

No.

23-5222

ORIGINAL

Supreme Court, U.S.
FILED

JUL 18 2023

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

MUSTAFA ALI-PETITIONER

vs.

JEFFREY MINEHART, ET AL.,-RESPONDENTS

ON PETITION FOR WRIT OF CERTIORARI TO

COMMONWEALTH COURT OF PENNSYLVANIA

PETITION FOR WRIT OF CERTIORARI

MUSTAFA ALI

S.C.I. MAHANAY, 301 GREY LINE DRIVE

FRACKVILLE, PA 17931

QUESTIONS PRESENTED

1. Whether the PCRA Court abused its discretion in failing to convert Petitioner's State Habeas Petition into a PCRA Petition?
2. Whether the Trial Court imposed a sentence greater than the statutory maximum?
3. Whether Pennsylvania Constitutional Statutes 18 Pa.C.S. § 1102 and 42 Pa.C.S. § 9711 are void for vagueness?
4. Whether the Philadelphia Court of Common Pleas has abolished the Writ of Habeas Corpus?

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:

Philadelphia Court of Common Pleas

RELATED CASES

Commonwealth of PA v Ali	CP-51-CR-0000683-2008
Commonwealth of PA v Ali	736 EDA 2010
Commonwealth of PA v Ali	509 EAL 2011
Commonwealth of PA v Ali	135 EDA 2017
Commonwealth of PA v Ali	411 EAL 2017
Ali v CCP Phila County	117 E.M. 2017
Ali v Overmyer,et al.	2:18 cv-1074
Ali v Overmyer,et al.	CA No. 19-1950
Ali v Oberlander,et al.	No.19-8112/140 S.Ct. 2831
Ali v Minehart,et al.	406 M.D. 2022
Ali v Minehart,et al.	10 E.M. 2023

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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☐ is unpublished.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☐ is unpublished.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 A to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unreported.

The opinion of the _____ 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.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals denied 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 writ of certiorari was granted to and including _____ on _____ in Application No. _____.

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 May 17, 2023.

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 writ of certiorari was granted to and including _____ on _____ in Application No. _____.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

18 Pa. C.S. § 1102.....	Appendix	C
18 Pa. C.S. § 3301.....	Appendix	D
42 Pa. C.S. § 6503.....	Appendix	E
42 Pa. C.S. § 9711.....	Appendix	G
42 Pa. C.S. § 9714.....	Appendix	H
42 Pa. C.S. § 9721.....	Appendix	
42 Pa. C.S. § ^{954A-43} 972-43	Appendix	F

Pennsylvania Constitution Article 1, Section 14: the privilege of the writ of habeas corpus shall not be suspended unless when in case of rebellion or invasion public safety may require it.

United States Constitution Article 1, Section 9

United States Constitution Fourteenth Amendment.....Appendix K

STATEMENT OF THE CASE

While awaiting trial , Petitioner filed a state habeas corpus petition in January of 2010. In his petition Petitioner sought to challenge subject matter juris diction and statutory authorization.

The habeas petition was docketed but the court denied Petitioner any opporunity to be heard concerning the issues of the petition telling him that "lack of jurisdiction can not be raised during trial and is *only* applicable if a conviction occurs." (APPENDIX J)

Petitioner went to trial and was found guilty of first degree murder. The sentencing procedures outlined in 42 Pa.C.S. § 9711 requiring a penalty phase hearing be held to determine if the sentence should be death or life imprisonment.

Upon the completion of the penalty phase hearing , the jury returned a sentence of life imprisonment. The sentencing judge sentenced pronounced two distinct sentences, one sentence of life imprisonment and another sentence of life imprisonment with the additional condtion of no possibility of parole(N.T. 2/24/10)

The conviction was affirmed by the Superior Court. The Supreme Court denied allowance of appeal. Thereafter, Petitioner filed a timely pro-se PCRA petition. Befora any ruling on the petition, Petitioner filed another state habeas petition restating the issues of the first petition filed in 2010 and raising new issues.

The new issues included absence of judgment of sentence order, void for vagueness of 48 Pa.

C.S. §1102 and 42 Pa. C.S. § 9711 and imposition of a sentence greater than the statutory maximum.

The PCRA Court denied the PCRA petition but refused to adjudicate the habeas corpus petition and did not convert the habeas petition into a PCRA petition. The Superior Court affirmed the PCRA court and the Supreme Court denied allowance of appeal.

Petitioner file a Petition for Review in the Nature of Mandamus in the Superior Court of PA to order the Phila. Court of Common Pleas to address Petitioner's habeas corpus petitions. The Petition for Review was denied and the Supreme Court denied allowance for appeal.

