

22-7235

FILED

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SUPREME COURT, U.S.

IN THE
SUPREME COURT OF THE UNITED STATES

NO. _____

ADAM ARNESS CHISM,

PETITIONER,

VERSUS

TRIAL COURT CAUSE NO: 22-649

STATE OF MISSISSIPPI,

RESPONDENT.

PETITION FOR WRIT OF CERTIORARI

PETITIONER PRO SE:

Adam A. Chism, #129591

SMCL, Area-2, Unit B-1

P. O. Box 1419

Leakesville, MS 39451

QUESTIONS PRESENTED

A.

WHETHER CHISM WAS DENIED DUE
PROCESS OF LAW WHEN PLAIN ERROR
WAS COMMITTED BY THE TRIAL COURT
IN IMPOSING AN ILLEGAL SENTENCE
AS A MATTER OF LAW AND/OR IN
THE INTEREST OF JUSTICE...

PETITIONER CHISM WOULD ANSWER "YES."

LIST OF PARTIES

All parties appear in the caption of
the case.

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APPENDIX - A: Order denying Application for Leave
to File Post-Conviction Collateral Relief
Motion.

OPINIONS BELOW

The opinion of The Mississippi Supreme Court (highest state court) -- denying Petitioner's Application for Leave to file Motion for Post-Conviction Collateral Relief -- is attached as Appendix-A(na).

JURISDICTION

The date of which The highest state court decided Petitioner's case was January 13, 2023. A copy of that decision appears as Appendix-A(na).

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED:

The Fourteenth Amendment to the United States Constitution states in pertinent part, as follows:

"No person shall be deprived of life, liberty, or property, without due process of law."

U.S. CONST, AM. XIV.

STATEMENT OF THE CASE

Petitioner Chism was indicted in the Circuit Court of Hinds County, Mississippi, for the offense of burglary of a dwelling.

Petitioner Chism entered a plea of not guilty to such charge, and the case was tried to a jury. Petitioner Chism was subsequently sentenced to life imprisonment without the possibility of parole-- to be served in the custody of the Mississippi Department of Corrections-- as a habitual offender, pursuant to Miss. Code Ann. § 99-19-83.

Petitioner Chism's direct appeal was affirmed by the Mississippi Supreme Court, on or about October 4, 2018 -- see, Chism v. State, 253 So.3d 343, 349 (Miss. 2018).

Petitioner Chism's most recent filed pleading [Application for Leave to File Motion for post-conviction Collateral Relief] was denied by the Supreme Court of Mississippi on January 13, 2023. This Petition for Writ of Certiorari follows in a timely manner.

REASONS FOR GRANTING THE WRIT

A. Chism was denied due process of law when plain error was committed by the Trial Court in imposing an illegal sentence as a matter of law and/or in the interest of justice.

Petitioner Chism contends that the Trial Court erred by considering a prior conviction (04/13/09), for burglary as a violent crime -- and using same as a predicate underlying the current habitual offender sentence, pursuant to Miss. Code Ann. § 99-19-83. The said habitual offender sentence of life imprisonment, without the possibility of parole being illegally imposed as a matter of law and/or in the interest of justice. In this regard, a principle deeply imbedded in our law, requires the court(s) to construe criminal statutes strictly -- resolving all doubts and ambiguities in favor of the accused... See, McLamb v. State, 456 So.2d 743, 745 (Miss. 1984); Watts v. State, 733 So.2d 214, 240 (Miss. 1999); Coleman v. State, 947 So.2d 878, 881 (Miss. 2006); Brown v. State, 102 So.3d 1087, 1090 (Miss. 2012); and, Fogleman v. State, 276 So.3d 1213, 1215 (Miss. 2018).

In regards to Petitioner's habitual offender life sentence -- Miss. Code Ann. § 99-19-83, provides:

"Every person convicted in this state of a felony who should have been convicted twice previously of any felony or federal crime upon charges separately brought and arising out of separate incidents at different times and who shall have been sentenced to and served separate terms of one (1) year or more; whether served concurrently or not, in any state and/or federal penal institution, whether in this state or elsewhere, and where any one (1) of such felonies shall have been a crime of violence-- as defined by Section 97-3-2, shall be sentenced to life imprisonment, and such sentence shall not be reduced or suspended, nor shall such person be eligible for parole, probation, or any other form of early release from actual physical custody within the Department of Corrections."

