

Supreme Court of the United States

Clifton Lee Tribble
Petitioner, Pro Se

v.
Bobby Lumpkin
Respondent TDCJ-ID

No. 22-5412

Supplemental

NOW COMES the petitioner in the above cited case a prisoner in State custody, in pro se, in necessity, in accordance with the Supreme Court Rule 15.8, which allows any party to file supplemental Brief while a petition for a writ of certiorari is pending, calling attention to new cases, new legislation, or other intervening matter, not available at the time of the party's last filing.

The Supreme Court of California recently heard In re Milton 2022 Cal. Lexis 4969. At page 10, "Applying these principles, the Appellate court concluded the defendant was improperly denied a jury trial on the factual predicate of an enhancement allegation that was attached to his pending charges." Id @ pp. 474, 490. The Milton court further explains @ 13, "The Sixth Amendment contemplates that a jury - not a sentencing court - will [make findings about the defendant's underlying conduct] unanimously and beyond a reasonable doubt." citing Descamps v. United States, 570 U.S. 254 2013 U.S. Lexis 4698 @ pg. 269. And similarly in Mathis v. United States 570 U.S. 500 2016 U.S. Lexis 4060. Which held that, "allowing the court to make the factual determinations regarding prior convictions would raise Sixth Amendment concerns." @ 579 U.S. @ pp 508, 511. Further the Milton court held, "Both federal and state cases have held that a rule is substantive rather than procedural where it alters the range of conduct or the class of persons that the law applies to and punishes." Citing this court's holding in Welch v. United States 578 U.S. 120 2016 U.S. Lexis 2451 See: LEd HN[8] and Schiro v. Summerlin, 542 U.S. 348 2004 US Lexis 4574 @ 353. holding, This includes decisions that narrow the scope of a criminal statute by interpreting its terms.

The Petitioner calls this Honorable Court's attention to the Illinois Appellate Court's 4th Circuit case of People v. Bradley 2022 Ill. App. (4th) 210413-U, 2022 Ill. App. Unpub. Lexis 1368 @ Page 16 "The Court explained, that the Supreme Court followed a long line of cases that have held the same thing, a jury must determine facts that would extend the normal sentencing range." The Court specifically noted the significance of AppRECEIVED, which "caused

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all jurisdictions to change their laws, Illinois included." Moreover, explained Alleyne v. United States 570 U.S. 99 2013 U.S. Lexis 4543 @HN#4 "In Apprendi, the U.S. Supreme Court held that, a fact is by definition an element of the offense and must be submitted to a jury if it increases the punishment above what is otherwise legally proscribed. At HN#5 held, "Apprendi concluded that any facts that increase the prescribed range of penalties to which a criminal defendant is exposed are elements of the crime." HN#6 Imposition of Sentence, Factors this Court averred,

"It is indisputable that a fact triggering a mandatory minimum alters the prescribed range of sentences to which a criminal defendant is exposed." The Supreme Court has held that the Sixth Amendment provides defendants with the right to have a jury find those facts beyond a reasonable doubt, Alleyne is an extension of the principles set forth in Apprendi.

The petitioner quoted Alleyne in the first 3 paragraphs of his Writ of Certiorari but inadvertently neglected to cite the case at line 13 of the 2ND paragraph. In turn, did not list it to the list of cases cited in Related Cases section of the previous filing.

The petitioner also calls the Courts attention to Taylor v. State 2022 Ind.App. Unpub. Lexis 950 @page 34 "The Due Process Clause of the United States Constitution protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged." citing In re Winship, 397 U.S. @364 1970 U.S. Lexis 56

Petitioner relied on these principles in Ground Three of his Application for Habeas Corpus Art. 11.07 filed October 18, 2017 as a federal claim in the Texas Court of Criminal Appeals.

"Under the Sixth Amendment, the fact that increase the prescribed range of penalties to which a criminal defendant is exposed, and facts that increase the mandatory minimum are elements and must be submitted to a jury and found beyond a reasonable doubt. This is the Apprendi/Alleyne rule." See HN29 United States v. White 413 F.Supp.3d 15 2019 U.S. Dist. Lexis 131687. also see Fiore v. White 531 U.S. 225 2001 U.S. Lexis 641.

HN1 The Due Process Clause, U.S. Const. amend XIV forbids a state to convict a person of a crime without proving the elements of that crime beyond a reasonable doubt. See Jackson v. Virginia, 443 U.S. 307 1979 U.S. Lexis 10

Finally, in the Questions Presented section of his Writ of Certiorari, petitioner would ask this Court to allow petitioner to clarify the Question#2. It should read:
"The Texas Court of Criminal Appeals has repeatedly held that the district court clerk's policy of refusing transcripts behind Tex Gov't Code Ann 552.028 is not justification and denies access to the Courts. Does the 3 year denial make valid petitioner's claim that deprivation of the transcripts prevented demonstration of facts that it fairly presented could have obtained relief?"

QUESTION(S) PRESENTED

1. If a State makes an increase in a defendant's authorized punishment by statute contingent on the findings of a fact, no matter how they label the fact, does that fact have to be found by a jury beyond a reasonable doubt? Without any additional findings, a DWI carries 10 years maximum in Texas.
2. The Texas Court of Criminal Appeals has repeatedly held that the district clerk's policy of refusing transcripts behind Tex. Govt Code Ann §52.028 ~~is~~ justification to deny access to the Courts. Does 3 years in denial make valid petitioner's claim that deprivation of the transcripts prevented demonstration of facts if fairly presented could have obtained relief?
3. Does the trial court's failure to comply with Rule 11(b) of federal rule of criminal procedure fundamentally impair the fairness of the trial to the level of constitutionally failing to provide the standard set forth by Congress?
4. Does the prosecutor's failure to correct testimony that he knew, or should have known, since he had the police report and probable cause supplement, but he failed to correct it. Can false testimony and false evidence be used to obtain a conviction under the due process clause U.S. Const. amend XIV?
5. The respondent claims that during the habeas proceeding trial counsel Ben Baker thoroughly responded to Tribble's allegations in an affidavit. No mention of the untimely filing. Petitioner supplied the U.S. district court with a letter from the clerk stating that she shows no hearing on any docket? Every sentence except one in the entire affidavit was advocating the State's position and they left that one sentence out. See the first paragraph of page 2, last sentence validates no evidence to sustain a deadly weapon finding. So why is Baker silent as a mouse in court as to this vital evidence in favor of petitioner? I.A.C.?