Petitioner again filed a Petition for Review in the Nature of Mandamus in the Commonwealth court of PA after his failed attempts to have The Phila. Court of Common Pleas address his habeas petitions. The Commonwealth Court transferred the matter to the Supreme Court. The Supreme Court denied review the mandamus petition and dismissed the lead respondent from the petition.

Petitioner now files this timely Petition for Certiorari.

REASONS FOR GRANTING THE PETITION

Respondents have denied Petitioner due process from the moment he was denied any opportunity to challenge subject matter jurisdiction. the Pennsylvania Supreme Court has held that an objection to subject matter jurisdiction can never be waived and may be raised at *any* stage in the proceedings by the parties or by the court on its own motion. *Commonwealth v Little, 314 A.2d 270(1974)*; the jurisdiction of a court to try the offender can be inquired into by habeas corpus under the laws of the United States by any judge or court which has right to issue the writ. *United States v Brawner, 7 Fed. Rep. 86*

Issues concerning lack of 'statutory authorization' are not cognizable under the PCRA and were thus properly raised under State Habeas Corpus in Petitioner's first filed petition. If there is no statutory authorization for an imposed sentence, that sentence is illegal and must be vacated. *Commonwealth v Wilson, 11 A.3d 519(2010)*; *Commonwealth v Johnson, 373 A.2d 704(2005)*.

The legislature is empowered to set the punishment for criminal conduct, while judges may only impose sentences that are within those boundaries set by the legislature. *Commonwealth v Sutley, 378 A.2d 780(1997)*.

The judge pronounce a sentence of life without the possibility of parole. Petitioner was sentenced pursuant to the procedures outlined in 42 Pa.C.S. § 9711 which only authorizes a sentence of life imprisonment or the death penalty. There is no additional condition of without the possibility of parole.

Likewise, 48 Pa.C.S. § 1102, which outlines the sentences of those convicted of first degree murder. This statute only authorizes a sentence of death or life imprisonment without any additional condition without the possibility of parole.

There are only two statutes that authorize life imprisonment without the possibility of parole: 18 Pa.C.S. § 3301 and 42 Pa. C.S. § 9714. Neither of these statutes are applicable in Petitioners case.

A careful examination of the statutes clearly demonstrate the legislative intent of statutes authorizing a sentence of life imprisonment and a sentence of life imprisonment without the possibility of parole. The sentencing judge was without statutory authorization to impose a sentence of life imprisonment without the parole eligibility under 42 Pa. C.S. § 9711 and 18 Pa.C.S. § 1102. That sentence is an illegal sentence and an illegal sentence must be vacated.

Commonwealth v Arrest, 734 A.2d 910,912(Pa Super 1999).

By pronouncing a sentence of life imprisonment without parole the court imposed a sentence greater than the statutory maximum. Petitioner raised this issue during the PCRA stage in a pro-se filed state habeas corpus petition.

The Post Conviction Act, 42 Pa. C.S. §§ 9541-9546 speaks to addressing illegal sentences and specifically sentences exceeding the lawful maximum or imposed by a court without jurisdiction.

The Superior Court in **Commonwealth v Moore**, 198 A.3d 442 (2018), noted a writ of habeas corpus is properly considered a PCRA petition if the issue raised is cognizable under the PCRA.

Commonwealth v DiMatteo, 644 Pa. 463, 177 A.3d 182,192(PA 2018).

Petitioner's state habeas raised issue challenging the legality of his sentence and was therefor

cognizable under the PCRA. The PCRA Court should have converted his state habeas petition into a PCRA petition.

Pennsylvania statutes 18 Pa.C.S. § 1102 and 42 Pa.C.S. § 9711 are void for vagueness because they fail to give notice that a sentence of life imprisonment is a sentence preventing parole eligibility. The void for vagueness doctrine "prevents the government from imposing sanctions under criminal law that fails to give fair notice of the prescribed conduct. *Commonwealth v Herman*, 639 Pa. 466, 161 A. 3d 204 (PA.2017) citing *Johnson v United States*, 576 U.S. 591, 595, 135 S.Ct. 2551, 192 L.Ed.2d 569(2015).

A sentencing court does not have authority to sentence a defendant to an unconstitutionally vague sentencing statute. *Welch v United States*, 136 S.Ct. 1257, 1262, 194 L.Ed.2d 387 (2016)

Any sentencing provision found to be unconstitutional on its face is as if that statutory authority never existed and any sentence imposed under such authority is an illegal sentence.

Commonwealth v Barnes, 637 Pa 493, 151 A.3d @127(2016).

The Court in *Commonwealth v McIntyre*, 232 A.3d 609, 619(Pa 2020), held that a sentence imposed for a conviction under a statute found ab initio implicated the legality of the sentence cognizable under the PCRA.

CONCLUSION

The Petition for a writ of certiorari should be granted.

Respectfully submitted,

Mustafa Ali

Date: July 15, 2023