

No. 28-5496

ORIGINAL

Supreme Court, U.S.
FILED

AUG 24 2022

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

VANCE L. WHITE ^{PRO SE} — PETITIONER
(Your Name)

vs.

COURT OF CRIM. APPEALS TX. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

VANCE L. WHITE
(Your Name)

JESTER III UNIT 3 JESTER ROAD
(Address)

RICHMOND, TEXAS 77406
(City, State, Zip Code)

—
(Phone Number)

QUESTION(S) PRESENTED

Can the Judge modify the essential elements set forth in the indictment at the Plea Colloquy?

Can the Court Amend an indictment without the resubmission to the grand jury? GUARANTEE

IF the Statutory maximum is ten years is a Judge authorized to go passed the ten years?

WHEN A PROSECUTOR KNOWINGLY INCREASES A SENTENCE BEYOND THE STATUTORY MAXIMUM DOES THAT CONSTITUTE A BREACH OF THE PLEA AGREEMENT OR BREACH OF CONTRACT?

IS DEFENSE COUNSEL INEFFECTIVE FOR STIPULATING TO A 12 YEAR PRISON TERM WHEN THE STATUTORY MAXIMUM IS 10 YEARS.

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

EX PARTE VANCE LOUIS WHITE CAUSE NUMBER-1436467-C
IN THE 179TH DISTRICT COURT OF HARRIS COUNTY, TEXAS
WRIT OF HABEAS CORPUS ARTICLE 11.07, GENERAL DENIAL
JUDGMENT DATE MAY 30, 2022

VANCE LOUIS WHITE TR. CT. NO. 1436467-C WR-88,277-05

JUDGMENT ENTERED JULY 13, 2022
COURT OF CRIMINAL APPEALS OF TEXAS DISMISSED
WITHOUT WRITTEN ORDER. SUBSEQUENT APPLICATION
FOR WRIT OF HABEAS CORPUS.

SUPREME COURT OF THE UNITED STATES?

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CAUSE NUMBER - 1436467. GENERAL DENIAL MAY 30, 2022
APPENDIX B ARTICLE 11.07 WRIT OF HABEAS CORPUS. DENIED
COURT OF CRIMINAL APPEALS OF TEXAS, NO. 1436467-C
WR-88,277-05. JUDGMENT JULY 13, 2022, APPLICATION
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LACKAWANNA COUNTY DISTRICT ATTORNEY VS. CASS, 532 U.S. 394 (2001) PRIOR UNCONSTITUTIONAL CONVICTION

STATUTES AND RULES (1) FIRST AMENDMENT-(FREEDOM OF SPEECH)
 FIFTH AMENDMENT-(DUE PROCESS OF LAW), SELF INCRIMINATION
 SIXTH AMENDMENT-(EFFECTIVE ASSISTANCE)(IMPARTIAL JUDGE)
 FOURTEENTH AMENDMENT-(DUE PROCESS OF LAW)(EQUAL PROTECTION)

TEXAS CONSTITUTION

TEXAS PENAL CODE SECTION 12.42 (E) TEXAS PENAL CODE C. SUPP. (2012). STATE JAIL FELONY CANNOT BE FURTHER ENHANCED AS A REGULAR FELONY.

OTHER

BELL VS. STATE, 693 S.W.2d 434 (TEXAS CRIMINAL APPEALS 1985) CONTROLLING STANDARD FOR AGGRAVATED ASSAULT WITH A DEADLY WEAPON A (FIREARM) MUST PROVE PHYSICAL FORCE.

(||||)

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 A to the petition and is

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

The opinion of the COURT OF CRIMINAL APPEALS TEXAS court appears at Appendix B to the petition and is

reported at APPENDIX -B; 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 07-13-2021. A copy of that decision appears at Appendix B.

A timely petition for rehearing was thereafter denied on the following date: JULY 23, 2022, and a copy of the order denying rehearing appears at Appendix B.

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

[FIRST AMENDMENT] FREEDOM OF SPEECH
CONGRESS SHALL MAKE NO LAW PROHIBITING
THE FREE EXERCISE THEREOF; OR ABRIDGING THE
FREEDOM OF SPEECH.

