No. 22-6326

ORIGINAL

Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

MARK A. WHITE — PETITIONER
(Your Name)

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

MARK A. WHITE 03671-028
(Your Name)

P.O. Box 5000
(Address)

Pekin - IL 61555
(City, State, Zip Code)

N/A
(Phone Number)

Question presented for Review

1. Whether the Justices of the 1986 Supreme Court "deviation" from clearly established law and the original meaning of the Constitution violated the substantive due Process rights, Protection and Guarantees of petitioner Mark A. White and countless American citizens rights of the Constitution with the Court's intentional violation of the Fifth and Sixth amendment. When the court "coined" the term "sentencing factors" which in exchange, removed elements of the offense as this violation transpired into the unconstitutional and irreconcilable decision of McMillan v. Pennsylvania. In which Justice Sotomayor, Justice Kagan, Justice Thomas, Justice Breyer and The late Justice Ginsberg concurs.

2. Whether the 1986 Supreme Court committed an irreconcilable legal error in their decision of McMillan v. Pennsylvania and violated the petitioner's substantive Due Process and affected the judicial proceedings and outcomes of the American people who were prejudice by this irreconcilable interpretation of federal law.

3. Whether the petitioner is being illegally detained in federal prison based on the premise of the district courts poisoned mindset of the irreconcilable reasoning and interpretation of federal law, which has been deemed unconstitutional.

4. Whether the rationale of the district court's decision-making has been tainted with judicial errors that has derived from the 1986 McMillan v. Pennsylvania Supreme Court decision which has been deemed irreconcilable and cannot be home to our Sixth Amendment Jurisprudence.

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 judgement is the subject of this petition is as follows:

Mark A. White

United States of America

RELATED CASES

Patterson v. New York 432 U.S. 197 (1977)

In Re Winship 397 U.S. 358 (1970)

Wilbur v. Malaney 421 U.S. 684 (1975)

United States v. Gaudin 515 U.S. 506 (1995)

Alleyne v. United States 570 U.S. 99 (2013)

Apprendi v. New Jersey 530 U.S. 466 (2000)

United States v. Thompson 286 f.3d 950 (7th Cir. 2002)

"All Criminal Cases from 1986-2013"

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CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. 18 U.S.C. 841 (a) (i) and 846

2. The fifth, sixth, fourteenth amendment and the original meaning of the Constitution.

3. The Petitioner's case and foundation is built on errors committed by the 1986 Supreme Court and District Court for applying this irreconcilable interpretation and reasoning to the petitioner's judicial proceedings and by the District Court and this Court's attempt at delimiting the constitutional protections and guarantees of the Constitution is a violation of the Right to Due Process when this Court created the Due Process violation in the first place. So how could a lawyer contest such an error, when the highest court itself is in error?

STATEMENT OF CASE

1. Allegedly from 1992 to 1997 there was an investigation launched against Mark A. White and several others. During this time, the record depicts that law enforcement did not obtain any evidence which would lead a prudent person into believing that Mr. White and other's had joined into an agreement to distribute drugs.

2. On October 25, 1997, Mark A. White was arrested for the murder of Marcus Willis by the Indianapolis Police Department.

3. On November 10, 1997 under the direction of the U.S.A. Judith A. Stewart, U.S.A. Melanie C. Conour and John E. Dowd, a Compliant and Indictment against Mr. White and others was filed.

4. On or about March 1998, the A.U.S.A. filed a Superseding Indictment charging 17 American Citizens with drug Conspiracy charges in violation of 21 U.S.C § 841 (a) (1). Duly Note: This charge was imposed without a "Penalty Phase" in the Indictment.

5. On or about July 6, 1999, Mark A. White and others proceeded to trial. There the trial judge implemented the unconstitutional and irreconcilable decision of McMillan v. Pennsylvania by removing the Drug Quantity from the Jury determination/ Fact-Finding role. Drug Quantity is clearly an element of the Drug Conspiracy offense.

6. On September 2, 1999, while the jury were deliberating, there was discussions amongst the Defense and Prosecution team about a possible dead-lock. Around 8:00p.m. Mr. White and others were summoned back to the courtroom, where the judge stated to the jury, "You cannot find them guilty of money laundry without finding them guilty of Drug conspiracy." This error has a substantial and injurious effect, also an influence on the determination of the jury, which the result is inconsistent with substantial justice.

