

22-5943
No. _____

ORIGINAL

Supreme Court, U.S.
FILED

OCT 10 2022

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

Isaiah Tyler — PETITIONER
(Your Name)

vs.

Kentucky Department of Corrections — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Kentucky Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Isaiah Tyler
(Your Name)

Eastern Kentucky Correctional Complex
(Address)

200 Road to Justice, West Liberty, KY 41472
(City, State, Zip Code)

606-743-2808
(Phone Number)

QUESTIONS PRESENTED

1. Do Kentucky's violent offender statute create a liberty interest protected by due process?
2. Is the Kentucky Department of Corrections in constant violation of the 8th Amendment and Due Process Clause for the way it applies the violent offender statute?
3. Was Tyler denied Equal Protection under the 14th Amendment?

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 is unpublished.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 is unpublished.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 A 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 is unpublished.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 Appeals 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 is unpublished.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 21, 2021. 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

DUE PROCESS

14TH Amendment

EQUAL PROTECTION CLAUSE

STATEMENT OF CASE

The petitioner was tried of First degree robbery in Henderson Circuit Court in Henderson, Kentucky. He was found not guilty but convicted of complicity to first degree robbery and second degree persistent felony offender and received a forty(40)year sentence by the jury. Following his conviction, petitioner received a twenty(20)thousand dollar appeal bond pending decision from the Kentucky Supreme Court on his direct review, Case No. 2015-SC-000064-MR, Tyler V. Commonwealth of Kentucky. The court affirm the conviction. The petitioner's appeal bond was revoked and once in custody of Kentucky Department of Corrections(KYDOC), he was classified as a violent offender under KRS 439.3401, despite his offense not being listed under the statue and being acquitted of the offense that is listed as well as not meeting the criteria setforth in the statue.

KRS 439.3401. Parole for violent offenders; applicability of section to victim of domestic violence or abuse; Time of offense; Prohibition against award of credit. Reads;

- (1) As used in this section, "violent offender" means any person who has been convicted of or plead guilty to the commission of:
 - (A) A capital offense;
 - (B) A class A felony
 - (C) A class B felony involving the death of the victim or serious physical injury to a victim;
 - (D) An offense described in KRS 507.040 or 507.050 where the offense involves the killing of a peace officer; firefighter, or emergency medical services personnel while the peace officer, firefighter, or medical services personnel was acting in the line of duty;

- (E) A class B felony involving criminal attempt to commit murder under KRS 506.010 if the victim of the offense is a clearly identifiable peace officer, firefighter, or emergency medical services personnel acting in the line of duty regardless of whether an injury results;
- (F) The commission or attempted commission of a felony sexual offense described in KRS Chapter 510;
- (G) Use of a minor in a sexual performance as described in KRS 531.310
- (H) Promoting a sexual performance by a minor as described in KRS 531.320
- (I) Unlawful transaction with a minor in the first degree as described in KRS 530.064(1)(a);
- (J) Human trafficking under KRS 529.100 involving commercial sexual activity where the victim is a minor;
- (K) Criminal abuse in the first degree as described in KRS 508.100;
- (L) Burglary in the first degree accompanied by the commission or attempted commission of an assault described in KRS 508.010, 508.020, 508.032 or 508.060;
- (M) Burglary in the first degree accompanied by commission or attempted commission of kidnapping as prohibited by KRS 509.040;
- (N) Robbery in the first degree; or
- (O) Incest as described in KRS 530.020(2)(b) or (c)

The court shall designate in its judgment if the victim suffered death or serious physical injury.

- (2) A violent offender who has been convicted of a capital offense and who has received a life sentence (and has not been sentenced to twenty-five(25) years without parole or imprisonment for life without benefit of probation or parole), or a class A felony and receives a life sentence or to death and his or her sentence is commuted to a life sentence shall not be released on probation or parole until

he or she has served at least twenty-five(25) years in the penitentiary. Violent offenders may have a greater minimum parole eligibility date than other offenders who receive longer sentences, including a sentence of life imprisonment

(3)

(A) A violent offender who has been convicted of a capital offense or class A felony with a sentence of a term of years or class B felony shall not be released on probation or parole until he served at least eighty-five oercent(85%) of the sentence;

(B) A violent offender who has been convicted of a violation of KRS 507.040 where the victim of the offense was clearly identifiable as a peace officer, a firefighter, or emergency medical services personnel and the victim was acting in the line of duty shall not be released on probation or parole until he or she has served at least eight-five percent(85%) of the sentence imposed.