[FIFTH AMENDMENT] DUE PROCESS OF LAWS
[FIFTH AMENDMENT] SELF INCRIMINATION, DUE PROCESS
[SIXTH AMENDMENT] EFFECTIVE ASSISTANCE OF COUNSEL
[FOURTEENTH AMENDMENT] DUE PROCESS OF LAWS
[FOURTEENTH AMENDMENT] EQUAL PROTECTION OF LAWS

STATEMENT OF THE CASE

UANCE LOUIS WHITE WAS CHARGED BY "INDICTMENT" FOR THE OFFENSE OF "AGGRAVATED ASSAULT WITH A DEADLY WEAPON A FIREARM."

ON NOVEMBER 05, 2015 WHITE PLEADED GUILTY TO THE CHARGE" AT.. THE PLEA COLLOQUY AFTER ACCEPTING WHITE'S PLEA," JUDGE KRISTIN M. GUINEY CHANGED THE "INDICTMENT" SHE AMENDED THE INDICTMENT" BY ADDING THREE AGGRAVATORS ON TO.. THE END OF THE SENTENCE. THEREBY RELIEVING THE STATE OF ITS BURDEN OF PROOF.

[PREJUDICE]

THE PROOF AT-THE PLEA COLLOQUY ON NOVEMBER 05, 2015. IS AT SIGNIFICANT UARIANCE WITH THE LANGUAGE IN THE INDICTMENT.

THE CRIME OF UANCE LOUIS WHITE'S CONVICTION IS.. NOT THE ONE,CHARGED BY THE GRAND JURY INDICTMENT.

JUDGE KRISTIN M. GUINEY ALTERED THE... TERMS OF THE GRAND JURY INDICTMENT.

AN UNCONSTITUTIONAL AMENDMENT OF THE INDICTMENT OCCURRED ON NOVEMBER 5, 2015.

SEE UNITED STATES VS. ATTANASIO, 870 F.2d 809 [2d CIR. 1989.

STATEMENT OF THE CASE

SEE UNITED STATES VS, ATTANASIO, 870 F.2d 809
2d CIR. 1989

NOTING THAT THE FIFTH AMENDMENT GRAND JURY "GUARANTEE IS VIOLATED WHEN EVIDENCE AND JURY INSTRUCTIONS" MODIFY THE ESSENTIAL ELEMENTS SET FORTH IN THE INDICTMENT TO SUCH AN EXTENT.. THAT THE CONVICTION OFFENSE IS DIFFERENT FROM THAT CHARGED IN THE INDICTMENT.

[AMENDING INDICTMENT]
THIS INTERPRETATION IS BASED ON THE EARLY CASE OF EX PARTE BAIN, 121 U.S. 1 (1887), PROHIBITING AMENDMENT OF AN INDICTMENT EXCEPT BY RESUBMISSION TO THE GRAND JURY.

SEE PLEA COLLOQUY IN CAUSE-1436467
FROM NOVEMBER 5, 2015
THE STATE OF TEXAS VS. VANCE LOUIS WHITE
AT THE SENTENCING STAGE.

STATEMENT OF THE CASE
IN CAUSE NUMBER- 1436467

ON JUNE 26, 2019 TEXAS COURT OF CRIMINAL APPEALS (CCA) DISMISSED THE PRO SE WRIT OF HABEAS CORPUS. (A) ARTICLE 11.07 FOR NON COMPLIANCE WITH THE RULES OF APPELLATE PROCEDURE.

ON SEPTEMBER 2, 2020 THE CCA DENIED THE PRO SE WRIT OF HABEAS CORPUS. (B)
IN CAUSE NUMBER- 1436467-8

ON JULY 13, 2022 (CCA) DISMISSED WITHOUT WRITTEN ORDER. SUBSEQUENT WRIT OF HABEAS CORPUS. ARTICLE 11.07, TEXAS CODE CRIM. PROC. SEC. 4(a) -(C)

CONFLICT

SLACK VS. McDANIEL, 529 U.S. 473 (2000)

A HABEAS PETITION FILED AFTER AN EARLIER SUCH PETITION WAS DISMISSED WITHOUT ADJUDICATION ON THE MERITS BECAUSE OF FAILURE TO EXHAUST STATE REMEDIES IS NOT A "SECOND OR SUCCESSIVE" PETITION."