7. On September 4, 1999, the jury acquitted Mr. White for the murder of Marcus Willis. However, the jury rendered a guilty verdict for the money laundering and drug conspiracy charges.

8. On December 10, 1999, Mr. White was sentenced to Life in prison, the judge determined the drug quantity (and murder enhancement), which determines the guideline range for the court to consider when applying the appropriate sentence set forth by Congress. The judge was in error.

9. On December 12, 1999, Mr. White and others filed Notice of Appeal. While on Direct Review in 2000, Apprendi v. New Jersey was decided, there the Court ruled "that any element of a crime had to be presented to the jury and proven beyond a reasonable doubt." During the same time, Counsel amended the appeal brief, adding the Apprendi argument, stating that the trial judge violated Mr. White's Due Process when the judge removed the Drug Quantity (elements) from the jury fact-finding role.

10. On April 9, 2002, The Seventh Circuit Court of Appeals remanded the case back for resentencing stating "that the District Court erred by applying the First Degree Murder enhancement guideline to White."

11. On June 13, 2003, Mr. White was sentenced to a term of 480 months. Under **Thorpe v. housing Authority of Durham,** 313 U.S. 268 (1969) "The Court at that time had an ethical and moral obligation to apply and render the law in effect at the time of their decision." Instead of the Court applying the governing law, (Apprendi v. New Jersey), the Sentencing Court ignored the Supreme Court precedents, and chose to accept A.U.S.A. Melanie C. Conour open Court Statement that "she had filed a motion for obstruction of justice with the Clerk of the Court." however, over 19 years later, the Criminal Docket for case 1:98-CR-00038-JMS-MJd depicts that the A.U.S.A "never" filed such a motion, thus making the enhancement illegal, and outside

of the Court Jurisdiction to apply such an enhancement. Duly Note: Any amount of additional jail time has Sixth Amendment significance.

12. On July 3, 2003, Mr. White appealed the judgement announced on June 13, 2003, and on March 4, 2004 Crawford v. Washington was decided and applies to White's direct appeal.

13. On May 13, 2005, The Seventh Circuit Court of Appeals directs a limited remand of White's case in light of United States v. Booker, but ignores Crawford v. Washington.

14. Later in 2005, the District Court rendered same sentence of 480 months despite the Constitutional violations that exist in White's case in light of U.S. v. Booker.

15. On December 28, 2005, Seventh Circuit Court of Appeals affirmed the judgment of the District Court.

16. In 2006, Mr. White filed a Writ of Certiorari to the United States Supreme Court. On or about November 6, 2006, the Supreme Court denied review.

17. In June of 2007, Mr. White hired attorney Dana Childress-Jones to prepare his Section 2255 motion.

18. On January 8th, 2008, Attorney Dana Childress-Jones filed White's Motion for Writ of Habeas Corpus Docket No. 1:08-CV-00030-LVM-WTL.eod 1/9/08. Counsel knew she had missed the filing deadline, Counsel had an ethical and moral obligation to White to either (1) notified the court and ask for an extension of time to file, (2) File the motion on time as required by law, or (3) be transparent with Mr. White at the time of accepting his family money. That it was impossible to complete the necessary research and preparation that is required to efficiently represent and file a 2255 motion on behalf of Mr. White.

19. On March 6th, 2009, the court DISMISSED White's 28 U.S.C. Section 2255, stating "that the filing was untimely." Counsel Dana Childress-Jones should have known the applicable time frame for filing a Section 2255 motion, but what's even more problematic is that one of prosecutor assigned to the case, Timothy Morrison, was in fact Counsel "Mentor." It's either by counsel negligence or design that counsel missed the deadline to file such motion. Either way, it's Ineffective Assistance of Counsel, and the appearance of misconduct, coupled with the fact, Mr. White has been diligently filing motions after motions in a timely manner, the Court should

have reviewed the meritorious constitutional claims presented in White's Section 2255, such actions by the Court represents fairness and good law.

20. In 2013, Mr. White filed a 2253 (c) (1) (a) motion.

21. In 2014, the Court denied White's 2253 (c) (1) (a) motion.

22. In 2015, Mr. White filed a motion to receive the retroactive amendments of 782, 751, and 791. The Court denied to grant the relief in which Congress intended for defendants such as Mr. White.

