

No. _____

In The
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2023

LAQUINCE T. HOGAN, *Petitioner*,

v.

DEXTER PAYNE, DIRECTOR
ARKANSAS DIVISION OF
CORRECTION, *Respondent*.

**Petition for a Writ of Certiorari
To the United States Court of Appeals
For the Eighth Circuit**

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LAQUINCE T. HOGAN

QUESTIONS PRESENTED FOR REVIEW

1. Whether the Arkansas Supreme Court denied Mr. Hogan due process of law under the Fifth, Sixth and Fourteenth Amendments, in acknowledging that Mr. Hogan's claim that he was convicted of an uncharged offense was cognizable in state habeas proceedings and should be addressed on the merits; but then holding that his arguments that the prosecution's oral amendment to the information in his case was insufficient as a matter of law to constitute the amendment advocated for by the state claim were "waived" even though the Court resorted to its own factual analysis based on the oral record in denying the "uncharged offense" claim.

LIST OF PARTIES TO PROCEEDING

All parties appear in the caption of the case on the cover page.

LIST OF DIRECTLY RELATED PROCEEDINGS

1. Court: Circuit Court of Little River County, Arkansas
Case Number(s): 41CR-08-53 and 41CR-08-54
Case Caption: State of Arkansas v. Laquince Hogan
Date of Judgment: June 4, 2009 (nunc pro tunc entered June 20, 2019) / Decision on Petition for Relief under A.R.C.P. 37.1 - December 20, 2010
2. Court: Arkansas Court of Appeals
Case Number: CR-09-1020
Case Caption: Laquince Hogan v. State of Arkansas
Date of Judgment: May 19, 2010
Hogan v. State, 2010 Ark. App. 434
3. Court: Arkansas Supreme Court
Case Number: CR-11-36
Case Caption: Laquince Hogan v State of Arkansas
Date of Judgment: May 23, 2013
4. Court: United States District Court, Eastern District of Arkansas
Case Number: 5:14CV00015-BD
Case Caption: Laquince T. Hogan v. Wendy Kelley, Director ADC
Date of Judgment: July 31, 2015
5. Court: United States Court of Appeals for the Eighth Circuit
Case Number: 15-2930
Case Caption: Laquince T. Hogan v. Wendy Kelley, Director
Date of Judgment: June 20, 2016
Hogan v. Kelley, 826 F.3d 1025 (8th Cir. 2016)
6. Court: United States Supreme Court
Case Number: 16-8929
Case Caption: Laquince Hogan v. Wendy Kelley, Director ADC
Date of Judgment: January 8, 2018
Hogan v. Kelley, 138 S.Ct. 635(Mem), 199 L.Ed.2d 526(Mem) (2018)

7. Court: Circuit Court of Hot Spring County, Arkansas
Case Number: 30CV-21-278
Case Caption: LaQuince Hogan v. Dexter Paine, Director ADC
Date of Judgment: June 27, 2022

8. Court: Arkansas Supreme Court
Case Number: CV-22-662
Case Caption: Laquince Hogan v. Dexter Payne, Director ADC
Date of Judgment: June 8, 2023, Rehearing Denied September 14, 2023

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June 27, 2022 APP 9

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Hogan v. Payne, 23 Ark. 99, 668 S.W.3d 466 (2023)

In The
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2023

LAQUINCE T. HOGAN, *Petitioner*,

v.

DEXTER PAYNE, DIRECTOR
ARKANSAS DIVISION OF
CORRECTION, *Respondent*.

**Petition for a Writ of Certiorari
To the Supreme Court of the State of Arkansas**

LAQUINCE T. HOGAN respectfully petitions for a Writ of Certiorari to review the Judgment of the Supreme Court of the State of Arkansas in Case No. CV-22-662 – *Hogan v. Payne*; reported at 23 Ark. 99, 668 S.W.3d 466 (2023).

OPINIONS BELOW

Mr. Hogan was sentenced by judgment and sentence entered by the Circuit Court of Little River County, Arkansas on June 4, 2009 (corrected by nunc pro tunc judgment entered June 20, 2019). (APP 13, 17). The Circuit Court of Hot Spring County entered its judgment on Mr. Hogan's Petition for

a Writ of Habeas Corpus on June 27, 2022 in Case No. 30CV-21-278. APP 9. The Arkansas Supreme Court entered its opinion judgment denying appeal of the Hot Spring County judgment on June 8, 2023. APP 2; *Hogan v. Payne*, 23 Ark. 99, 668 S.W.3d 466 (2023). The Court denied Petitioner's petition for rehearing on September 14, 2023. Appendix APP 1.