ALL CLAIMS WERE FAIRLY PRESENTED TO STATE COURTS.

ALL CLAIMS ARE EXHAUSTED IN THE STATE OF TEXAS'S COURT'S. IN CAUSE NO, 1436467

STATEMENT OF THE CASE

ON NOVEMBER 5, 2015 UANCE L. WHITE PLED GUILTY TO A 3RD DEGREE FELONY 2 TO 10 YEARS IMPRISONMENT. THE STATUTORY MAXIMUM IS 10 YEARS, UNDER TEXAS PENAL CODE SECTION 12.42. AFTER WHITE PLED GUILTY TO THE AGGRAVATED ASSAULT, JUDGE KRISTIN M. GUNNERY SENTENCED WHITE TO 12 YEARS IMPRISONMENT ON A STATUTORY MAXIMUM OF 10 YEARS. BECAUSE SHE SAID WHITE PLED TRUE TO ONE ENHANCEMENT PARAGRAPH A STATE JAIL FELONY CHARGE OF POSSESSION OF A COCAINE UNDER A GRAM (UNDER 1 GRAM) A STATE JAIL FELONY 2 YEARS STATUTORY MAXIMUM.

IN 1990 WHITE PLED GUILTY TO POSSESSING UNDER ONE GRAM OF COCAIN. HE WAS SENTENCED TO 7 YEARS IN STATE PRISON.

IN 1997 THE TEXAS LEGISLATURE AMENDED THE TEXAS PENAL CODE ANN. 12.42, THE SENTENCE IMPOSED UPON UANCE WHITE EXCEEDED STATUTORY AUTHORITY IN EFFECT AT THE TIME.

ACCORDING TO TEXAS PENAL CODE SECTION 12.42 STATE JAIL FELONY CANNOT BE FURTHER ENHANCED AS A REGULAR FELONY.

REASONS FOR GRANTING THE PETITION

RULE 10. (C) RULE (d)(1)'S CONTRARY TO CLAUSE
A STATE COURT HAS DECIDED AN IMPORTANT
FEDERAL QUESTION IN A WAY THAT CONFLICTS
WITH (A) RELEVANT DECISIONS OF THIS COURT.

IN THE 179TH JUDICIAL COURT OF HARRIS COUNTY,
TEXAS. CONTRARY TO CLAUSE

IN CAUSE NUMBER - 1436467

ON APRIL 1, 2022 VANCE L. WHITE FILED AN
ARTICLE 11.07 IN THE 179TH DISTRICT COURT OF
HARRIS COUNTY, TEXAS. WRIT OF HABEAS CORPUS
THE STATE WAS NOTIFIED ON MAY 13, 2022.

REPLY TO APPLICANT'S GROUND FOR RELIEF
HIS LAWYER TED R. DOEBBLER WAS INEFFECTIVE
FOR LETTING WHITE GET SENTENCED TO 12 YEARS
ON A STATUTORY MAXIMUM OF 20 YEARS.
THIS WAS HIS FIRST CLAIM ON THE APPLICATION
11.07 WRIT OF HABEAS CORPUS.

THE STATES REPLY TO WHITE'S GROUNDS FOR
RELIEF. [CONTRARY TO CLAUSE] (d)(1)'S
(2) WHITE HAD NOT ESTABLISHED BY A PREPONDERAN-
CE" OF THE EVIDENCE, BUT FOR A VIOLATION OF
THE UNITED STATES CONSTITUTION NO RATIONAL
JUROR COULD HAVE FOUND THE APPLICANT GUILTY
BEYOND A REASONABLE DOUBT.