23. In 2017, Mr. White filed a 2241 motion in the Fourth Circuit in light of **Wheeler v. United States**. The Court denied White's 2241 motion.

24. In 2019, Mr. White file a motion requesting recalculation of sentence pursuant to the First Step Act of 2018 Sec. 404

25. In 2021, The Court denied relief for Mr. White pursuant to Section 404 motion.

26. In July of 2022, Mr. White filed a Recall of the Mandate, asking the Seventh Circuit to correct the Constitutional violations which are clear and obvious and has effected White's substantial rights. Unfortunately, the Court has denied the motion.

27. On September 2nd, This Court received Mark A. White's Writ of Certiorari to this court as 9 copies of the Motion was mailed to the Justices of this court. As the Writ of Cert. was returned due to the proper order of the filing papers were not in the correct order...as petitioner White is seeking this court to recall the judgment of the Mandate of the Seventh Circuit Court of Appeals. As a recall of the mandate and judgement is the only recourse for this court and the appellate court to correct and address such an error committed by the United States Supreme Court. As the rationale of the District Court's decision making has been tainted with judicial errors that has derived from the 1986 Supreme Court decision of McMillan v. Pennsylvania, which has been deemed "irreconcilable" and cannot be home with the Sixth Amendment jurisprudence...which makes petitioner White's sentence and conviction irreconcilable in conjunction with the Fifth and Sixth Amendment when taken together.

Therefore, Petitioner White's conviction and sentence is based on the notion and premise of an irreconcilable interpretation of Federal Law. As a Recall of Judgement and the Mandate should be annulled by reasons of errors of law.

Reason for granting Petition

Comes now, Mark A. White, an American citizen petitioning this court to decide a substantive Due Process violation and principle of justice so rooted in traditions and conscience of our people as to be ranked as fundamental or transgresses any recognized principle of fundamental fairness in operation. Medina v. California, 505 U.S. 437, (1992) as post-conviction relief procedures are constitutional if they comport with fundamental fairness, as a federal court may recall the mandate to vindicate the substantive rights provided by the constitution. As this violation committed by the 1986 Supreme Court is of dire importance that is beyond the particular facts and is of great importance to the American people and public interest. As the case before the court is one of which whose constitutional reach extends to all American Citizen, who has found their selves in any Federal Court Room from "1986 to 2013" as this case and issue is of such imperative importance to where there has never been a decision recorded by the United States Supreme Court in which the Justices are required to revisit and determine that their prior decision is "responsible" for violating countless of American Citizens substantive Due Process rights with their irreconcilable and unconstitutional decision of McMillan v. Pennsylvania, which has affected the landscape and Judicial outcome of every criminal case since 1986 to 2013 due to this court, the Court of Appeals and every District Court in America not applying the correct legal standard of the pre-existing law and guarantees of the original meaning of the constitution. Which has prejudice and violated the petitioner's and a great number of the American peoples Fifth and Sixth Amendment rights. As the Justices in Apprendi v. New Jersey 530 U.S. 466 (2000) pointed out in their "re-affirmance" of Patterson v. New York 432 U.S. 197 (1977). And "Justice Black, concurring" in Powell v. Texas 392 U.S. 514 that, when a state's power to define criminal conduct is challenged under the Due Process clause, we "The Supreme Court" only inquire whether the law, "offends" some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental. Patterson v. New York 432 U.S. 197 (1977). So when the court stated that, they were re-affirming the pre-existing law outlined in Patterson v. New York clarifies the petitioner "argument" that the "courts" had deviated from clearly established and a well rooted tradition and fundamental principle as the court has recognized that at the time of Fifth Amendment's ratification, the words "Due Process of law"