JURISDICTION

The Arkansas Supreme Court entered its order denying rehearing on appeal in this matter on September 14, 2023. This Court's jurisdiction is invoked by petition for certiorari filed within 90 days of that date pursuant to 28 U.S.C. § 1257(a). See U.S.S.Ct. Rule 13(1).

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

UNITED STATES CONSTITUTION, AMENDMENT V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

UNITED STATES CONSTITUTION, AMENDMENT VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

UNITED STATES CONSTITUTION, AMENDMENT XIV

SECTION 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Ark. Code Ann. § 5-4-501(a)(1) and (2)

(a) (1) A defendant meeting the following criteria may be sentenced to pay any fine authorized by law for the felony conviction and to an extended term of imprisonment as set forth in subdivision (a)(2) of this section:

(A) A defendant who:

(i) Is convicted of a felony other than those enumerated in subsections (c) and (d) of this section committed after June 30, 1993; and

(ii) Has previously been convicted of more than one (1) felony but fewer than four (4) felonies or who has been found guilty of more than one (1) but fewer than four (4) felonies;

* * *

(2) The extended term of imprisonment for a defendant described in subdivision (a)(1) of this section is as follows:

(A) For a conviction of a Class Y felony, a term of imprisonment of not less than ten (10) years nor more than sixty (60) years, or life;

* * *

Ark. Code Ann. § 5-4-501(b)(1) and (2)

(b) (1) A defendant meeting the following criteria may be sentenced to pay any fine authorized by law for the felony conviction and to an extended term of imprisonment as set forth in subdivision (b)(2) of this section:

(A) A defendant who:

(i) Is convicted of a felony other than a felony enumerated in subsections

(c) and (d) of this section committed after June 30, 1993; and

(ii) Has previously been convicted of four (4) or more felonies or who has been found guilty of four (4) or more felonies;

* * *

(2) The extended term of imprisonment for a defendant described in subdivision (b)(1) of this section is as follows:

(A) For a conviction of a Class Y felony, a term of imprisonment of not less than ten (10) years nor more than life;

* * *

STATEMENT OF THE CASE

A. Petitioner's Conviction

Petitioner Laquince Hogan was charged by information filed in the Circuit Court of Little River County, Arkansas on August 11, 2008 with one count under A.C.A. § 5-64-401 (unlawful possession of crack cocaine with intent to deliver); and one count under A.C.A. § 5-64-401 (unlawful possession of marijuana with intent to deliver). The information set out possible punishment for each offense as:

CLASS Y FELONY
10 to 40 YEARS, OR LIFE IMPRISONMENT
NOT TO EXCEED \$25,000.00 FINE
OR BOTH FINE AND IMPRISONMENT

Id. The proposed punishment for the second count was allegedly amended by the prosecution in pretrial proceedings to “four to ten” years, in compliance with A.C.A. § 5-64-401.

Mr. Hogan was convicted on June 4, 2009 and sentenced to 1500 months (125 years) for Possession of a Controlled Substance with Intent to Deliver – Crack Cocaine under A.C.A. § 5-64-401. The judgment and sentence entered in Petitioner's case contained no reference to any basis for the sentence above that allowable for a Y felony. See A.C.A. § 5-4-401. *Id.* *[On June 20, 2019, the Little River County Circuit Court, without notice or further order or discussion, apparently as a clerical correction, entered a*

modified sentencing order making no changes in sentence, but showing a habitual offender status under A.C.A. § 5-4-501(b)].

Mr. Hogan's appeal of his conviction was denied in *Hogan v. State*, 2010 Ark. App. 434 (2010). He filed a petition under Ark. R. Crim. P. 37.1 in the Circuit Court for Little River County, which was denied, and that denial was affirmed on appeal in *Hogan v. State*, 2013 Ark. 223 (2013). Mr. Hogan filed a petition for habeas corpus relief under 28 U.S.C. § 2254 on March 24, 2014 in the United States District Court for the Eastern District of Arkansas (Case 5:14-cv-00105-BD). Mr. Hogan's petition was denied July 31, 2015, and his appeal to the United States Court of Appeals was denied. *Hogan v. Kelley*, 826 F.3d 1025 (8th Cir. 2016), *cert. denied Hogan v. Kelley*, 138 S.Ct. 635(Mem), 199 L.Ed.2d 526(Mem) (2018).