Miss. Code Ann. § 97-3-2, went into effect on and from July 1, 2014 [2014 Miss. Laws ch. 457, § 78 (House Bill 585)]. Prior to July 1, 2014, there was no comprehensive statutory definition of "crime of violence." The court's jurisprudence requires strict construction of criminal statutes in favor of the accused... See, City of Natchez v. Sullivan, 612 So.2d 1087, 1089 (Miss. 1992); Arceo v. Tolliver, 19 So.3d 67, 70 (Miss. 2009); and, Tipton v. State,

41 so.3d 679, 682 (Miss. 2010).

However, Petitioner's 2009 house burglary charge was not found to be violent in nature when he was convicted (burglary was considered a generic crime), but, when applying Section 97-3-2, as amended July 1, 2014, to Petitioner's prior house burglary conviction would make it a greater crime than when committed... IT deems a finding of fact-- that the fact-finder did not find - "violence." Furthermore, violence must be proved to have actually occurred for a house burglary conviction to be considered violent for enhancement of sentencing purpose... See, Carter v. State, 334 so.2d 876 (Miss. 1976); State v. Russell, 358 so.2d 409 (Miss. 1978); Dunn v. U.S., 442 U.S. 100, 112 (1979); Gilbert v. State, 48 so.3d 516, 524 (Miss. 2010); and, Miller v. State, 225 so.3d 12, 17 (Miss. 2017).

In Calder v. Bull, 3 U.S. 386 (1798), Justice Chase, had this to say about ex post facto laws:

"I will state what laws I consider ex post facto laws, within the words and the intent of the prohibition... 1st. Every law that makes an action done before the passing of the law, and which was innocent when done, criminal, and punishes such action; 2d. Every law that aggravates a crime, or make it greater than it was when committed;

3d. Every law That changes the punishment, and inflicts a greater punishment, than the law annexed to the crime when committed; and, 4th. Every law That alters the legal rules of evidence, and receives less, or different testimony than the law required at the time of the commission of the offense--in order sentence the offender."

Both, the United States Constitution [Art. I, § 9, cl. 3], and the Mississippi Constitution [Art. 3, § 4], protect persons from ex post facto laws--and provide that, those convicted should be sentenced pursuant to the statute existing on the date of the offense, to avoid an ex post facto problem... See, Johnston v. State, 618 So.2d 90, 94 (Miss. 1993); Flowers v. State, 35 So.3d 516, 518 (Miss. 2010); and, Cozart v. State, 226 So.3d 574, 578 (Miss. 2017).

In an attempt to satisfy the statutory provision of sentencing petitioner as a habitual offender--the prosecutor submitted that one (1) of the prior felonies (2009 house burglary), was a violent crime. However, at the time of this prior felony conviction (04/15/09), house burglary was not a crime of violence; and not applicable as an underlying predicate for habitual offender sentencing... See, U.S. v. Palomino-Garcia, 606 F.3d 1317 (11th Cir. 2010) and Mathis v. U.S., 136 S.Ct. 2243 (2016). The proper remedy for imposition of an illegal

sentence is to remand for resentencing in accordance with the applicable statute... see, Jefferson v. State, 958 So.2d 1276, 1281 (Miss. 2007); Foreman v. State, 51 So.3d 951, 962 (Miss. 2011); and, Masters v. State, 285 So.3d 192, 199 (Miss. 2019).

The prosecutor (State) failed to prove beyond a reasonable doubt that Petitioner's prior house burglary conviction was a crime of violence; or, at the least, involved violence in its commission (note: the prior burglary in question was for an unoccupied dwelling... no violence whatsoever). Thus, Petitioner's habitual offender life sentence is illegally imposed as a matter of law and/or in the interest of justice... See, Carter v. State, 334 So.2d 376 (Miss. 1976); Wilson v. State, 395 So.2d 957 (Miss. 1981); and, Keyes v. State, 549 So.2d 949 (Miss. 1989).

