777

(City, State, Zip Code)

None

(Phone Number)

QUESTION(S) PRESENTED

1) Does the Eighth Amendment of the U.S. Constitution, which prohibits the imposition of cruel and unusual punishment require that a sentencing court, when conducting a proportionality review, consider the defendant's overall/aggregate sentence?

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:

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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 _____; 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 is unpublished.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 _____; 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 is unpublished.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 B to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the Colorado Supreme Court court appears at Appendix A 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 is unpublished.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 _____.

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 May 23, 2022. A copy of that decision appears at Appendix A.

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

United State Constitution, Amendment VIII

"Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted."

STATEMENT OF THE CASE

In 2014, Mr. Sawano was arrested and charged with 12 counts of securities fraud based upon his mis-appropriation of funds from investment accounts he managed. This misuse of funds occurred over a number of years and was the result of Mr. Sawano having thrown good funds after bad in an attempt to recover earlier loses caused by investing in resort properties which suffered devastating damage from a hurricane. Mr. Sawano did so without first obtaining permission from the investors to place their funds into high risk investments, most of which did also not pan out.

Mr. Sawano entered into a plea agreement whereby he would enter a plea to two Class-III felonies of theft and two Class-III felonies of securities fraud as defined under Colorado law. As a result of this plea, Mr. Sawano was subject to a presumptive range sentence of 4-12 years on each count. When sentence was imposed, the trial court imposed a 7-year sentence on each count, but then ran them consecutively, resulting in an overall, aggregate sentence of 28-years in the Colorado Department of Corrections, plus 5-years of mandatory parole. This is an extraordinarily long sentence for a man in his 50's, plus it not only may exceed Mr. Sawano's life expectancy, but also fails to take in to account his ability to make any meaningful attempt at restitution.

Mr. Sawano then timely sought a proportionality review of his sentence and the trial court denied an extended review finding no inference of a disproportional sentence with respect to each 7-year sentence. The trial court also refused to consider the aggregate sentence and ability to pay restitution. Mr. Sawano

appealed and a division of the Colorado Court of Appeals affirmed the trial court's ruling. See Appendix B. Certiorari was sought in the Colorado Supreme Court and denied. See Appendix A. This action is both timely and properly presented to this Court, vesting it with the authority to entertain the claim presented herein.

REASONS FOR GRANTING THE PETITION

- 1) Does the Eighth Amendment of the U.S. Constitution, which prohibits the imposition of cruel and unusual punishment, require that a sentencing court, when conducting a proportionality review, consider the defendant's overall/aggregate sentence?

The Eighth Amendment of the U.S. Constitution provides in relevant part that:

"Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted."

Id, see also, Ingraham v. Wright, 430 U.S. 651, 671 n.40 (1977).

In turn this dictates that any sentence which is grossly disproportionate to the offense the defendant was convicted of is prohibited. See id, 430 U.S. at 667; see also, Coker v. Georgia, 433 U.S. 584, 592 (1977)(finding that when a sentence is challenged as being excessive, it must be reviewed to determine whether it is fair.)

The question rejected by the Colorado courts, i.e., that which is before this Court is one of whether when reviewing a sentence, the reviewing court must consider the overall sentence to determine whether it ~~it~~ violates the Eighth Amendment's prohibitions; or whether, as held by said, review of each individual sentence for disproportionality is sufficient, despite the aggregate sentence imposed. See Appendix B, pp. 5, ¶ 14. Moreover, there's a question as to whether the reviewing court should consider whether any sentence imposed exceeds a defendant's life expectancy, or prohibits the defendant from being able to make

any sort of meaningful restitution to the victims, other factors which were rejected by the Colorado Court of Appeals. See Appendix B, pp. 7-8, ¶ 18.

This Court has found that with respect to juveniles, the imposition of an automatic life sentence upon such a defendant violates the protections afforded by the Eighth Amendment. See Miller v. Alabama, 567 U.S. 460, 475 (2012); Graham v. Florida, 560 U.S. 48, 82 (2010). The protections announced therein have been extended to aggregate sentences as well as those which are simply mandatory life without the possibility of parole. Accord, Budde v. Addison, 851 F.3d 1047 (10th Cir. 2017); Lee v. Archuleta, 859 Fed. Appx 347 (10th Cir. 2021).

As such, Mr. Sawano respectfully submits that when considering whether a sentence is excessive, i.e., fair, as required in Coker, the reviewing court must not only take into account each individual sentence imposed upon a defendant, but also, in the case of consecutively imposed sentence, whether the overall/aggregate sentence imposed violates the Eighth Amendment's prohibition. He would move this Court most respectfully to grant certiorari and find that there is such a constitutional requirement.

Finally, as already noted, Mr. Sawano would submit that not only should a court conducting a proportionality review consider the aggregate sentence imposed as to the defendant's life expectancy; but considering the purposes of restitution, see e.g., 18 U.S.C. §§ 3556, 3363, 3364 (also known as the M.V.R.A. and recognizing that purpose is to compensate victim's fairly for losses suffered

as a result of being the victim of the defendant's criminal activity) whether any sentence imposed would prohibit any attempt by the defendant to recompense the victim(s) for losses suffered. Mr. Sawano would thus also respectfully move this Court to grant certiorari with respect to this issue.

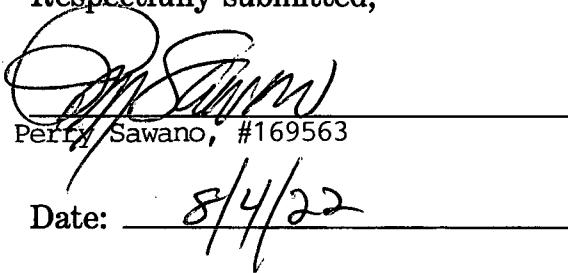
Clearly there is no disputing that Mr. Sawano misappropriated funds, but he made no personal gains out of said and lived no extravagant life-style. And while he knows that this fact does not lessen the impact on what he did upon his victims it is clear that given the aggregate sentence imposed upon him will in all likelihood exceed his life expectancy and prohibit him from attempting to the best of his abilities to make whole those who suffered severe financial loss.

As such, Mr. Sawano respectfully moves this Court to grant certiorari on this claim. This as well as all available relief is respectfully requested.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Perry Sawano, #169563

Date: 8/4/22

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