were understood "to convey the same meaning as the words "By the law of the land" "In Magna Carta, Murray's Lessee v. Hoboken Land & Improvement Co. 18 How 272, 276, 15 L.Ed 372 (1856). Although the terminology associated with the guarantee of Due Process changed dramatically between 1215 and 1791, the general scope of the underlying rights protected stayed roughly constant. However, this Supreme Court and every Federal Court in America was intentionally violating these rights. With the use of the now declared and "irreconcilable" decision of McMillan v. Pennsylvania 477 U.S. 79 (1986) where the justices circumvented and deviated from the correct legal standard of law. So when the Supreme Court stated that Apprendi v. New Jersey was not a new rule of law, "this court was correct". However, within the court's statement the court is clearly "admitting" that the 1986 Supreme Court has violated the substantive Due Process rights of the petitioner and the American people by the courts deviation from the original meaning of the Constitution. As the rule of law in which Apprendi v. New Jersey "re-affirmed and clarified" is the pre-existed rule of law that this United States Supreme Court, Appellate Courts, and all Federal Courts in America have been intentionally engaged in violating. As the universal rule in this country is that, the prosecution must prove guilt beyond a reasonable doubt, "which means that," long before "In Re Winship 397 U.S. 358 (1970), Tot v. United States 319 U.S. 463 (1943), and Speiser v. Randall 357 U.S. at 523-525 L.Ed 2d 1460, 78 S.Ct. 1332" were decided, the usual and established meaning of an "element" was clear: "As it is a "constituent part" of a crime's legal definition a thing that, the prosecution must prove beyond a reasonable doubt to sustain a conviction." Mathis v. United States 579 U.S. 500 (2016), Apprendi v. New Jersey 530 U.S. 466 (2000), United States v. Gaudin 515 U.S. 506 (1995).

As it also established that, there are two types of elements which some are invariant; that is, they must be proved in every case. Which we do know that, it's illegal and unconstitutional for a Judge or Legislator to remove elements of the offense from the jury as "it is not within the province of a legislator to declare an individual guilty or presumptively guilty of a crime." **McFarland v. American Sugar Rfg. Co. 241 U.S. 79, 86, 60 L.Ed 899, 36 S.Ct. 498** (1916). Therefore, the constitutional violations and errors committed in this case and against the American people was created by the 1986 Supreme Court justices, long before the petitioner ever stepped foot in a Federal courtroom or accused of "any alleged crime". Which the violation itself has violated the petitioner's and American people's substantive Due Process rights and Sixth Amendment guarantees and protections. However, (Quoting Justice Stevens) "Our solemn

responsibility is not merely to determine whether a state Supreme Court has adequately protected "a defendants" rights under the Federal constitution, it is to ensure that when the court speak in the name of the Federal Constitution, that they disregard none of its guarantees-neither those that ensure the rights of criminal defendants nor those that ensure what Justice Black spoke of in his dissent in "In Re Winship" 397 U.S. 358 (1970) called "the most fundamental individual liberty of our people-the right of each man to participate in the self-government of his society." Therefore, the Constitution bars courts from insisting that prisoners remain in prison when their convictions or sentences are later deemed unconstitutional. However, this court is doing just that, because in Apprendi v. New Jersey this court acknowledged the Fifth and Sixth Amendment ramifications of these Judge- found facts as "Winship and Gaudin" in conjures together, protects the American people against the unconstitutional premise created by this court as this court refused to apply the pre-existed law in which the 1986 Supreme Court had violated in McMillan v. Pennsylvania. As Alleyne v. United States 570 U.S. 99, (2013) later deemed "unconstitutional and irreconcilable" and continued to allow the petitioner and countless American Citizens to suffer in prison on the irreconcilable and unconstitutional decision that was egregiously wrong the day it was decided like "Justice Alito declared **Roe v. Wade 410 U.S. 113** (1973) was the day it was decided. Therefore, Mark A. White hinges his argument on this extraordinary miscarriage of justice committed by the United States Supreme Court has affected the petitioner substantive Due Process rights along with his Sixth Amendment guarantees and protections. As the following Justices are in complete agreement, according to the late "Justice Ginsburg", Justice Sotomayor, Justice Kagan, Justice Breyer and Justice's Thomas", who declared McMillan v. Pennsylvania unconstitutional and irreconcilable and cannot be home to our Sixth amendment jurisprudence. Therefore, the Justices must apply this same standard and reasoning of law to petitioner White's Writ of Certiorari, concerning the denial from the Seventh Circuit Court of Appeals of the petitioner's Motion to Recall the mandate of the original appeal of United States v. Thompson 286 f.3d 950 (7th Cir.2002). As it is based on the "irreconcilable decision" of McMillan v. Pennsylvania 477 U.S. 79 (1986), where the 1986 Supreme Court decision has "poisoned the mindset" of every District Judge in America with this intentionally "irreconcilable interpretation" that has been "overruled" and declared irreconcilable "for violating" the "reasoning of the original meaning of the Constitution" and the Sixth Amendment jurisprudence as McMillan v. Pennsylvania was "intentionally created" by the 1986 Supreme

Court to negate the "truth and cause" of the distinction between "elements and sentencing factors" in which, McMillan v. Pennsylvania primarily relied upon. So, this strange treatment of the Constitutional text cannot be justified and is especially surprising since it clashes so sharply with the way in which the late "Justice Scalia" generally treated the text of the Constitution (and indeed, with his entire theory of legal interpretation) as he put it, "what I look for in the constitution is precisely what I look for in a statute: the original meaning of the text." A. Scalia, a matter of interpretation 38 (1997).