The issue of whether the application of a statute constitutes an ex post facto violation -- is an issue warranting de novo review. The habitual offender life sentence illegally imposed herein warrants being reversed and set aside... see, Brown v. State, 731 So.2d 595, 598 (Miss. 1999); Rice v. Merkick, 34 So.3d 555, 557 (Miss. 2010); and, Cozart v. State, 226 So.3d 574, 578 (Miss. 2017).

An ex post facto law is one which creates a new offense or changes the punishment, to the detriment of the accused -- after the commission of the

crime... see, Collins v. Youngblood, 497 U.S. 37 (1990); Johnston v. State, 618 So.2d 90, 94 (Miss. 1993); and, Knowles v. State, 708 So.2d 549, 552 (Miss. 1998). Herein, when Petitioner Chism was sentenced in 2009, for house burglary (unoccupied dwelling), it was not classified as a violent crime. In order for the State to support the habitual offender life sentence (399-19-83), proof was required of an act of violence -- in the prior conviction. Said sentence resulting from the unconstitutional changing the quantum of punishment -- an ex post facto law violation... See, Weaver v. Graham, 450 U.S. 24, 28 (1981) and, Puckett v. Abels, 684 So.2d 671, 673 (Miss. 1996).

The Constitution provides that: "no State shall pass any ex post facto law." In fact, the Framers included two (2) separate clauses in the Constitution prohibiting ex post facto legislation [Art. I, §9, cl.3] (no Bill of Attainder or ex post facto law shall be passed); [Art. I, §10] (no State shall pass any Bill of Attainder, ex post facto law, or law impairing the obligation of contracts) -- highlights the Framers of the Constitution appraisal of the importance of that prohibition. The ex post facto clauses' basic coverage has been well understood, at least since 1798 -- when the Court in 'Calden' identified four (4) categories of ex post facto law. The third of which states unequivocally as follows: "Every law that changes the punishment, than the law annexed to the crime. In this regard, the

of The Mississippi Code indicates that sentencing a defendant to a more severe penalty under a statute not created until after the commission of his crime violates the very basic tenants of the ex post facto clause... see, U.S. v. Olano, 507 U.S. 725, 731 (1993); Porter v. State, 749 So.2d 250, 260 (Miss. 1989); Gray v. State, 549 So.2d 1316, 1321 (Miss. 1989); Taylor v. State, 754 So.2d 598, 603 (Miss. 2000); and, Rowland v. State, 98 So.3d 1032, 1036 (Miss. 2012).

The after-quoted opinion of Mr. Justice Chase, in 'Calder' supra, summarizes ex post facto laws within the intendment of the Constitution; thus; 1st. Every law that makes an action done before the passing of the law, and which was innocence when done criminal, and punish such action; 2d. Every law that aggravates a crime or makes it greater than it was when committed; 3d. Every law that changes the punishment than the law annexed at the time the crime was committed and inflict a greater punishment; and, 4th. Every law that alters the legal rules of evidence, and receives lesser or different testimony, than the law required at the time of the commission of the offense -- in order to convict and sentence the offender... see, Malloy v. South Carolina, 237 U.S. 180, 182 (1915).

Petitioner argument asserts the second and third 'Calder's' factors. Article I, Section 9, clause 3, of the United States Constitution states: "no Bill of Attainder or ex post facto law shall be passed." Article I, Section 10,

clause 1, of The United States Constitution, prohibit the States from passing ex post facto laws, stating, "No State shall pass any ex post facto law." The State of Mississippi adopted this prohibition in its Constitution at Article 3, section 16, stating: "Ex post facto laws shall not be passed..." See, Pockett v. Abels, 684 So.2d 671 (Miss. 1996) and Knowles v. State, 708 So.2d 549, 554 (Miss. 1998).