Additionally, on August 5, 2013, Mr. Hogan filed a "Petition to Correct an Illegal Sentence Pursuant to Arkansas Code Ann. § 16-90-111(A)" with the Circuit Court of Little River County in his original criminal proceeding based on claims of lack of due process and adequate notice relating to charging of the sentencing issue raised here. The Circuit Court denied this petition by order entered August 6, 2013.

B. Facts regarding charge and sentence:

Mr. Hogan's sentence of 1500 months was not authorized under any charge under the written information in his case, or any written amendment made to the information. No statute was cited in any amendment motion or action taken by the Court, and no written amendment was filed by the State asserting any habitual offender charge. However, Mr. Hogan's charges were orally addressed by the prosecution in pretrial proceedings, where the following colloquy took place:

MR. CHESSHIR: Yes, sir. So requested. I so request that amendment. Also, Your Honor at this moment in time we move to make him habitual.

MR. BOOKER: He's already been made habitual. That amendment was made last time.

MR. CHESSHIR: It was in regard to the other case.

MR. BOOKER: Oh, well, now, I don't know about that.

THE COURT: Under which habitual statute?

MR. CHESSHIR: It would be the large one, the four.

THE COURT: More than four prior convictions?

MR. BOOKER: I've seen the certified judgments, so we have no objection.

THE COURT: I'll let you do that, if you haven't done it already.

MR. CHESSHIR: We did it on the previous case, but we did not do it on this case, I don't think.

THE COURT: Drug cases it's and/or. The exception to the Class Y being punishment only. I tell you what. Let's look at that again. That comes up constantly. Well, normal Y's don't have a fine, penitentiary only, but I think – let's look at the statutes. Consolidating CR-2008-53 and 94-1 and the State is choosing to try –

MR. CHESSIR: 08-54.

Trial TR at 46-47 (Habeas Exhibit 68-69). After this colloquy, the State took no further pretrial action to amend or otherwise address any issue in the information in pretrial proceedings.

At trial, the Prosecution clarified its prior motion and restated the charges as follows:

THE COURT: Are there any amendments to the charge? Let me make sure. Possession of controlled substance with intent to deliver –

MR. CHESSHIR: Cocaine. It's the big habitual. Class Y. It's the big habitual, ten to 60 to life.

THE COURT: I'll let y'all give the range, so it's two charges, possession with intent cocaine and possession with intent marijuana?

MR. CHESSIR: Uh-huh.

Trial TR at 93-94 (Habeas Exhibit 86-87). The defense argued 10 to 60 to life in voir dir. Trial TR at 117. However, the jury was instructed on sentencing that,

The offense of possession of controlled substance with intent to deliver crack cocaine when committed by a habitual offender is punishable by imprisonment in the Arkansas Department of Corrections for a term of not less than ten or up to life and a fine not to exceed \$25,000.00.

Trial TR at 334.

C. State Habeas Proceedings

Mr. Hogan filed a State Court Petition for Habeas Corpus relief in the Arkansas Circuit Court for Hot Spring County on September 22, 2021. He alleged, *inter alia*, that he was convicted of an uncharged offense, under the provisions of A.C.A. § 5-4-501(b) because the State's final statement on amendment was that the applicable habitual offender statute was that prescribing a penalty of "ten to 60 to life." This range language can only relate to the penalty provisions of A.C.A. § 5-4-501(a) – not (b). This petition was denied by the Circuit Court on June 27, 2022, and Mr. Hogan timely appealed to the Arkansas Supreme Court. The Supreme Court found that:

- a. Mr. Hogan's petition properly asserted a cognizable claim under the Arkansas habeas corpus statute (A.C.A. 16-112-101, *et. seq.*), *Hogan*, 668 S.W.3d at 469; APP 5-6.
- b. Resolution of the claim required factual analysis of the language in question; *Id.*
- c. That no due-process vagueness challenge could be brought to that language, even though the issue was squarely before the Court – i.e. no claim that the language was insufficient to charge the offense – because even though the issue of what crime was charged was before the court on the merits, any claim the language was insufficient to charge the offense was waived. *Hogan*, 668 S.W.3d at 470; APP 5-6.