As it also preserves the historic role of the jury as the intermediary between the government and criminal defendants. **United States v. Baudin 515 U.S. 506** (1995). Even though the A.U.S.A. and District Court judge chose sentencing factors over elements. This distinction is clearly undermined by the original meaning of the Constitution, as the Sixth Amendment provides that, Mark A. White and "All' American Citizens "accused" of a "crime" have the right to a fair trial "by an impartial jury". As this right, in conjunction with the Due Process clause "requires" that each "element" of a crime be proved to the jury beyond a reasonable doubt, United States v. Gaudin 515 U.S. 506, 510, 115 S.Ct. 2310, 132 L.Ed 2d 444 (1995) and "In Re Winship 397 U.S. 358, 364, 90 S.Ct. 1068, 25 L.Ed 2d 368 (1970). Which is one of the most traditional and landmark cases ever decided in America. As the 1986 Supreme Court Justices has completely disregarded "In Re Winship" and intentionally "created" and "coined" the term "sentencing factors" that allowed federal judges to engage in a unconstitutional practice of federal law, that removed "elements of the offense" to be called and considered as "sentencing factors" by the use of the preponderance of the evidence, based on judge-found facts. Which is illegal and unconstitutional, as "Ex Parte Siebold" 100 U.S. 371 (1880) soundly states that, if a sentence and conviction is "based" on an unconstitutional law, "then" it is illegal and void and if its "unconstitutional now", then it was "unconstitutional then!

As this court is clearly aware of the constitutional ramification of the 1986 Supreme Court "intentionally" violating the American People right to the Fifth and Sixth Amendment. As McMillan v. Pennsylvania was "egregiously wrong" the day that it was decided and "irreconcilable" with "our" (meaning the American People) Sixth Amendment jurisprudence "and yet" for the last 25 years, a first time non-violent American Citizen "Mark A. White" is still being held illegally in federal prison for a drug charge with no jury finding of any amount of

drugs. As there is no drugs, no audio or video recordings of any kind, or any agreement to commit or engage in any kind of unlawful act, but rather based on the unconstitutional "Judge found facts" and "ghost dope" created under the "sentencing factors". As it has already been proven by this court's own words that:

1. It is illegal for a judge or legislator to remove elements of the offense from the jury.
2. That, McMillan v. Pennsylvania is irreconcilable and unconstitutional for violating the Sixth Amendment and the original meaning of the Constitution.
3. That the 1986 Supreme Court violated the 5th, 6th, and 14th Amendment when they-the 1986 Supreme Court deviated from the original meaning of the Constitution and the principles outlined in "In Re Winship" which is clearly established law. "Which is an error."

However, in 1999, when this court first tried to correct this violation of the original meaning of the Constitution being violated by the 1986 Supreme Court, it still allowed for the right to "Due Process" to be denied, the court made it look like it was only a "sentencing enhancement" which was wrong. But it's both amendments being violated at the same time. That is the essence of the constitutional right that needs to be applied to stop this re-occurring violation of the 5th, 6th Amendments. So, when the 2000 Supreme Court came along and "confirmed" that, "both errors existed". A few of the justices of the court engaged in the delimiting of Winship and Apprendi, as they "allowed the created" term of a "sentencing factor" to continue to allow every federal judge to negate "Drug type and Quantity" as elements of the offense" which is a clear violation of the original meaning of the Constitution. See In Re Winship, **Wilbur v. Mullaney** 421, U.S. 684 (1975) and **Apprendi v. New Jersey** 530 U.S. 466 (2000) as Apprendi v. New Jersey rest and stands on the principle of **"In Re Winship"** 397 U.S. 358 (1970). Because petitioner Mark A. White is standing and requesting that this court apply the original meaning of the Constitution and "In Re Winship" properly to the petitioner case.