REASONS FOR GRANTING PETITION

DECISION MUST BE REVERSED AND RELIEF MUST BE GRANTED IF A STATE COURT PROCEEDING RESULTED IN A DECISION THAT WAS BASED ON AN UNREASONABLE DETERMINATION OF THE FACTS IN LIGHT OF THE EVIDENCE PRESENTED IN THE STATE COURT PROCEEDING, IN CAUSE NO. 1436467 AGGRAVATED ASSAULT WITH A DEADLY WEAPON A (FIREARM) CONTROLLING STANDARD IN TEXAS

BELL VS. STATE, 693 S.W.2d 434 [1985]

THE STATE OF TEXAS PRESENTED NO FIREARM OR VICTIM, BELL AS A MATTER OF LAW AGGRAVATED ASSAULT BY THE USE OF A DEADLY WEAPON.

BELL RULED THAT AGGRAVATED ASSAULT WITH A DEADLY WEAPON A FIREARM, REQUIRES PROOF OF ACTUAL PHYSICAL FORCE.

THE 179TH DISTRICT COURT OF HARRIS COUNTY, TEXAS TEXAS REFUSED TO HONOR THIS CITATION ON APPEAL MAY 30, 2022. IN:RE STATE'S PROPOSED FINDINGS OF FACT CONCLUSIONS OF LAW AND ORDER

SEE BELL VS. STATE, 693 S.W.2d 434 TEXAS CRIMINAL APPEALS (1985).

ALSO STRICKLAND VS. WASHINGTON, 466 U.S. 668, 694 (1984) CONTRARY TO CLAUSE.

REASONS FOR GRANTING PETITION
SENTENCING INEFFECTIVENESS
STANDARDS AMENDMENTS 6TH AND 14TH
IN STRICKLAND VS. WASHINGTON, 466 U.S. 668, 695
[1984]
GLOVER VS. UNITED STATES, 531 U.S. 198, 203 (2001)
IN ASSESSING WHETHER COUNSEL'S DEFICIENT
PERFORMANCE PREJUDICED A DEFENDANT, "ANY AMOUNT
OF ACTUAL JAIL TIME HAS SIXTH AMENDMENT
SIGNIFICANCE").

IN CAUSE NUMBER - 1436467
THE STATE OF TEXAS VS. VANCE LOUIS WHITE
NOVEMBER 5, 2015 CHARGED, WITH 1 COUNT
OF AGGRAVATED ASSAULT WITH A DEADLY WEAPON.
ATTORNEY AT THE PLEA BARGAIN FOR VANCE WHITE
TED R. DOEBBLER. STATUTORY MAXIMUM UNDER THE
TEXAS PENAL CODE 2-TO-10 YEARS IMPRISONMENT.
AT THE PLEA COLLOQUY WHITE PLEADED GUILTY TO
THE CHARGE! JUDGE KRISTIN M. GUINEY ACCEPTED
THE PLEA AND SENTENCED WHITE TO 12 YEARS IN
PRISON AFTER FINDING THAT WHITE PLEADED TRUE
TO ONE ENHANCEMENT PARAGRAPH?
A POSSESSION OF COCAINE FROM 1990 OUT OF
HOUSTON, TEXAS, LESS THAN ONE GRAM OF COCAINE
TEXAS LEGISLATURE AMENDED THE TEXAS PENAL CODE
IN 1997, AND AGAIN IN 2013)

REASONS FOR GRANTING PETITION

IN 1990 VANCE WHITE PLED GUILTY TO POSSESSING "LESS THAN 1 GRAM" WHITE WAS GIVEN 7 YEARS IN PRISON.

BECAUSE THE TEXAS LEGISLATURE AMENDED THE TEXAS PENAL CODE ANN. 12.42 AFTER THE DEFENDANT'S VANCE WHITE'S CONVICTION.

THE SENTENCE IMPOSED UPON DEFENDANT WHITE EXCEEDED STATUTORY AUTHORITY IN EFFECT AT THE TIME.

