

No. 22-6977

ORIGINAL

Supreme Court, U.S.
FILED

JAN 12 2023

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

Sharif Talib — PETITIONER
(Your Name)

vs.

Brian Frosh "et al." — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

Sharif Talib
(Your Name)

Eastern Correction Institution 30420 Revells Neck Rd.
(Address)

Westover, Maryland 21890
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

~~① Did the~~

- ① The lower court violated Appellant's Constitutional Rights by subjecting to impermissible "Stacking" at sentencing.
- ② The lower court violated by imposing separate sentences of incarceration for Count 1 CDS Distribution of heroin, Count 2 CDS Distribution of Cocaine, and Count 8 CDS Possession with the intent to distribute heroin.
- ③ The lower court violated Appellant's Constitutional Rights for not ~~being~~ reversing the conviction for Distribution of heroin, Distribution of cocaine, and Possession with intent to distribute heroin because the absence of representative sampling by forensic scientists rendering their testimony concerning the weight of recovered substances lacking a sufficient factual basis.
- ④ The lower court violated Appellant's Constitutional Rights by not merging the sentences due to on going events.
- ⑤ The lower court violated Appellant's Constitutional Rights due to Ex Post Facto Clause.
- ⑥ The lower court violated Appellant's Constitutional Rights due to Due Process of Law.

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

Queen Anne's - C-17-CR-18-000551
Wicomico - C-22-CR-18-000136

INDEX TO APPENDICES

APPENDIX-A - March 1, 2018 - Request For Bail Review Hearing

APPENDIX-B - March 7, 2018 - Request Denied

APPENDIX-C - April 2, 2018 - Motion For Continuance

APPENDIX-D - April 2, 2018 - Motion Continued

APPENDIX-E - May 2, 2018 - Motion For Continuance And Request
For A Status Conference

APPENDIX-F - May 2, 2018 - Motion Continued

APPENDIX-G - July 10, 2018 - Motion For Modification Of Sentence

APPENDIX-H - July 23, 2018 - Motion Denied

APPENDIX-I - April 3, 2020 - Petition for Evaluation and
Commitment For Substance Abuse
Treatment

APPENDIX-J - April 29, 2020 - Petition Denied

APPENDIX-K - October 15, 2021 - Motion to Correct Illegal Sentence

APPENDIX-L - November 18, 2021 - Motion Denied

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	5
CONCLUSION.....	6

INDEX TO APPENDICES

- APPENDIX A October 15, 2021 Appellant Filed a Motion to Correct Illegal Sentence.
Case # C-23-CR-17-000572
- APPENDIX B November 18, 2021 Judge Brian D. Shoddeley denied Motion to Correct Illegal Sentence.
- APPENDIX C March 11, 2022 Appellant Filed Appeal by way of brief for the denial of Motion to Correct
Illegal Sentence. September Term, 2021 No. 1548
- APPENDIX D May 16, 2022 Appellee Filed extension to Appellant's response
June 30, 2022 Appellant received an Affirmed judgment from the Court of Special
Appeals unreported opinion September term, 2021 No. 1548 Judge Timothy E. Meredith
- APPENDIX E August 17, 2022 Appellant Filed Motion To Reconsider Order of Affirmed Decision in the
Court of Special Appeals. August 17, 2022 Appellant Filed Writ of Certiorari in the
Court of Appeals. September Term, 2021 No 1548
- APPENDIX F October 25, 2022 The Court of Appeal denied Writ of Certiorari to the Court of
Special Appeals Judge Matthew Fader. Appellant has yet to hear a response from the
Filed Motion To Reconsider Order of Affirmed Decision.

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Blinken v. State 49 Md. App. 25; 430 A.2d 847; (1981)	4
Davon Jones, Antonio Johnson v. State (2001)	4
Gardner v. State 344 Md. 642 689 A.2d 610 (1997)	4
Brasgiano v. State 334 Md. 428, 436 639 A.2d 625 629 (1997)	4
Jones v. State 311 Md. 398, 405 535 A.2d 471 (1988)	4
Lockhart v. Nelson, 488 U.S. 33, 39 (1988)	5
Melgar v. State 355 Md. 339, 734 A.2d 712 (1999)	4
Scott v. State 351 Md. 667, 700 A.2d 291 (1998)	4
State v. Gehlke 474 N.W.2d 722, 726 S.D. (1991)	4
State v. Lascomb 291 Md. 424, 432, 435 A.2d 764, 768 (1981)	4
Turner v. State 192 Md. App. 45 79-80 (2010)	4

STATUTES AND RULES

Maryland Annotated Code Criminal Law Article §5-602
 Maryland Annotated Code Criminal Law Article §5-608
 Maryland Rule 4-345
 Maryland Rule 4-252

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 N/A to the petition and is

☐ reported at N/A; 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 N/A to the petition and is

☐ reported at N/A; 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 B to the petition and is

☐ reported at N/A; or,
☒ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the Court of Special Appeals court appears at Appendix A to the petition and is

☐ reported at N/A; 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 N/A.