REASONS FOR GRANTING THE WRIT

Petitioner submits that a writ of certiorari should issue in this case because the action of the Arkansas Supreme Court in agreeing that Petitioner was entitled to review on the merits under State Court habeas procedure, but then denying meaningful review under the guise of trial waiver, even though the underlying due process issue had been held to not be waived and properly raised clearly conflicts with relevant due process decisions of this Court.

1. *This Court should consider this Petition on “direct collateral review” because no review is otherwise clearly available under 28 U.S.C. § 2254, and in the absence of direct review off state habeas corpus proceedings, there is no established means for Petitioner to raise a constitutional due process claim.*

This Court has established a clear pattern of acknowledging the need for direct review of State collateral proceedings. From 2015 to 2020, for instance, this Court heard or resolved at least 16 cases in this procedural posture or its equivalent. *See Williams v. Pennsylvania*, 136 S. Ct. 1899, 1903 (2016); *Foster v. Chatman*, 136 S. Ct. 1737, 1742 (2016); *Wearry v. Cain*, 136 S. Ct. 1002, 1002 (2016) (per curiam); *Montgomery v. Louisiana*, 136 S. Ct. 718, 726–27 (2016); *Maryland v. Kulwicki*, 577 U.S. 1, 3–4 (2015) (per curiam); *Weaver v. Massachusetts*, 137 S. Ct. 1899, 1906–07 (2017); *Moore v.*

Texas, 137 S. Ct. 1039, 1044 (2017); *Rippo v. Baker*, 137 S. Ct. 905, 906 (2017) (per curiam); *Turner v. United States*, 137 S.Ct. 1885 (2017); *Jones v. Mississippi*, 140 S. Ct. 1293, 1293 (2020) (mem.) (granting certiorari).

Direct collateral review of cases of the nature asserted here are particularly important because the uncertainty of access to relief for state court due process violations that occur in post-conviction proceedings. See *United States v. Dago*, 441 F.3d 1238, 1248 (10th Cir. 2006) (“due process challenges to post-conviction procedures fail to state constitutional claims cognizable in a federal habeas proceeding”); *Sellers v. Ward*, 135 F.3d 1333, 1339 (10th Cir. 1998) (“[B]ecause the constitutional error he raises focuses only on the State's post-conviction remedy and not the judgment which provides the basis for his incarceration, it states no cognizable federal habeas claim.”); *Hopkinson v. Shillinger*, 866 F.2d 1185, 1219 (10th Cir. 1989) (“The presence of a procedural deficiency in a state's scheme for postconviction relief... does no violence to federal constitutional rights.”), overruled on other grounds *Phillips v. Ferguson*, 182 F.3d 769, 772-73 (10th Cir. 1999); *Wallin v. Miller*, 661 Fed.Appx. 526, 534-35 (10th Cir. 2016); *Franzen v. Brinkman*, 877 F.2d 26 (9th Cir. 1989); contra. *Dickerson v. Walsh*, 750 F.2d 150 (1st Cir. 1984).

2. *The Arkansas Court has created a right, based on underlying constitutional principles, as well as state law, that gives*

petitioner due process rights in his challenge to his State Court conviction.

In its opinion, the Arkansas Supreme Court expressly acknowledged that,

a. “An argument that Hogan was convicted of an offense for which he was never charged would, if established, be grounds for the writ” of habeas corpus under Arkansas law. *Hogan*, 668 S.W.3d at 469; citing *Anderson v. Kelley*, 2019 Ark. 6, 564 S.W.3d 516.

b. Although Arkansas case law generally limits such review to “the face of the information” the Court determined that it would look at the language of the prosecutions alleged oral amendments to the information; *Hogan*, 668 S.W.3d at 469.

c. That despite the fact that the Court looked to the prosecution’s asserted oral modification of the information in Mr. Hogan’s case, Mr. Hogan could not assert a challenge to the language or sufficiency of that oral modification. *Hogan*, 668 S.W.3d at 470.

Although the Arkansas Supreme Court found that Mr. Hogan had a right to assert a habeas claim that he was convicted of an uncharged offense, he was not permitted to address or challenge the charging language relied on by the state. In other words, under the Arkansas Supreme Court’s ruling, even though due process precludes conviction on an uncharged offense, a

defendant otherwise entitled to review on the merits of an “uncharged offense” claim may not challenge *any* language relied or asserted by the State to claim that the offense was in fact charged. Here, the state could have pointed to any oral language in the record it chose – even language unrelated to any charge in any way – and have asserted a claim that the language was sufficient to overcome a claim that the offense of conviction was an uncharged offense and this argument could not be challenged by Mr. Hogan.