TEXAS CONTROLLED SUBSTANCES ACT PUNISHMENT RANGES

OFFENSE	1 TO LESS THAN 4 GRAMS
PENALTY GROUP-1	3RD DEGREE FELONY
HEALTH AND SAFETY CODE 481.115	2 TO 20 YEARS IN PRISON LESS THAN 1 GRAM (STATE JAIL STATUTORY MAXIMUM(2) FELONY
PENALTY GROUP-2	1 TO LESS THAN 4 GRAMS
HEALTH AND SAFETY CODE 481.116	3RD DEGREE FELONY 2 TO 20 YEARS IN PRISON LESS THAN 1 GRAM STATE JAIL STATUTORY MAXIMUM(2) YEARS) FELONY

UNDER TEXAS PENAL CODE SECTION 12.42

STATE JAIL FELONY CANNOT BE FURTHER ENHANCED AS A REGULAR FELONY. TED R. DOEBBLER ATTORNEY FOR WHITE FAILED TO FILE A MOTION TO QUASH INDICTMENT. ACCORDING TO SECTION 12.42 MOTION TO QUASH... WOULD

REASONS FOR GRANTING PETITION
SHOULD BE GRANTED.

SECTION 12.42 (E) TEXAS PENAL CODE C, SUPP.
(2012) ONLY REGULAR FELONIES CAN BE USED TO
ENHANCE OFFENSES DESIGNATED BY SECTION-12.42
(B) (C) OR (D). AN OFFENSE DESIGNATED A FELONY IN
THIS CODE WITHOUT SPECIFICATION AS TO CATEGORY
IS A STATE JAIL FELONY.

EFFECTIVE DATE SEPTEMBER 1, 2013

VANCE WHITE'S PRIOR CONVICTION FOR POSSESSION
OF LESS THAN 1 GRAM, IS CONSTITUTIONALLY
INVALID PRIOR SENTENCE.

UNDER SECTION 12.42 STATE JAIL FELONY CANNOT BE
FURTHER ENHANCED AS A REGULAR FELONY,
IN CAUSE NO. 2436467 THE STATE OF TEXAS USED
AN INVALID PRIOR SENTENCE TO MOVE FROM A
3RD DEGREE FELONY TOO, A SECOND DEGREE FELONY
POSSESSION OF LESS THAN 1 GRAM IS NOTHING
BUT A STATE JAIL FELONY PUNISHABLE BY NO
MORE THAN TWO YEARS IN STATE JAIL.

VANCE L. WHITE IS CONSIDERED TO BE INSUFFICIENT
CUSTODY FROM THAT PRIOR POSSESSION OF COCAINE
CHARGE/SENTENCE TO USE FEDERAL HABEAS CORPUS
TO ATTACK THAT PRIOR SENTENCE.

LACKAWANNA COUNTY DISTRICT ATTORNEY VS. COSS, 532
U.S. 394 (2001).

REASONS FOR GRANTING PETITION
CONTRARY TO CLAUSE

TEXAS CASE LAWS

EX PARTE MILLER, 921 S.W.2d 239 (1996)
TEXAS CRIMINAL APPEALS LEXIS 57
TEXAS CRIMINAL APPEALS MAY 8, 1996
TEXAS CRIMINAL APPEALS CORPUS WAS
APPLICATION FOR WRIT OF HABEAS CORPUS WAS
"GRANTED" WHERE APPLICANT'S SENTENCE OF 25 YEARS
EXCEEDED THE STATUTORY MAXIMUM FOR POSSESS-
ION" OF COCAINE OF LESS THAN ON GRAM AND
WAS UNLAWFUL AT THE TIME.. THAT APPLICANT
COMMITTED THE OFFENSE.

COMMITTED THE OFFENSE.
A STATE JAIL FELONY COULD NOT BE ENHANCED
UNDER TEXAS PENAL CODE ANN. 12.42

TEXAS APPEALS

STATE VS. LARA NO. 01-96-00024-CR. 1996
TEXAS APPEALS LEXIS 2400) TEX. APP. HOUSTON,
TEXAS 1ST DISTRICT JUNE 23, 1996
TRIAL COURT PROPERLY SENTENCED DEFENDANT
TO 1 YEAR OF CONFINEMENT WITH CREDIT
FOR 101 DAYS SERVED. UNDER TEXAS PENAL CODE
ANN. 12.44 FOR THE STATE JAIL FELONY OF "DE-
LIVERY" OF "COCAINE. DEFENDANT ALSO PLEADED
"TRUE TO TWO" ENHANCEMENT PARAGRAPHS IN THE
INDICTMENT THAT ALLEGED A FELONY "RAPE"
CONVICTION AND A FELONY FORGERY CONVICTION.
DEFENDANT COULD NOT BE SENTENCED UNDER
TEXAS PENAL CODE ANN. 12.42. AS THE STATE CON-
TENDED.