☐ 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: N/A, and a copy of the order denying rehearing appears at Appendix N/A.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (date) in Application No. N/A A N/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 October 25, 2011.
A copy of that decision appears at Appendix B.

☐ A timely petition for rehearing was thereafter denied on the following date: N/A, and a copy of the order denying rehearing appears at Appendix N/A.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (date) in Application No. N/A A N/A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Maryland Constitution - Declaration of Rights Article ²¹7, 19, 20, ~~21~~ 24, 26
United States Constitution - Article 1 section 9
United States Constitution - 5TH, 14TH Amendment, 4TH

STATEMENT OF THE CASE

On May 3, 2018, Appellant, Sharif Talib, pled guilty in the Circuit Court for Worcester County to distribution of heroin, distribution of cocaine, and possession with intent to distribute heroin. That same day, he was sentenced to concurrent 15 years terms on the distribution counts, and to a consecutive 15 year term on the count of possession with intent to distribute heroin. Talib filed an Application for leave to Appeal on September 7, 2018, which was dismissed as untimely by this Court.

On October 15, 2021, Talib filed a Motion to Correct Illegal Sentence. The Court denied this motion by order dated November 18, 2021. On March 11, 2022, Talib issued an appeal by way of brief for the denial of the Motion To Correct Illegal Sentence. The Appellee requested an extension of time of an additional 30 days to and including May 6, 2022, for the filing of its brief, whereas appellee's brief exceeded 30 days.

On June 30, 2022, Mr. Talib's brief was heard and affirmed.

On August 17, 2022, Mr. Talib filed a Motion To Reconsider Order of Affirmed Decision and has yet received a response.

Also on August 17, 2022, Mr. Talib filed a Writ of Certiorari which was denied on October 25, 2022.

REASONS FOR GRANTING THE PETITION

The Appellant's Constitutional Rights were violated, both Maryland Declaration of Rights and the United State Constitution with egregious sentencing. The Maryland Constitution - Declaration of Rights Article 17 and United States Constitution Article 1 Section 9, explains the prohibition of Ex Post Facto Laws. In Appellant's case the Justice Reinvestment Act was the sentencing guidelines that should've been followed to avoid egregious sentencing. The relevant law specifically reads and is titled Justice Reinvestment Act. In the House Bill 1312 and Senate Bill 1005 Criminal Law Article 5-602 has no penalty attached. In reference the penalty is directed toward 5-608 - (HB 1312) it reads ~~10~~ 10 years or a fine not exceeding "~~\$5,000~~" 15,000 or both; (SB 1005) ~~5-608 is struck~~ from the bill or deleted from the law. House Bill 1312 and Senate Bill 1005 is (CE) compared to one another. From a legislative stand point an ambiguous penal statute is subject to the "rule of lenity" which requires that such statutes be strictly construed against the state and in favor of the defendant. The Fundamental Fairness factor dictates that the defendant understand clearly what debt he must pay to society for his transgressions. If there is doubt as to the penalty, then the law direct that his punishment must be construed to favor a milder penalty over a harsh one.

Appellant's Constitutional Rights were once again violated with Maryland Declaration of Rights Article 19, 20, 21, 24, 26 and United States Constitution 5th Amendment (Federal) and 14th Amendment (State) where it explains Due Process of the law. According to the Maryland Sentencing Guidelines the "Stacking" requirement refers to multiple victims, in this case it involved only one individual. The sentencing guideline sheet is centered around 5-602 with guidelines of ~~10-10~~ 10-10 years.

The Appellant ultimately points out there is absolutely nothing in the history of these statutes that even suggest that the legislature intended a stacking requirement.

Throughout this indictment it uses the language "on or about". Indictment does not specifically set out how much (quantity) was considered instead it utilized the language "insufficient quantity to indicate an intention to distribute same."

Count 1 does not indicate quantity distributed to Detective Johns agreement occurred during and in furtherance of initial transaction. Because of the use of the language on the indictment every act of Possession with the intent and actual distribution MUST be merged because indictment's broad language incorporated all offenses from November 9, 2017 to December 1, 2017. This also violates Appellant's Constitutional Rights were each case from Worcester County, Queen Anne's County, and Wicomico County relied to charge each charging document, however each jurisdiction relied on Worcester County and Appellant ended up with 57 years all consecutive.

All Facts and circumstances considered, Appellant is entitled by Maryland Common Law merger principles, the Maryland Constitution and the Double Jeopardy clause of the Federal Constitution to have the lesser included offense of possession with intent to distribute vacated.

Alternatively, the offense under the rule of lenity should be set aside due to the ambiguity created by the charging document. legally, no sentence should have or could have been imposed for the lesser included offense.

CONCLUSION

Appellant is respectfully requesting that this Court reverse the judgement of the lower court and for such other and further relief, including this Court using its "Interest of Justice Discretion" to facilitate the greater ends of justice.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Sharif Fakh

Date: December 15, 2011