(C) A violent offender who has been convicted of a violation of KRS 507.040 or 507.050 where the victim of the offense was a peace officer, a firefighter, or emergency medical services personnel and the victim was acting in the line of duty shall not be released on probation or parole until he or she has served at least fifty percent(50%) of the sentence imposed

(D) Any offender who has been convicted of a homicide or fetal homicide offense under KRS chapter 507 or 507A in which the victim of the offense died as a result of an overdose of a schedule I controlled substance and who is not otherwise subject to paragraph (a),(b) or (c) of this subsection shall not be released on probation, shock probation, parole or conditional discharge or other form of early release until he or she has served at least fifty percent(50%) of the sentence imposed

(4) A violent offender shall not be awarded any credit on his sentence authorized by KRS 197.045(1)(b)1. In no event shall a violent offender be given credit on his or her sentence if the credit reduces the term of imprisonment to less than eighty-five percent(85%) of the sentence.

(5) This section shall not apply to a person who has been determined by a court to have been a victim of domestic violence or abuse pursuant to KRS 533.060 with regard to the offenses involving the death of the victim or serious physical injury to the victim.

The provisions of this subsection shall not extend to rape in the first degree or sodomy in the first degree by the defendant.

In the case at bar with petitioner Tyler, he was convicted of complicity to first degree robbery and secondly, death or serious physical injury didnt occur. To create a protected liberty interest in the prison context, state regulations must use "explicity mandatory language" in connection with the establishment of specific substantive predicates to limit official discretion and thereby require that a particular outcome be reached upon finding that the relevant criteria have been met. Joost v. U.S. parole commission, 647 F.Supp 644, 646 (D.Kan.1986) also see Hewitt v. Helms, 459 U.S. 460, 472, 103 S.Ct. 864 871, 74 L.Ed 2d 675

- (1) Tyler's offense for complicity to first degree robbery isn't described under KRS 439.3401
- (2) Death or serious physical injury isn't in his final judgment, therefore he is not a "violent offender" under state law.

When the state court was faced with the issue of complicity and KRS 439.3401, they stated "Complicity is not a seperate offense but is an alternative theory of the offense charged. Futrell v. Commonwealth 471 S.W. 3d 258, 277(Ky.2015) and in the case of Commonwealth v. Combs, 316 S.W. 3d 877, 881(Ky.2010) quoting Wilson v. Commonwealth, 610 S.W. 2d 289, 286(Ky.1980) " A person who is guilty of complicity to a crime occupies the same status as one being guilty of the principal offense." The petitioner was acquitted of the principal offense, first degree robbery and his alledged codefendants all pled guilty to various charges. Futhermore, it is a seperate offense thats why it has different statue numbers. KRS 502.020-complicity and KRS 515.020 is first degree robbery. Complicity to first degree robbery isn't the same as first degree robbery, there decisions have been incorrect and misinterpretation of law.

KRS 502.020. Liability conduct of another-complicity

(1) A person is guilty of an offense committed by another person when, with the intention of promoting or facilitating the commission of the offense, he

- (A) Solicits, commands, or engages in a conspiracy with such other person to commit the offense; or
- (B) Aids, counsels, or attempts to aid such person in planning or committing the offense; or
- (C) Having a legal duty to prevent the commission of the offense, fails to make proper effort to do so

(2) When causing a particular result is an element of an offense, a person who acts with the kind of culpability with respect to the result that is sufficient for the commission of the offense is guilty of that offense when he:

- (A) Solicits or engage in a conspiracy with another person to engage in the conduct causing such result; or
- (B) Aids, counsels or attempts to aid another person in planning or engaging in the conduct causing such result; or
- (C) Having a legal duty to prevent the conduct causing the result, fails to make a proper effort to do so.

The statue for first degree robbery reads; KRS 515.020 Robbery in the first degree;

(1) A person is guilty of robbery in the first degree when, in the course of committing theft, he or she uses or threatens the immediate use of physical force upon another person with the intent to accomplish the theft and when he or she;

- (A) Causes physical injury to any person who is not a participant in the crime

- (B) Is armed with a deadly weapon; or
- (C) Uses or threatens the immediate use of a dangerous instrument upon any person who is not a participant in the crime

(2) Robbery in the first degree is a class B felony, unless the offense occurs during a declared emergency as defined by KRS 39A.020 arising from a natural or manmade disaster, within the area covered by the emergency declaration and within the area impacted by the disaster in which case it is a class A felony.