REASONS FOR GRANTING PETITION

ON NOVEMBER 5, 2015 VANCE L. WHITE PLED GUILTY TO AGGRAVATED ASSAULT WITH A DEADLY WEAPON. AND PLED TRUE TO ONE ENHANCEMENT PARAGRAPH " POSSESSION OF LESS THAN 1 GRAM OF COCAINE FROM 1990 OUT OF HARRIS COUNTY, TEXAS. AT THE SENTENCING ON NOVEMBER 5, 2015 WHITE DID NOT TESTIFY REGARDING THE AGGRAVATED ASSAULT PLEA AND WAIVER OF THE FIFTH AMENDMENT

IN MITCHELL VS. UNITED STATES, 526 U.S. 314 (1999) THE COURT HELD THAT THE PLEA DOES NOT OPERATE AS A "WAIVER OF PRIVILEGE AT SENTENCING.

IN MITCHELL THE DEFENDANT PLED GUILTY TO THREE COUNTS OF 'DISTRIBUTING COCAINE NEAR A SCHOOL GROUND AND TO CONSPIRACY TO DISTRIBUTE FIVE OR MORE KILOGRAMS OF COCAINE.

AT THE PLEA COLLOQUY... THE U.S. DISTRICT JUDGE WHILE ASSESSING WHETHER THERE WAS A FACTUAL BASIS FOR THE PLEA ASKED HER WHETHER SHE HAD DONE THE THINGS TO WHICH SHE WAS PLEADING, GUILTY.

AT THE SENTENCING, SHE DID NOT TESTIFY REGARDING, THE QUANTITY OF DRUGS. THE SENTENCING JUDGE CONCLUDED THAT HER GUILTY PLEA WAIVED HER FIFTH AMENDMENT SELF INCRIMINATION PRIVILEGE AND THEREFORE THE JUDGE COULD DRAW AN ADVERSE INFERENCE FROM HER SILENCE AT THE SENTENCING HEARING.

REASONS FOR GRANTING PETITION

IN MITCHELL VS. UNITED STATES, 526 U.S. 324 (1999)
THE COURT EXCEPTED THE GUILTY PLEA:

IN REVERSING, THE SUPREME COURT
EXPLAINED...

THE FIFTH AMENDMENT BY ITS TERMS PREVENTS
A PERSON FROM BEING "COMPELLED" IN ANY CRIMI-
NAL, CASE TO BE A WITNESS AGAINST HIMSELF.
TO MAINTAIN THAT SENTENCING PROCEEDINGS
ARE NOT PART OF ANY CRIMINAL CASE IS "CONTRARY
TO THE LAW AND COMMON SENSE.

PETITIONER FACED IMPRISONMENT FROM ONE YEAR
UPWARDS TO LIFE, DEPENDING ON THE CIRCUMSTANCES
OF THE CRIME. TO SAY SHE HAD NO RIGHT TO REMAIN
SILENT, BUT INSTEAD COULD BE COMPELLED TO CO-
OPERATE IN THE "DEPRIVATION" OF HER LIBERTY
WOULD IGNORE THE FIFTH AMENDMENT PRIVILEGE AT
THE PRECISE STAGE WHERE FROM HER POINT OF VIEW
IT WAS MOST IMPORTANT.

NOTE

THE COURT ALSO CONCLUDED THAT BY DRAWING AN
ADVERSE INFERENCE FROM MITCHELL'S SILENCE THE
SENTENCING JUDGE IMPOSED AN IMPERMISSIBLE
BURDEN ON HER ATTEMPT TO EXERCISE HER PRIVILEGE
AGAINST SELF INCRIMINATION.

