

IN THE SUPREME COURT OF THE UNITED STATES

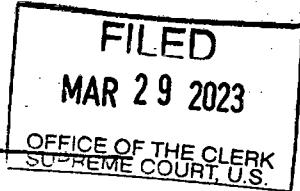
ORIGINAL

SANTOS CUEVAS, petitioner

22-7257

vs.

NO



GOVERNOR TINA KOTEK in her official capacity  
(Was KATE BROWN) ,ELLEN ROSENBLUM in her official capacity  
As Attorney General Jesse William Barton-in his official capacity as  
Attorney at law and Corey Fhuere in his official capacity as  
Superintendent of Oregon State Penitentiary

On Petition For a Writ of Certiorari

Petition for Writ of Certiorari

SANTOS CUEVAS

2605 State Street, Salem, Oregon 97301

## QUESTIONS PRESENTED

Has Oregon's Judiciary and legislature failed to incorporate landmark cases relevant for how and when to enhance a sentence, and to comport with the rule of Federal law?

Is a Unanimous verdict of 12 votes and jury record a pre-condition and affirmation under the Federal United States Constitution, before an appellate and State Supreme Court declares an Opinion and dissent on Sixth Amendment Jury trial right sentencing errors harmless?

Are Judicial discretionary findings Are merger and non-merger and concurrent and consecutive allowed to aggravate a sentence to each count beyond the maximum set by the statute under federal law?

Does the Double Jeopardy Clause of the Fifth Amendment provision of the United States protect a defendant from having any of his Jury trial convictions to be included and counted into his criminal history score and from being subject to a higher recidivist sentence to each count?

For purpose of the foregoing, on State Action Liability, did the Appellate Court correctly determine the liability issues of facts?

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PETITION FOR WRIT OF CERTIORARI

OPINIONS BELOW

Petitioner prays that a writ of certiorari issues to reviews the judgement below.

For cases from the United States federal courts:

The opinions of the United States Supreme Court of Appeals appear at

Appendix A to the petition and is reported at

Is unpublished.

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Appendix \_\_\_\_\_ to the petition and is reported at

Is unpublished.

[ ] For cases from state courts:

The opinion of the States' highest court to review the merits appears at  
Appendix \_\_\_\_\_ to the petition and is

[ ] Reported at \_\_\_\_\_: or,

[ ] Has been designated for publication but is ont yet reported or

[ ] Is unpublished

## TABLE OF AUTHORITIES CITED

### CASES

APPRENDI v NEW JERSEY 530 U.S. 224, 140 LEd 2d 350 (2000) p. 5  
BENTON v MARYLAND , 395 U.S. 784, 89 S.Ct. 2056 (1969) p. 7  
OREGON v BUCHOLZ , 317 Or. 309, 314, 855 P.2d 1100 (1993) p. 7  
OREGON v SANTOS CUEVAS 263 Or. App. 94, 114, 326 P.3d 1242 (2014) p. 5  
OREGON v SANTOS CUEVAS 358 Or. 147, 361 P.3d 581 (2015) p. 6  
YOUNGER v HARRIS , 401 U.S. 37, 91 S.Ct. 746, 27 LEd 2d 669 (1971) p. 7

### STATUTES AND RULES

ORS. § 137.123 (1-5) p.5

200%, 400% sentencing rules and shift to 'I' rule. p. 6

### OTHER Criminal History Rule:

Oregon Administrative Rule- OAR 213-004-0006 (2)

Features, Oregon Criminal History Rule to reconstitute, increasing the criminal history score to [each] conviction sentenced, as long as the multiple conviction are not merged and not concurrent.

**JURISDICTION For cases from federal courts:**

The date on which the United States Court of Appeals decided my case was **January 26, 2023**

**A petition for rehearing was filed in this case or for reconsideration which is the appeal from the District court judgement, not available at this time.**

## **Constitutional and Statutory Provisions Involved**

1st, Fourth, Fifth, Sixth, Eighth, Thirteenth, Fourteenth Provisions of the United States

Constitution, Amendments.

## STATEMENT OF THE CASE

For over 20 years Oregon has failed to incorporate *Apprendi v New Jersey* and line of cases.

The following are 'Bad Faith' prosecutions and sentences shown by the statement declared by the appellate court, and are direct collateral consequences making this case of controversy and justiciable.

"At sentencing, the trial court determined that all of defendant's felony convictions, except for the merged Counts 2 and 6, and Counts 4 and 8, were separate criminal episodes. Three consequences flowed from that determination. First, the court could impose consecutive sentences. See ORS 137.123 (allowing a court to impose consecutive sentences when a defendant is "simultaneously sentenced for criminal offenses that do not arise from the same continuous and uninterrupted course of conduct"). Second, each time the trial court passed sentence on a count representing a separate criminal episode, the court considered that count to be part of defendant's criminal history for the purpose of the remaining counts."