The state court's ruling were truly erred, there is a major difference between First degree robbery and the petitioner's offense, Complicity to First degree robbery. These are separate offenses in which one is covered under KRS 439.3401 and the other is not. If the General Assembly wanted Complicity to First degree robbery included in KRS 439.3401, then it would have been added. Smithkline Beecham Corp V. Revenue Cabinet 40 S.W. 3d 883, 855(Ky.App.2001). This court's duty is "not to destroy the act if we can, but to construe it, if consistent with the will of congress, so as to comport with constitutional limitations."

Civil Service Comm'n V. Letter Carriers, 413 U.S. 548, 571, 93 S.Ct. 2880, 37 L.Ed 2d 796(1973). In discharging that duty, "every reasonable construction must be resorted to, in order to save a statute from unconstitutionality." Hooper, 155 U.S. at 657, 15 S. Ct. 207

The issue here isn't whether the statute is ambiguous or not but rather unconstitutional how the Kentucky Department of Corrections applies it. "A presumption never ought to be indulged, that congress meant to exercise or usurp any constitutional authority, unless that conclusion is forced upon the court by language altogether unambiguous. United States V. Coombs, 12 Pet. 72, 76, 37 U.S. 72, 9 L. Ed 1004(1838) The statute is clear and concise, complicity isn't listed under

KRS 439.3401 nor does it imply that it should. First degree robbery is the offense listed under the statute and the petitioner was acquitted of that offense therefore, he is not a violent offender by law.

Under traditional equal protection principles, distinctions need only be drawn in such a manner to bear some rational relationship to a legitimate state end. Classifications are set aside only if they are based solely on reason totally unrelated to the pursuit of the states goals and if no grounds can be conceived to justify them.

McDonald V. Board of Election Comm'rs, 394 U.S. 802, 808-809(1969); McGowan V. Maryland, 366 U.S. 420, 425-426, 81 S.Ct. 1101, 1104-1105, 6 L.Ed. 2d 393(1961). The court have departed from traditional protections principles only when the challenged statute places a burden upon "suspect classes" of persons or on a constitutional right that is deemed to be fundamental. San Antonio Independent School Dist. V. Rodriguez, 411 U.S. 1, 93 S.Ct. 1278, 36 L.Ed 2d 16(1973); Clements V. Fashing, 457 U.S. 957, 963, 702 S.Ct. 2836, 73 L.Ed 2d 508(1982).

The second issue petitioner argues is that KYDOC is abusing its discretion by ignoring mandatory language within KRS 439.3401. The statute specifically states "The court shall designate in its judgment if the victim suffered death or serious physical injury." This what determines if certain class B felonies are considered violent or not. It's mandatory language not optional, "In common or ordinary parlance, and in its ordinary signification, the term "shall" is a word of command and must be given a compulsory meaning." Black's Law Dictionary 1233 (5th Ed, 1979). Shall means shall. Vandertoll V. Commonwealth, 110 S.W. 3d 789, 795-796(Ky.2003); KRS 446.010 -Definitions for statutes;(39) shall is mandatory.

Even if the petitioner's offense for Complicity to First Degree Robbery was described under Kentucky's violent offender statute, he still wouldn't be considered a violent offender under state law since death or serious physical injury isn't in his judgment from the trial court. The KYDOC is applying KRS 439.3401, violent offender status to all Complicities to first degree robberies and First degree robberies despite whether or not death or serious physical occurred. Rather than serve eight(8)years before being parole eligible, the petitioner has to serve twenty(20)years due to his classification as a violent offender. His classification not only violates Due Process, Equal Protection under the Fourteenth(14)Amendment but the Eighth(8th)Amendment as well by making the petitioner serve more time than he's suppose too. See Graham V. Florida, 176 L.Ed 2d 825, 130 S.Ct. 2011, 560 U.S. 48(2010); Farmer V. Brennan, 511 U.S. 825(1994); Sandlin V. Conner, 515 U.S. 472, 481, 482-484, 115 S.Ct. 2293, 132 L.Ed 2d. 418(1995) also see Wilkinson, 545 U.S. at 222-23.

In Greenholtz V. Nebraska Penal Inmates, 442 U.S. 1,99 S.Ct.2100,60 L.Ed 2d 668, the court held that the mandatory language and structure of a Nebraska Parole-release statute created an "expectancy of release" a liberty interest entitled to protection under the Due Process Clause. The Montana statute at issue in this case provides that a prisoner eligible for parole "shall" be released when there is a reasonable probability that no detriment will result to him or the community, and specifies that parole shall be ordered for the best interests of society and when the state board of pardons believes that the prisoner is able and willing to assume the obligations of a law-abiding citizen. The board denied him right to due process by failing to apply the

statutory mandated criteria in determining parole eligibility and failing adequately to explain its reasons for parole denials.