Because the petitioner was on direct appeal in 2000 when Apprendi v. New Jersey was decided, as the 7th Cir. applied a not yet understood reasoning to the petitioner case. The courts position was to stand with the irreconcilable decision of McMillan v. Pennsylvania, "which has been proven to be unconstitutionally wrong" since the 1986 "Supreme Court

Justices" intentionally removed the principles of "In Re Winship" to be applied to the petitioners case. As they "poisoned the mindset" of "every district court judge" with this irreconcilable decision of McMillan v. Pennsylvania. Because, before an American Citizen can be punished as a criminal under the federal laws of the United States of America, the American citizen must be plainly and unmistakingly within the provisions of some statute. See **United States v. Gradwell 243 U.S. 476** (1917). So when the 1986Court intentionally deviated from the principles of "Winship", it did so in error. Because there is no legal reason or excuse that can plausibly justify the 1986 Supreme Court interpretation or decision to be completely disregarding "In Re Winship" which is clearly established law today. Because the 1970 Supreme Court unanimously decided the retroactivity of "In Re Winship" and where this court has clearly held that the government must prove each charged element of the crime beyond a reasonable doubt at 399 U.S. 358 90 S.Ct. 1068 25 L.Ed 368 (1970). As "Winship" rest on the historic and "ancient" legal tradition incorporated into the Constitution 397 U.S. at 361, 90 S.Ct. 1068. A tradition served to "safeguard" men from unjust convictions without resulting in forfeitures of their freedom. Therefore, there is no justification for this error committed by the 1986 Supreme Court and every state and federal court not to apply drug type and quantity as elements of the offense. Because there is no way possible that a Supreme Court Justice can say that they did not know the principles, guarantees and protections of the Fifth, Sixth, Fourteenth amendments. As the constitutional ramifications of these constitution errors is quite dire to the court. As this court has continuously stated that courts must adhere to the original meaning of the constitution.

As the sixth amendment is understood as pre-serving the historical role of the jury. As "Ex-Parte Siebold" 100 U.S. 371 (1880) clearly states and confirm that if a sentence and conviction is based on an unconstitutional law, then it was unconstitutional in 1986. Therefore, since McMillan v. Pennsylvania has been declared "irreconcilable now" means that it was "irreconcilable in 1986" when the Supreme Court decided McMillan v. Pennsylvania which means that the petitioner Mark A. White sentence and conviction cannot stand and must be vacated and immediately released. As the 1986 Supreme Court committed legal error that violated Mark A. White, and countless American Citizens, fifth, sixth, and fourteenth amendments by allowing the interpretation of McMillan v. Pennsylvania to poison the mindset of "a judge or legislator" in the current sense, for a "district court judge" to be

construed as the legislator who actually removed the assessment of facts from the jury. Which makes the petitioner sentence and conviction "illegal and unconstitutional". Because it is quite clear that the judge and A.U.S.A. knew from the beginning that certain functions and guarantees had already been removed from the jury. Therefore the petitioner never received a fair trial or sentencing proceeding. Because certain elements of the offense has already been removed by the 1986 Supreme Court Justices. In closing, the Petitioner would like to point out "that" this court in 1985 ruled in **Caldwell v. Mississippi, 472 U.S. 320, 328-29, 105 S.Ct. 2633, 86 L.Ed 3d 231** (1985), that "This court has unequivocally held that" it is "constitutionally impermissible" to rest a death sentence on a determination made by a sentencer." Therefore, according to the "Webster's Encyclopedic Unabridged Dictionary" of the English language elements at 14 definition covers every whole part. Appendix D. As death sentence, liberty, drug type and quantity, gun or firearm, knowledge of a crime, all constitute elements of an offense. Therefore, when this court compares a drug offense and drug type and quantity the same way as a death is to a death sentence, as both constitute parts are "confronting" an element that must be proved and considered by the jury. As opposed to the sentencer. "Then it's quite clear" that the 1986 Supreme Court intentionally violated the petitioners fifth and sixth amendment.