JUDGE KRISTIN M. GUINEY WAS WHITE'S JUDGE
ON NOVEMBER 5, 2015

REASONS FOR GRANTING PETITION

IN APPRENDI VS. NEW JERSEY, 530 U.S. 466 (2000)

IN APPRENDI VS. NEW JERSEY, 536 U.S. 584 (2000)

POST-APPRENDI

IN BLAKELY VS. WASHINGTON, 542 U.S. 296 (2004)

BLAKELY PLEADED GUILTY TO KIDNAPPING HIS
ESTRANGED WIFE.

UNDER WASHINGTON LAW THE MAXIMUM SENTENCE
HE COULD RECEIVE AT THAT TIME WAS 53 MONTHS
IN PRISON.

BUT WASHINGTON LAW, LIKE TEXAS LAW AUTHORIZED
AN INCREASE IF "SUBSTANTIAL AND COMPELLING
REASONS" JUSTIFIED "AN EXCEPTIONAL SENTENCE.
THIS COULD INCREASE BLAKELY'S SENTENCE TO 90
MONTHS IF THE COURT FOUND THAT HE ACTED WITH
"DELIBERATE CRUELTY," JUST LIKE JUDGE KRISTIN
M. GUINEY DID UANCE WHITE. ONE OF SEVERAL
AGGRAVATING FACTORS PERMITTING THE JUDGE
TO INCREASE THE SENTENCE UPON FINDING THE
AGGRAVATING FACTOR TO BE PRESENT.

AFTER HEARING EVIDENCE, INCLUDING THE VICTIM'S
TESTIMONY ABOUT THE INCIDENT, THE TRIAL
JUDGE ISSUED 32 FINDINGS OF FACT AND IM-
POSED, THE 90 MONTH SENTENCE.

THE BLAKELY COURT INVALIDATED THE INCREASE
BECAUSE "THE STATUTORY MAXIMUM" FOR APPRENDI
PURPOSES IS THE MAXIMUM SENTENCE A JUDGE
MAY IMPOSE SOLELY ON THE BASIS, OR ADMITTED BY
THE DEFENDANT.

REASONS FOR GRANTING PETITION

BLAKELY VS. WASHINGTON, 542 U.S. 296 (2004)
APPRENDI BARRED INCREASING A SENTENCE
BEYOND THE MAXIMUM THE JUDGE "MAY IMPOSE
BASED SOLELY ON THE FACTS ADMITTED IN THE
GUILTY PLEA" 542 U.S. 303 (EMPHASIS IN ORIGINAL).
IN CAUSE NUMBER-1436467
BOTH SIDES DID NOT STIPULATE TO THE RELEVANT
ENHANCING FACTS.

IN CUNNINGHAM VS. CALIFORNIA, 127 S.CT. 856 (2007)
THE "RELEVANT STATUTORY MAXIMUM" FOR APPRENDI
PURPOSES, THE COURT REITERATED, IS NOT THE ...
MAXIMUM SENTENCE A JUDGE MAY IMPOSE AFTER
FINDING ADDITIONAL FACTS, BUT THE MAXIMUM
HE MAY IMPOSE WITHOUT ANY ADDITIONAL
FINDINGS." 127 S.CT. AT 865 QUOTING FROM
BLAKELY, 542 U.S. 303 (EMPHASIS IN ORIGINAL)

JUDGE KRISTIN M. GUINEY WAS NOT AUTHORIZED
TO GO OVER THE STATUTORY MAXIMUM OF 20
YEARS. IN THE 2797TH DISTRICT COURT OF HARRIS
COUNTY HOUSTON, TEXAS ON NOVEMBER 5, 2015
PLEA COLLOQUY OF VANCE LOUIS WHITE.
SHE FOUND ONE AGGRAVATOR. A STATE JAIL FELONY
POSSESSION OF LESS THAN 1 GRAM, 2 YEARS
MAXIMUM, CANNOT BE FURTHER ENHANCED AS A
REGULAR FELONY.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Vance L. White

Date: August 16, 2022