State v. Cuevas, 326 P.3d 1242, 263 Or.App. 94 (Or. App. 2014)

Oregon Supreme Courts statement makes this case a controversy, since the distinction of the exception and the Apprendi rule has not been over-ruled to allow the bad faith shown here.

After the trial court determined the sentence on defendant's first conviction, it counted that conviction as part of his criminal history in determining the presumptive sentence for defendant's second conviction. Including the first conviction as part of defendant's criminal history increased his criminal history score and, for that reason, resulted in a higher presumptive sentence for the second conviction. The court followed the same course in determining the presumptive sentences for the remainder of defendant's convictions.

*State v Santos Cuevas State v. Cuevas, 358 Or 147, 361 P.3d 581 (Or. 2015)*

The Judicial created rules are simply an extension of Oregon laws that allowed conviction to be included into the criminal history and of a defendants sentencing calculation to a higher sentence of 200%, 400% including the rule called the shift to column I rule, the shifting to the provision on the grid scale because the initial sentence begins on the prior conviction column which is the similar error of aggravating a sentence and conviction at issue in this petition, the 200% and 400% rules aggravate the sentence on a single count by 200% or 400% and the sum of the total of the concurrent or consecutive sentence not to exceed that aggravated total which remains an error with aggravating the sentence not comporting with Federal Due process and the legal basis for the sentence enhancement is judicial findings of multiple convictions whereas concurrent or consecutive merger or non-merger are according to Oregon are justified legal basis for aggravating the sentence under State law, holdings that Apprendi is not implicated, privileges appointed counsel to allow these enhancements.

## Reasons For Granting the Petition

This court has not overruled *Apprendi v. New Jersey*, in terms of the double Jeopardy Clause this court had stated necessarily that when convictions can be erroneously counted to violate the Double jeopardy clause " it is enough to give this case an adversary cast and make it justiciable *Benton v Maryland* 395 U.S 784, 23 L.Ed. 2d 707, 89 Sct. 2056 (1969)

Also stating ,

"It is sufficient for present purposes to hold that there is ~~is~~ <sup>no</sup> jurisdictional bar to consideration of challenges to multiple convictions, even though concurrent sentences were imposed." *Benton v Maryland* *supra*

Beyond not incorporating the *Apprendi* landmark decisions of this court, Oregon has a history of Judicial and legislative practice of aggravating a sentence not justified by any decisions of this court see *State v. Bucholz*, 317 Or. 309, 314, 855 P.2d 1100 (1993) ("Nothing in the wording of the criminal history rule excludes consideration of the conviction for a separately occurring crime merely because the two separate crimes are sentenced on the same day and in the same session of court.")

*Bucholz* calls into question the principle as to what constitutes a single judicial proceeding and a prior conviction. Since *Bucholz* involved two indictments and **this** case involves only a single indictment.

No matter the number of Indictments s long as there are multiple convictions constituting multiple counts on separate violations, the bad faith also is with co0iunting the convictions into the recidivist provisions of the guidelines.

The jurisdiction of this court makes this case of controversy and justiciable as the impact to Oregon is exhibited in petitioner cases, and exhibits not remedy and nor declaratory remedy is available because it's not. Ex post facto is a concern and Bad faith.

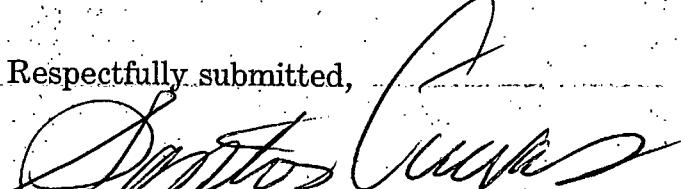
*Younger v. Harris*, 401 U.S. 37, 91 S.Ct. 746, 27 L.Ed.2d 669 (1971)

All claims not included in Statement of the case are here incorporated by reference to the pleadings and which were subject to the Court of Appeals panel of Appellate judgement and for purpose of State Action Liability Standard of Review was not applied and State Action Liability Standard of Review should have been applied to 'Interstate Extradition' claim against the Governors' Office in violation of the Fourth Amendment and Federal Imprisonment on State charges - Circuit Court for State action liability, District Court erred, not allowing Jury Questions for liability.

#### CONCLUSION

The petition for a writ of certiorari should be granted, dismissal is error.

Respectfully submitted,

  
Date: 3/28/2023