Although the term 'ex post facto law' has not been defined with any precision--generally, an ex post facto law is one that--inter alia, aggravates the definition of crimes and/or impose additional penalties for acts already proscribed--clearly are barred by the ex post facto prohibition... See, 'Calder', supra.; Dobbert v. Florida, 432 U.S. 282, 292 (1977); Geraghty v. U.S. Parole Comm'n., 579 F.2d 238, 263 (3d cir. 1978); and, Government of Virgin Islands v. Civil, 591 F.2d 255, 259 (3d cir. 1979).

In the case at bar, Petitioner's prior crime of house burglary in 2009, (burglary of an unoccupied dwelling), was a generic non-violent crime. For the first time in 2014 (House Bill 585); a list of violent crimes was penned, (Miss. Code Ann. § 97-3-2), to include burglary of a dwelling. However, said amendment was effective from and after July 1, 2014-- and is not retroactive... See, Johnston v. State, 618 So.2d 90, 94 (Miss. ~~2003~~²⁰¹⁷). The scope and meaning of the ex post facto clause of the Constitution(s) was determined in 'Calder' by Justice Chase. The classification there

made of cases embraced by that provision(s) has been universally accepted in the courts of the United States (circuit courts not excluded)... see, 'Calder', supra.; Kring v. Missouri, 107 U.S. 221 (1883) and Hawker v. People of New York, 170 U.S. 189, 195 (1898).

Justice Chase clearly explained that the reason the ex post facto clauses were included in the Constitution was to assure that state and federal legislatures were restrained from enacting arbitrary or vindictive legislation. Even using this instant case, as a prime example -- it is plain and clear that petitioner's prior 2009 burglary conviction was unconstitutionally aggravated herein; and that, his habitual offender sentence was illegally imposed as a matter of law and/or in the interest of justice... see, (Paterson, J.) in, Lindsey v. Washington, 301 U.S. 397, 399 (1937); (Iredell, J.) in, Malloy v. South Carolina, 237 U.S. 180, 183 (1915); James v. U.S., 366 U.S. 213, 247 n.3 (1961); and, Miller v. Florida, 482 U.S. 423, 428 (1987).

Herein, the ex post facto law violation aggravated petitioner's 2009 burglary conviction, and unconstitutionally used same as a violent offense underlying petitioner's habitual offender status. As aforementioned, most, if not all courts, (state and federal) holds that, the state is without authority to enforce against any person an ex post facto law... see, Dunn v. Grisham, 157 So.2d 766 (Miss. 1963); Weaver v.

Graham, 450 U.S. 24, 28-29 (1981); Tiller v. State, 440 So.2d 1001, 1004 (Miss. 1983); Collins v. Youngblood, 497 U.S. 37 (1990); and, Knowles v. State, 708 So.2d 549, 553 (Miss. 1998).

In 'Puckett', *infra.*, the court quoted the Supreme Court's decision in 'Morales', *infra.*; for the proposition that the ex post facto clause is primarily aimed at laws that retroactively aggravate a crime and/or use same to enhance punishment in a later conviction... see, 'Weaver', *supra.*; 'Morales', *infra.*; 'Puckett', *infra.*; and 'Wilson', *infra.*

The presumption against the retroactive application of new law, is an essential thread in the mantle of protection that the law affords the individual citizen... that presumption is deeply rooted in our jurisprudence, and embodies a legal doctrine centuries older than our Republic. This doctrine finds expression in several provisions of our constitution. The constitution places limits on the sovereign's ability to use its law making power to modify bargains it has made with its subjects. Any aggravation of Petitioner's prior 2009, crime of burglary--and its use to enhance Petitioner's present prison sentence is a violation of the ex post facto law... See, U.S. v. Brown, 381 U.S. 437, 456 (1965).

The courts universally hold that defendants will be sentenced under the version of the statute

That was in place at the time the crime was committed. In effect, Miss. Code Ann. § 99-19-1, expressly provides that, the previous law will remain in effect for the purpose of providing punishment... see, Wilson, *infra.*; Wells v. State, 202 So.3d 1230, 1234 (Miss. 2016); and, Walters v. State, 206 So.3d 524, 531 (Miss. 2016).