As Caldwell v. Mississippi, In Re Winship, Magna Carta, Wilbur v. Mullaney, all guarantee that certain elements of the offense be decided by the jury, as this court clarified in Apprendi v. New Jersey, render the distinction between elements of an offense and sentencing factors untenable. Therefore, it's not Apprendi that makes this distinction untenable, but rather the original meaning of the Fifth Amendment, and Magna Carta, Winship, Caldwell v. Mississippi, and the principle outlined in these cases that make Apprendi good law. Because without these cases, there would be no Apprendi v. New Jersey. Therefore when the 1986 Supreme Court deviated and departed from clearly established law it created a substantive due process violation that has affected "All American Citizens" dealing with a criminal case as this court stated in **Gamble v. United States 587 U.S. , , 159 S.Ct. 196, 204 L.Ed 2d, 322** (2019). That "a departure from precedent demands special justification" and since this court has deemed the 1986 Supreme Court decision of McMillan v. Pennsylvania "irreconcilable" clearly forecloses any special justification that could be

made by this court concerning the 1986 Supreme Court deviation and knowingly intent to violate the 5th, 6th and 14th amendment and the original meaning of the Constitution.

However, in the seventh circuit denial of petitioner White's recall of the mandate, the court stated that petitioner White's case is closed and that repetitious filing had occurred. Well contrary to the court's opinion, this is petitioner's White's first time challenging the violation of the original meaning of the Constitution as applied to the petitioner's original case. Therefore when the seventh circuit or clerk stated that petitioner White's case is closed, it means that a recalling of the mandate is not the correct challenge or vehicle to seek justice from a feast of errors committed by the court who is completely inadequate and an abuse of discretion is therefore another issue before the court.

As the Seventh Circuit, in Shelton v. United States 1: 12-CR-82, dated Aug. 3, 2022, declined to address the petitioners Rule 60 (B) (6) Motion and stated that "Shelton" case is closed and that a recall of the mandate is the only filing that the Seventh Circuit will accept at this time "which is a complete contradiction of the ruling in Mark A. White's v. United States 99-4281. See Appendix A-C. So is this an abuse of discretion by the Seventh Circuit court of Appeals; or is this a complete miscarriage of justice and substantive due process violation committed by the court?

Therefore, Mark A. White, an American Citizen, is being illegally held in federal prison based on an unconstitutional and irreconcilable reasoning of the original meaning of the constitution and due to the 1986 Supreme Court decision in McMillan v. Pennsylvania where this court has concluded that this court's decision was egregiously wrong the day it was decided, as it violates Mark A. White liberty and due process in which the principles outlined in landmark cases such as "**In Re Winship" 397 U.S. 358, 90 S.Ct. 1068, 25 L.Ed 2d 368** (1970), and under the Magna Carta doctrine, Mark A. White is entitled to his liberty, the Habeas Corpus Act was passed to curb the power of King Charles II, but nonetheless came to be seen as a protection for liberty, therefore, since Mark A. White trial proceedings has been tainted with the irreconcilable decision in McMillan, it is incumbent upon this court to correct its own mistakes. It is not the claim in which Mark A. White is relying upon, but the fact that an error which has affected Mark A. White substantial rights has occurred. For these reasons Mark A. White respectfully ask this Honorable Court to grant a reasonable bail until

the outcome of this court's decision addressing these matters; therefore it is the duty of this court to search for constitutional errors with painstaking care and it's never more exacting then right now. As sua sponte gives the Justice or Justices the authority and jurisdiction over this appeal. As this court has the inherent power to recall their mandate and correct the lower courts irreconcilable position. As it's the duty of the court to search for constitutional errors with painstaking care and it's never been more urgent then right now. **Burger v. Kemp 483 U.S. 776** (1987).

However, the Supreme Court has unanimously explained in **United States v. Gaudin 515 at 510-511, 132, L.Ed 2d 444 115 S.Ct. 2310**. The historical foundation for our recognition of these principles extends down centuries into common law. Duncan v. Louisiana 391 U.S. 145, 151-154, 20 L.Ed 2d 491, 88 S.Ct. 1444 (1968). Therefore, when we read case law such as this, "The demand for a higher degree of persuasion in criminal cases was "recurrently expressed" from ancient times, "though its crystallization into the formula" beyond a reasonable doubt seems to have occurred as late as 1798. It is now accepted in common law jurisdictions as the measure of persuasion by which the prosecution must convince the trier of all the essential elements of guilt". C. McCormack, evidence 321, pp. 681-682 (1954) see also G. J. Wigmore, evidence 2497, L3d (1940). Winship 397 U.S. at 361, 25 L.Ed 2d 368, 90 S.Ct. 1068. This court went on to explain that the reliance on the "reasonable doubt" standard among common-law jurisdictions "reflects a profound judgment about the way in which law should be enforced and justice administered" Id at 361-362, 25 L.Ed 2d 368, 90 S.Ct. 1068 (Quoting Duncan, 391 at 155, 20 L.Ed 491, 88 S.Ct. 1444). So it is quite clearly impossible for the court to take any other position other than the fact that the 1986 Supreme Court decision was egregiously and unconstitutionally wrong.

