

22-6321 ORIGINAL

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED
DEC - 5 2022
OFFICE OF THE CLERK

Perry Armstrong — PETITIONER
(Your Name)

vs.

The State of Colorado, and — RESPONDENT(S)
Attorney General of Colorado
ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

Perry Armstrong 186/60
(Your Name)

P.O. Box 600
(Address)

Canon, Colorado, 81215
(City, State, Zip Code)

N/A
(Phone Number)

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SUPREME COURT, U.S.

QUESTION(S) PRESENTED

The Petitioner is requesting the United States Supreme Court to review whether the courts erred in not joining the case together under the "Same Criminal Episode". And whether the courts erred in determining these sentences consecutive instead of running them concurrent.

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

The People of the State of Colorado v. Perry Armstrong, 2017 CR 2114,
People of the State of Colorado v. Perry Armstrong, 2019 CF 1740, and
People of the State of Colorado v. Perry Armstrong, 2022 SC 311.

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
<i>People v. Blankenship</i> , 30 P.3d 698 (Colo. App. 2000)	6
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STATUTES AND RULES	
Eight Amendment of the U.S. Const.	6
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Co.R.S. 18-1-408(1)	6
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Co.R.S. 18-1.3-401(1)(a)(v)(A)	6
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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 _____; 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☐ is unpublished.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☐ is unpublished.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 C 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 Appellate Court court 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.

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 ^{September} ~~April~~ 2, 2022. A copy of that decision appears at Appendix B.

☐ 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 States Constitution Amendment 8 Bail and Punishment: Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Colorado Rules of Criminal Procedures Rule 8.

(a)(1) Mandatory Joinder of Offenses. If several offenses are actually known to the prosecuting attorney at the time of commencing the prosecution and were committed within his judicial district, all such offenses upon which the prosecuting attorney elects to proceed must be prosecuted by separate counts in a single prosecution if they are based on the same act or series of acts arising from the same criminal episode.

18-1-408. Prosecution of Multiple Counts For Same Act.

(1) When any conduct of a defendant establishes the commission of more than one offense, the defendant may be prosecuted for each such offense. He may not be convicted of more than one offense if:

(3) When two or more offenses are charged as required by subsection (2) of this section and are supported by identical evidence constitutes concurrent sentences.

18-1.3-401. Felonies Classified.

(1)(a)(v)(A) Except as otherwise provided in section 18-1.3-401.5 for offenses contained in article 18 of this title 18 committed on or after October 1, 2013, as to any person sentenced for a felony committed on or after July 1, 1993, and before July 1, 2018, felonies are divided into six classes that are distinguished from one another by the following presumptive ranges of penalties that are authorized upon conviction:

Class 3: Four years to twelve years of imprisonment with five years mandatory parole.

(10)(a) The general assembly hereby finds that certain crimes that are listed in subsection (10)(b) of this section, presents an extraordinary risk of harm to society

and therefore, in the interest of public safety, for such crimes that constitutes class 3 Felonies, the maximum sentence in the presumptive range is increased by four years.

(b) (X) Child Abuse as defined in section 18-6-401.

1. Statement Relevant to the Case

On October 15, 2012 Mr. Armstrong was charged with six (6) counts of Child Abuse with Serious Bodily Injury, a Class three (3) Felony.

On October 16, 2012 Mr. Armstrong was informed/arraigned of these offenses that was filed by the prosecution.

On June 16, 2019 the jury trial in the counts started and lasted for Four (4) days when the jury panel entered a guilty verdict with the court.

On August 30, 2019 the trial court sentenced Mr. Armstrong to One-hundred and ninety-two (192) years in the Colorado Department of Corrections. Mr. Armstrong received six (6) consecutive sentences of thirty-two (32) years each.

On ~~May~~^{March} 1, 2021 Mr. Armstrong filed his Opening Brief with issue six (6) challenging the sentencing of his case to consecutive terms was improper.

On ~~March~~^{May} 19, 2021 the People filed their Answer Brief contending in issue six (6) that the trial court did not error in consecutive sentencing.

On June 8, 2021 Mr. Armstrong filed his Reply Brief arguing that the trial court failed to sentence him to concurrent sentences.

On September 12, 2021 the Colorado Court of Appeals denied Mr. Armstrong's appeal affirming his conviction.

In November of 2021 Mr. Armstrong filed his Writ of Certiorari with the Colorado Supreme Court.

On September 12, the Colorado Supreme Court denied Mr. Armstrong's writ upholding his sentence as the court specified.

No Reason For Granting The Petition.

The trial court inappropriately sentenced Mr. Armstrong to One-hundred and ninety-two years in the Department of Correction by stacking multiple counts of the same conviction. The maximum penalty range for a Class 3 Felony is Four to twelve years with an increased maximum of 4 years for extraordinary risk circumstances. Colorado Revised Statute 18-1.3-401 (1)(a)(V)(A) and (1)(a).

Since Mr. Armstrong's case involved the same victim, at the same place and time. This makes all six counts as the "same Criminal Episode" and was known to the prosecution at the time of filing of charges, which also form a part of one whole schematic scheme. Colorado Revised Statute 18-1-408(1); People v. Farrell, 10 P.3d 672 (Colo. App. 2000); Colorado Rules of Criminal Procedures Rule 8(a)(1).

In each of these counts that were stock consecutively the court should have known that identical evidence was used, and constitute concurrent sentences. Colorado Revised Statute 18-1-408 (3); People v. Chirinos-Raudales, 2021 COA 37, 491 P.3d 538; People v. Blankenship, 30 P.3d 698 (Colo. App. 2000).

In Mr. Armstrong's case the trial court erred when it sentenced him to consecutive counts, six in total. Furthermore, this was tantamount to double jeopardy when it sentenced Five extra counts when it should have ran concurrent to one concurrent sentence of eight to ~~30~~ thirty-two years. U.S. Const., Eighth Amendment.

III. Conclusion.

Mr. Armstrong requests that the conviction be remanded to the trial court for the correct sentencing of an eight to thirty-two year term in the Department of Correction and that a pre-sentence investigation report recommendation be conducted and followed by the trial court. After review of other like cases this is an appropriate remedy. For the reason herein submitted the petition for a writ of certiorari should be granted.

Respectfully submitted,

Leivy Armstrong

December 1, 2022