In 'Calder', *infra.*, Justice Chase viewed all ex post facto laws as manifestly unjust and oppressive. Likewise, "Blackstone" condemned them as cruel and unjust-- as did every state constitution with a similar clause. Follow Justice Washington's explanation in characterizing the injustice and tyranny of ex post facto laws-- as follows:

"Why did the authors of the constitution turn their attention to this subject, which at the first blush, would appear to be peculiarly fit to be left to the discretion of those who have the police and good government of the state under their management and control?" The only answer to be given is -- because laws of this character are oppressive, unjust, and tyrannical; and, as such, are condemned by the universal sentence of civilized man."

In short, The ex post facto clause, inter alia, was designed to protect against the favorite and most formidable instruments of Tyranny... See, 1 Commentaries on the Laws of England 46 (1765); Ogden v. Saunders, 12 Wheat 213, 266 (1827); The Federalist, No. 84, P. 512 (C. Rossiter ed. 1961); and, Carmell v. Texas, 529 U.S. 513, 528 (2000).

Upon inspecting such of our state constitution, as take notice of laws made ex post facto--we shall find-- that they are understood in the same sense --- The Constitution of Massachusetts, Article 24th of the Declaration of Rights (laws made to punish for actions done before the existence of such laws, are unjust, oppressive, and inconsistent with the fundamental principles of a free government)... The Constitution of Delaware, Article 11th of the Declaration of Rights (that retrospective laws punishing offenses committed before the existence of such laws, are oppressive and unjust, and ought not to be made)... The Constitution of Maryland, Article 15th of the Declaration of Rights (that retrospective laws, punishing facts committed before the existence of such laws, are oppressive, unjust, and incompatible with liberty; wherefore no ex post facto law ought to be made)... and The Constitution of North Carolina, Article 24th of the Declaration of Rights (that retrospective laws, punishing facts committed before

accused--after the commission of the crime... see, section 16, withdraws from the state the power to punish a person for violating a law that did not exist at the time of the crime. The statute in effect at the time an offense is committed is the one that must control the prosecution of the offense. Petitioner herein contends that his §99-19-83 habitual offender life sentence, is the result of an ex post facto law violation and the same should not be allowed to stand... see, 'Dunn', infra.; 'King v. State', 304 So.2d 650 (Miss. 1974); 'Johnston', infra.; 'Tiller', infra.; 'Knowles', infra.; 'Bell v. State', 726 So.2d 93 (Miss. 1998); 'Flowers', infra.; and 'Cozant', infra.

Petitioner chism would add that, applying Miss. Code Ann. §97-3-2, to his 2009, burglary conviction--to enhance his current sentence--constitutes an increase in punishment; in violation of the ex post facto clause. Section 97-3-2, at issue herein makes a change of law affecting a crime. Thus, Petitioner is not to be affected by §97-3-2, because Petitioner prior burglary crime (2009) was committed some approximate five (5) *years before burglary of a dwelling was made violent (2014). The courts have also held that, §97-3-2, does not apply retroactively. House Bill 585, (the birth of §97-3-2) did not take effect until July 1, 2014. Thus, neither §97-3-2, or §47-7-3, as amended, applied at the time Petitioner was

convicted of house burglary in 2009. The State has provided no authority to even suggest that §97-3-2, applies retroactively... See, Rodriguez v. U.S., 594 F.2d 170 (CA7 1979); Arins v. Snow, 922 F.2d 1558 (CA11 1991); Roller v. Cavanaugh, 984 F.2d 120 (CA4 1993); Miller, *infra.*; and Johnston, *infra.*

The ex post facto clause is aimed at laws that retroactively alter the definition of crimes or increase the punishment for criminal acts already done. The standard for determining whether a law violates the ex post facto clause encompasses those two (2) components; (1) retroactively applying to events occurring before its enactment and (2) disadvantaging the offender affected by it--by either; a) altering the definition of criminal conduct (acts) or b) increasing the punishment for criminal acts. Thus, it is no surprise that nearly, if not all, state supreme courts and federal courts of appeal--to consider the issue has so held... See, California Dept. of Corr. v. Morales, 16 F.3d 1061 (CA9 1994); Lynce, *infra.*; U.S. v. Glover, 153 F.3d 749, 757 (D.C. Cir. 1998); and, Miller, *infra.*