As the justices intentionally deviated from the original meaning of the Constitution and violated the substantive Due Process rights of the petitioner Mark A. White and countless other American citizens as the actual violation in which the 1986 Supreme Court has committed doesn't take place, until the actual "accusation of the alleged crime or charge" has been submitted to a grand jury and written up into an indictment.

Therefore, let's compare the word "ingredient and elements". 1. Ingredient is something that enters as an element into a mixture. 2. A constituent element of anything. So as one

judge stated "criminal charges can be broken down into elements" meaning, if you bake a cake and you look at the side of the box and it says eggs, water, sugar, flour and so on, "means that" that same principle applies in regard to elements. So in order to have this cake, means that, you need all these ingredients which means that in order for the prosecutor and judge to sentence and convict anyone of a crime means that every element must be proven beyond a reasonable doubt. So, when the court crafted and "coined" the term "sentencing factors" to circumvent elements of the offense. The court committed a federal legal error which violated substantive Due Process rights. Therefore, as the above language explains the "reasonable doubt" standard which has existed at least since (1798). As these are the words of this Supreme Court. For these words are a mere reflection of the language of the United States Supreme Court.

Therefore, this court has the inherent power of authority to recall the judgment and mandate in petitioner White's case. As a recall of the mandate and judgment is the only recourse for this court and the appellate court to correct and address such substantive Due Process and Sixth Amendment violation of constitutional errors committed by this United States Supreme Court. As the rationale of the district court's decision-making has been tainted with judicial error's that has derived from 1986 Supreme Court decision of McMillan v. Pennsylvania. Which has been deemed "irreconcilable" and cannot be home with our Sixth Amendment Jurisprudence by 3 of the current sitting Supreme Court Justice. And the late Ruth Gingsburg and Justice Breyer who just retired. Therefore, the vote of 5 Supreme Court Justices makes petitioner White's sentence and conviction irreconcilable with the fifth and sixth amendment when taken together in light of Winship, Gaudin, and Patterson v. New York[1]. This is the erroneous position of the 7th Circuit when Patterson v. New York has always been the law since 1977 and Winship 1970. "So just to be clear", if the 1986 Justices

[1] We recently rejected a nearly identical argument, holding that a special verdict form asking the jury to find a threshold amount under §841(b) (1), rather than the exact amount alleged in the indictment, satisfied the Apprendi rule. See, United States v. Smith, 308 F.3d 726, 740-742 (7th Cir. 2002). In so holding, we reiterated that the law in this circuit is clear: drug quantity is not an element of the offense under §841. Id. at 740-41 ("If drug amount were a true element of §841, then a failure by a jury to agree on the drug amount would mean that 'there is **no offense at all**. {2003 U.S. App. LEXIS 13} "" (quoting *Bjorkman*, 270 F.3d at 492 (emphasis in original))); Trennell, 290 F.3d at 887. As we explained in *Bjorkman*, "Apprendi does not rewrite or change the elements of any federal offense," rather, it requires only that the jury find beyond a reasonable doubt facts that raise the maximum lawful punishment. 270 F.3d at 491

knew or didn't know the reasoning of the original meaning and the correct legal standard of the reasonable doubt and how it was meant to be applied, their irreconcilable decision violated the petitioner's and countless of other American citizens substantial Due Process rights and Sixth Amendment guarantees.

Therefore, the end result is that the foundation of petitioner White's sentence and conviction is in error and cannot stand. And due to the errors at hand, were committed by the 1986 Supreme Court. Petitioner White submits and requests to be immediately released by this Honorable court and appointment of counsel at this time.

Conclusion

Mark A. White.

M.A. White 10-31-22

Mark A. White

"Quoting Thurgood Marshall"

To protect against injustice is the foundation

of "all our" American Democracy