3. *The Arkansas Supreme Court’s analysis deprives Petitioner of any meaningful opportunity to validate this clearly established and fundamental right.*

It is axiomatic, and acknowledged in both Federal and Arkansas case law, that “a person cannot, under due process, be convicted of a crime for which he was not charged.” *Hedrick v. State*, 292 Ark. 411, 730 S.W.2d 488 (Ark. 1987), citing *Thornhill v. Alabama*, 310 U.S. 88, 60 S.Ct. 736, 84 L.Ed. 1093 (1940) (“Conviction upon a charge not made would be sheer denial of due process”); U.S. Const. Amend. 6 (no person shall be “deprived of life, liberty, or property, without due process of law”). Thus, Mr. Hogan had a clear, fundamental right at issue here, and the Court simply refused, under the guise of trial waiver jurisprudence, to permit any meaningful opportunity for Mr. Hogan to either litigate the language relied on by the state, or otherwise validate that right procedurally, even though the Court conceded the issue

was properly raised in habeas corpus proceedings. Respectfully, “minimum [procedural] requirements [are] a matter of federal law, they are not diminished by the fact that the State may have specified its own procedures that it may deem adequate for determining the preconditions to adverse official action.” *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 541 (1985), citing *Vitek v. Jones*, 445 U. S. 480, 445 U. S. 491 (1980).

Petitioner submits that there are only two possible analysis available here. If the Court’s determination is limited to the face of the information, Mr. Hogan was conclusively not charged under this statute. Once the Court moves to oral amendments, particularly those susceptible to multiple interpretations, it is fundamentally incongruous and basically unfair for the Court to both state that these representations can be relied on to supplement its “face of the record” review, (*Hogan*, 668 S.W.3d at 468) and at the same time deny a Petitioner the right to challenge their sufficiency to do so.

CONCLUSION AND REQUEST FOR RELIEF

WHEREFORE AND FOR THE REASONS STATED ABOVE, Petitioner respectfully prays that a writ for certiorari issue to review the judgment of the Arkansas Supreme Court. Petitioner requests that the Court at minimum direct that his appeal be considered on the merits of his due process challenge, and that the Court grant relief, and find that either Petitioner was not effectively charged with any habitual offender offense here, or alternatively that he should, on the facts presented, be resentenced under the lesser Arkansas habitual offender statute.

Dated this 13th day of December, 2023

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LAQUINCE T. HOGAN

OFFICE OF THE CLERK
ARKANSAS SUPREME COURT
625 MARSHALL STREET
LITTLE ROCK, AR 72201

SEPTEMBER 14, 2023

RE: SUPREME COURT CASE NO. CV-22-662
LAQUINCE T. HOGAN V. DEXTER PAYNE, DIRECTOR, ARKANSAS DIVISION
OF CORRECTION

THE ARKANSAS SUPREME COURT ISSUED THE FOLLOWING ORDER TODAY IN THE
ABOVE STYLED CASE:

“APPELLANT’S PETITION FOR REHEARING IS DENIED.”

SINCERELY,



KYLE E. BURTON, CLERK

CC: JEREMY B. LOWREY
CHRISTIAN HARRIS, SENIOR ASSISTANT ATTORNEY GENERAL
HOT SPRING COUNTY CIRCUIT COURT
(CASE NO. 30CV-21-278)

SUPREME COURT OF ARKANSAS
No. CV-22-662

LAQUINCE T. HOGAN
APPELLANT
V.
DEXTER PAYNE, DIRECTOR,
ARKANSAS DIVISION OF
CORRECTION
APPELLEE

Opinion Delivered: June 8, 2023

APPEAL FROM THE HOT SPRING
COUNTY CIRCUIT COURT
[NO. 30CV-21-278]
HONORABLE CHRIS E WILLIAMS,
JUDGE

AFFIRMED.

COURTNEY RAE HUDSON, Associate Justice

Appellant, Laquince Hogan, appeals the denial of his petition for writ of habeas corpus filed in the county where he is incarcerated pursuant to Arkansas Code Annotated sections 16-112-101 to -123 (Repl. 2016). For reversal, Hogan argues that (1) his 125-year prison sentence is illegal because it is not authorized by the subsection of the habitual-offender statute that the State referenced when it orally amended the information, and (2) to the extent the amendment sought to identify a different subsection of the habitual-offender statute, it was too vague to suffice as an amendment at all. We affirm.