Petitioner Chism would also assert that section 97-3-2, as applied herein--appears to flout with Sixth Amendment concerns under 'Apprendi' (other than the fact of a prior conviction, any fact that increase the penalty for a crime beyond the statutory maximum--

must be submitted to a jury and proved beyond a reasonable doubt), and its progeny. Under the application of §97-3-2, herein -- The Petitioner's prior 2009 house burglary -- has been deemed to include a new fact not found by the jury; that, increases the penalty for the crime beyond the otherwise prescribed statutory maximum... See, Apprendi v. New Jersey, 530 U.S. 466, 490 (2000); Blakely v. Washington, 542 U.S. 296, 303-04 (2004); U.S. v. Booker, 543 U.S. 220, 244 (2005); and, Allyne v. U.S., 133 S.Ct. 2151, 2155 (2013).

The Mississippi Supreme Court has previously decided that 'breaking & entering' is not per se a crime of violence. Many years past, in 'McLamb', infra., The Court addressed the crime of violence requirements under section 99-19-83, and refused to consider breaking & entering as a crime of violence. More recently in 'Brown', infra., the Court held that, burglary of a dwelling (unoccupied in the 2009 case), is not per se a crime of violence under §99-19-83. For this Court to rule otherwise -- would seriously affect the fairness, integrity or public reputation of judicial proceedings... See, 'McLamb', infra.; U.S. v. Brown, 450 F.3d 76, 79 (1st Cir. 2006); U.S. v. Gonzalez-Terrazas, 529 F.3d 293, 296; and, Brown v. State, 102 So.3d 1087, 1090 (Miss. 2012).

The question now becomes whether the State has the right to a second chance to prove

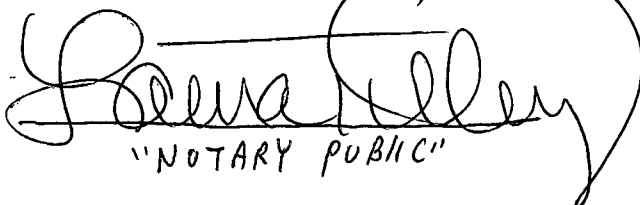
PETITIONER'S STATUS AS A HABITUAL OFFENDER -- AS OPPOSE TO -- PETITIONER'S RIGHT NOT TO BE TWICE PLACED IN JEOPARDY. THE DOUBLE JEOPARDY CLAUSE BARS THE STATE FROM RE-TRYING THE ISSUE WHETHER PETITIONER QUALIFIES FOR HABITUAL OFFENDER SENTENCING, UNDER § 99-19-83 OR § 99-19-81. IN ACCORD WITH THE PROVISIONS OF ARTICLE 3, SECTION 22, OF THE MISSISSIPPI CONSTITUTION -- THE STATE DO NOT GET A SECOND CHANCE TO OFFER ITS PROOF (EVIDENCE) OF PETITIONER'S HABITUAL OFFENDER STATUS --- WHERE THE STATE HAS SOUGHT AND FAILED TO PROVE THAT A PRIOR FELONY CONVICTION FOR HOUSE BURGLARY IN 2009, WAS A CRIME OF VIOLENCE. SEE, MS CONST. ART. 3, § 22; DYCUS V. STATE, 440 SO. 2D 246, 258 (MISS. 1983); DE BUSSI V. STATE, 453 SO. 2D 1030, 1031 (MISS. 1984); and, COX V. STATE, 586 SO. 2D 761, 766 (MISS. 1991).

PETITIONER CHISM'S HABITUAL OFFENDER SENTENCE UNDER § 99-19-83, SHOULD BE VACATED AND SET ASIDE. THE PETITION FOR WRIT OF CERTIORARI SHOULD BE GRANTED.

Respectfully Submitted,


ADAM CHISM

SWORN TO AND SUBSCRIBED BEFORE ME,
THIS THE 29 day of March, 2023.


"NOTARY PUBLIC"



"MY COMMISSION EXPIRES"