"When scrutinized under the Greenholtz standards the Montana statute clearly creates a liberty interest in parole release that is protected by due process clause of the the Fourteenth Amendment. Although, as in Greenholtz; the release decision here is necessarily subjective and predictive" and the board discretion "very broad" nevertheless, the Montana statute, like Nebraska statute, uses mandatory language ("shall") to create a presumption that parole release will granted when the designated finding are made.

The district court first acknowledged that the case was controlled by principles established in this court's decision in *Greenholtz V. Nebraska Penal Inmates*, 442 U.S. 1,99 S.Ct. 2100,60 L.Ed 2d 668(1979).

In *Greenholtz*, the court held that despite the necessarily subjective and predictive nature of parole-release decision see *Id*, at 12,99 S.Ct. at 2106, state statutes may create a liberty interests in parole release that are entitled to protection under the Due Process Clause.

The court concluded that the mandatory language and the structure at the Nebraska statue at issue in *Greenholtz* created an "expectancy of release" which is a liberty interest entitled to such protections action of government, *Dent V. West Virginia*, 129 U.S. 114, 123,9 S.Ct. 231,233, 32 L.Ed 623(1889) see *Anderson V. Winsett*, 449 U.S. 1093, 101 S.Ct. 891, 66 L.Ed 2d 822(1981) (White,J., dissenting from denial of Cert.) But as the following analysis of the decisions of the court of appeals demonstrate, even under the most "restrictive interpretation of *Greenholtz*" *Buamann V. Arizona Department of Corrections*, 754 F.2d 841,844(CA9 1985) courts have held that the presence of mandatory language in the statute gives rise to a liberty interest in parole release. The Montana statute,

by its use of the word "shall" and the phrase "subject to the following restrictions." Creates a liberty interest under this most restrictive interpretation.

Court of Appeals decisions since Greenholtz fall into four categories. When statutes or regulatory provisions are phrased in mandatory term or explicitly create a presumption of release, courts find a liberty interest. See. Parker V. Corrothers, 750 F.2d 653,661(CA8 1984)

Petitioner Tyler's classification as a "violent offender" is unconstitutional and should be set aside as a matter of law, both state and federal. Having to serve eighty-five percent(85%) instead of twenty percent(20%) like other nonviolent offenders cannot be supported by law. The statute in question creates a liberty interest by its mandatory language within by use of the word "shall." Also the statute lays out specific guidelines and offenses that subject's one to being a "violent offender." The Kentucky statute invokes the protection and entitlements of Greenholtz, Id at 466, 101 S.Ct. at 2465.

The United State Supreme Court has held that statutes that uses mandatory language when it comes to parole/release liberty interest are entitled; Board of Pardon V. Allen, 482 U.S. 369, 107 S.Ct. 2415 96 L.Ed 2d 303(1987); Greenholtz V. Nebraska Penal Inmates, 442 U.S. 1,99 S.Ct.2100,60 L.Ed.2d 668(1979). The state courts decision should be reversed and clarification needs to be provide because the KYDOC is applying KRS 439.3401-violent offender to all complicities and first degree robberies regardless if one does not meet the criteria and their subjecting individuals to serve more time than they should be. Currently petitioner's parole date is June of 2036

and a serve out date of June of 2056, when by law it should be June of June of 2024 and serve out date of June of 2032 or 2033, that's with good time credit and programs. The way the KYDOC applies the statute is a abuse of discretion and the state courts are abusing their discretion as well by not upholding and enforcing statutes. What's the point of having KRS 439.3401 if Kentucky Department Of Corrections and the state courts aren't going to follow the guidelines, criteria and the mandatory language within? Its complete anarchy how they use the statute and ignore language that is defined as mandatory by the state see. KRS 446.010(26) and 446.010(39).

REASONS FOR GRANTING WRIT OF CERTIORARI

There has been so much misinterpretation regarding KRS 439.3401, that it needs proper clarification at the highest level of this nation which can only be provided by United States Supreme Court. This will be a landmark ruling affecting not only the petitioner but tens of thousands maybe more. Those who are currently convicted and serving sentence enhanced by the statute but pretrial detainees as well and also how the court sentences individuals. The petitioner is addressing federal claims in his Writ of Certiorari and those need a federal decision rendered.

CONCLUSION

The Petitioner prays this court grant his writ of certiorari so not only can he get relief but the tens of thousands of others can too. His state and federally protected rights must be enforced as a matter of law.

RESPECTFULLY SUBMITTED

David Tyler

DATE: October 8th, 2022