On August 5, 2008, police officers searched a residence on East Cowling Street in Ashdown and found marijuana, cocaine, and scales. Hogan was outside with a group of about eight to ten people who scattered when officers arrived. Police seized more than \$4,000 from Hogan's person. Hogan was charged with possession of crack cocaine with

intent to deliver, in violation of Arkansas Code Annotated section 5-64-401 (Supp. 2007).¹

At that time, the base sentencing range for that offense was ten to forty years, or life imprisonment. Ark. Code Ann. § 5-64-401(a)(1)(A)(i). Hogan was not initially charged as a habitual offender. However, at a May 26, 2009 hearing, the Little River County Circuit Court allowed the State to orally amend the information to charge Hogan as a “large” habitual offender with four or more prior offenses. Hogan’s attorney said that he had “seen the certified judgments, so we have no objection.” Under Arkansas’s habitual-offender statute, Hogan was therefore subject to a sentencing range of ten years to life in prison. *See* Ark. Code Ann. § 5-4-501(b)(1), (2)(A).

Hogan’s charges were discussed again on the first day of Hogan’s June 3–4, 2009 trial. The court asked if there were any amendments to the charges. The State responded “It’s the big habitual. Class Y. It’s the big habitual, ten to 60 to life.” After the trial, the jury convicted Hogan of possession of cocaine with intent to deliver. At sentencing, the court instructed the jury that Hogan had previously been convicted of eight felonies and was subject to an extended term of imprisonment of not less than ten years nor more than life imprisonment. The jury verdict form provided for a sentencing range of ten years to life imprisonment, in accordance with section 5-4-501(b).

The jury sentenced Hogan as a habitual offender to a total of 125 years’ imprisonment. The court of appeals affirmed on direct appeal. *Hogan v. State*, 2010 Ark.

¹Hogan was also convicted of possession of marijuana. Neither his conviction nor his one-year sentence for that offense are at issue in this appeal.

App. 434. We affirmed the denial of Hogan's petition for postconviction relief pursuant to Ark. R. Crim. P. 37.1. *Hogan v. State*, 2013 Ark. 223. Hogan's federal habeas petition was also denied. *Hogan v. Kelley*, 826 F.3d 1025 (8th Cir. 2016). Additionally, Hogan filed a petition to correct an illegal sentence that the Little River County Circuit Court denied on August 6, 2013. *State v. Hogan*, No. CR-2008-54-1.

On September 22, 2021, Hogan filed a petition for writ of habeas corpus in the Hot Spring County Circuit Court.² He argued that the State's oral amendment charged him, at most, as a habitual offender with at least one but less than four prior felonies pursuant to section 5-4-501(a), or that it was too vague to charge him as a habitual offender at all. On June 27, 2022, the circuit court entered an order denying Hogan's petition. Hogan filed a timely appeal.

A writ of habeas corpus is proper when a judgment and commitment order is invalid on its face or when a trial court lacked jurisdiction over the cause. *Fuller/Akbar v. Payne*, 2021 Ark. 155, 628 S.W.3d 366. Jurisdiction is the power of the court to hear and determine the subject matter in controversy. *Osborn v. Payne*, 2021 Ark. 94, 622 S.W.3d 152. When the trial court has personal jurisdiction over the appellant and also has jurisdiction over the subject matter, the court has authority to render the judgment. *Id.*

²The record also contains a habeas petition that Hogan filed in the Little River County Circuit Court, although in his brief he states his belief that the petition is not within the jurisdiction of that court because he is incarcerated in Hot Spring County and not Little River County.

A petitioner who does not allege his or her actual innocence and proceed under Act 1780 of 2001 must plead either the facial invalidity of the judgment or the lack of jurisdiction by the trial court and make a showing, by affidavit or other evidence, of probable cause to believe that he or she is being illegally detained. Ark. Code Ann. § 16-112-103(a)(1) (Repl. 2016); *Fuller/Akbar*, 2021 Ark. 155, 628 S.W.3d 366. Proceedings for the writ are not intended to require an extensive review of the record of the trial proceedings, and the circuit court's inquiry into the validity of the judgment is limited to the face of the commitment order. *Jones v. Payne*, 2021 Ark. 37, 618 S.W.3d 132. Unless the petitioner can show that the trial court lacked jurisdiction or that the commitment order was invalid on its face, there is no basis for a finding that a writ of habeas corpus should issue. *Id.*

A circuit court's decision on a petition for writ of habeas corpus will be upheld unless it is clearly erroneous. *Owens v. Payne*, 2020 Ark. 413, 612 S.W.3d 169. A decision is clearly erroneous when, although there is evidence to support it, the appellate court, after reviewing the entire evidence, is left with the definite and firm conviction that a mistake has been made. *Morgan v. Payne*, 2020 Ark. 239, 602 S.W.3d 736.

With these authorities in mind, we turn to Hogan's appeal. Hogan does not challenge the trial court's jurisdiction to hear and determine the criminal charges against him. Instead, he first argues that the State's reference to a sentencing range of "ten to 60 to life" on the day of trial means that he must have been charged as a habitual offender under section 5-4-501(a), which does not authorize a 125-year sentence. Hogan insists that his sentence is therefore illegal because the trial court lacked the authority to impose it. An argument that

Hogan was convicted of an offense for which he was never charged would, if established, be grounds for the writ. *Anderson v. Kelley*, 2019 Ark. 6, 564 S.W.3d 516.

Hogan's argument requires us to consider the specific language of two subsections of Arkansas Code Annotated section 5-4-501, which governs sentencing for habitual offenders. Subsection (a) applies to defendants who have previously been convicted of at least one, but less than four, prior felonies. In Hogan's case, it would provide for a sentencing range of "not less than ten (10) years nor more than sixty (60) years, or life" in prison. Ark. Code Ann. § 5-4-501(a)(1), (2)(A). Subsection (b) applies to defendants who have previously been convicted of four or more prior felonies. Under this subsection, Hogan was eligible for a sentence of "not less than ten (10) years nor more than life" imprisonment. Ark. Code Ann. § 5-4-501(b)(1), (2)(A).

Although Hogan argues that his sentence is illegal because he was actually charged under subsection (a), he has not established probable cause that the writ should issue. Regardless of the State's comments regarding the sentencing range, it stated that Hogan should be sentenced as a habitual offender because he had four or more prior felony offenses. This clearly referenced section 5-4-501(b). The State's use of the term "big habitual" also indicates a reference to section 5-4-501(b). See *Trammel v. Payne*, 2022 Ark. 76 (noting that a "small habitual" offender is subject to sentencing under section 5-4-501(a)).³ Hogan has presented no convincing proof that the information in this case was defective such that

³Notably, a sentencing range of "ten to 60 to life," is not inconsistent with the ten years to life sentencing range authorized pursuant to subsection (b).

the trial court was deprived of jurisdiction to enter the judgment. *See Johnson v. Payne*, 2021 Ark. 145.

Because Hogan was charged as a habitual offender pursuant to section 5-4-501(b), the court was vested with the authority to impose a sentence consistent with that subsection. Here, the amended sentencing order indicates that Hogan was sentenced as a habitual offender pursuant to section 5-4-501(b). That subsection provides for a sentence of between ten years and life imprisonment. Hogan's sentence of 125 years' imprisonment is more than ten years and less than life. Therefore, Hogan's sentence fell within the sentencing range authorized by section 5-4-501(b) and is not illegal on its face.

Hogan's second argument is that if the State was not referencing section 5-4-501(a), its amendment was too vague to amend the information at all. To the extent that Hogan argues his due-process rights were violated because the State's amendment was too vague, we note that trial error and due-process claims do not implicate the facial validity of the judgment or the jurisdiction of the trial court. *Philyaw v. Kelley*, 2015 Ark. 465, 477 S.W.3d 503. If there are errors at trial, those errors could, and should, have been raised at trial on the record and on direct appeal. *Noble v. State*, 2019 Ark. 284, 585 S.W.3d 671. Thus, they are not within the purview of the remedy because the writ of habeas corpus will not be issued to correct errors or irregularities that occurred at trial. *Id.*

In sum, Hogan was charged as a habitual offender pursuant to section 5-4-501(b). Therefore, the trial court had authority to sentence him under that subsection, and his 125-year sentence is within the range authorized. Hogan's due-process and trial-error arguments

do not implicate the facial validity of the judgment or the jurisdiction of the trial court, and the circuit court did not clearly err in rejecting his petition.

Affirmed.

CV-22-662

**IN THE CIRCUIT COURT OF
HOT SPRING COUNTY, ARKANSAS**

LAQUINCE T. HOGAN
Petitioner

v. **No. 30CV-21-278-1**

DEXTER PAYNE, Director
Arkansas Division of Correction

ORDER DENYING PETITION FOR A WRIT OF HABEAS CORPUS

Now before the Court is LaQuince Hogan's Petition for a Writ of Habeas Corpus. He is an inmate in the Ouachita River Unit. A hearing was had on the petition on February 22, 2022. After considering the facts, law, and statements of counsel, the Court is of the opinion that it should be denied.

On June 4, 2009, a Little River County jury convicted LaQuince Hogan of Possession of a Controlled Substance (crack cocaine) with Intent to Deliver and Possession of a Controlled Substance (marijuana). He was sentenced as a habitual offender to 125 years in the Arkansas Division of Correction on the intent to deliver charge and one year in the county jail on the marijuana charge. The initial Judgment and Commitment Order was entered the same day. On appeal, the convictions and sentences were affirmed. Hogan v. State, 2010 Ark. App. 434.

Mister Hogan subsequently filed a timely petition for post-conviction relief pursuant to Rule 37 of the Arkansas Rules of Criminal Procedure. The circuit court denied relief and the Supreme Court of Arkansas affirmed. Hogan v. State, 2013 Ark. 223.

In 2014, he filed an application for a writ of habeas corpus in the United States District Court for the Eastern District of Arkansas. In an unpublished opinion and order, the magistrate

judge denied habeas relief. Hogan v. Kelley, 5:14-cv-00105 (Document 37, July 31, 2015). The United States Circuit Court for the Eighth Circuit affirmed the denial of habeas relief. Hogan v. Kelley, 826 F.3d 1025 (8th Cir. 2016). The Supreme Court of the United States denied certiorari. Hogan v. Kelley, 138 S.Ct. 635 (2018). This petition followed.¹

“A writ of habeas corpus is proper when a judgment and commitment order is invalid on its face or when a trial court lacked jurisdiction over the cause. Jefferson v. Payne, 2022 Ark. 4, at 3. “Jurisdiction is the power of the court to hear and determine the subject matter in controversy.” Id. “When the trial court has personal jurisdiction over the appellant and also has jurisdiction over the subject matter, the court has authority to render the judgment.” Id. When a petitioner files a petition for a writ of habeas corpus “and does not allege his or her actual innocence and proceed under Act 1780 of 2001” he or she “must plead either the facial invalidity of the judgment or the lack of jurisdiction by the trial court and make a showing, by affidavit or other evidence, of probable cause to believe that he or she is being illegally detained.” Id.

In 2008, as is true currently, the penalty range for a Class Y felony when the defendant has four or more felony convictions is a minimum of 10 years and a maximum of life in the Arkansas Division of Correction. Ark. Code Ann. §5-4-501(b)(2)(A) (2008).

LaQuince Hogan was originally charged with one count of Possession of a Controlled Substance with Intent to Deliver, a Class Y felony, and one count of Possession of a Controlled Substance with Intent to Deliver, a Class C felony. He was not charged as a habitual offender and

¹Mr. Hogan has a pending state habeas corpus petition in Little River County. However, because he is incarcerated in the Ouachita River Unit in Hot Spring County, this Court is the appropriate court to rule on his claims.

the second count was eventually reduced to a Class A misdemeanor.

On June 3, 2009, during a pre-trial hearing on the day of trial, the trial court allowed the State to orally amend the Information to include the habitual allegation. The prosecutor correctly told the court “[i]t’s the big habitual” but then gave inaccurate information when he told said that the penalty range is, “ten to 60 to life.” Also, during voir dire the prosecutor twice told prospective jurors that the range was ten to 60 or life.

After the Mr. Hogan was convicted, however, the trial court instructed the jury on the proper penalty range, a minimum of ten years to a maximum of life in the Arkansas Division of Correction. During Stage Two the State introduced evidence of the prior convictions. The jury was given a proper Stage Two verdict form with the proper penalty range and the jury sentenced Mr. Hogan to 125 years, within the penalty range.

A Judgment and Commitment Order was entered on June 4, 2009. This order omitted the habitual notation. An amended order was entered on June 20, 2019, to correct the scrivener’s error and accurately reflect the habitual status. “A circuit court can enter an order *nunc pro tunc* at any time to correct clerical errors in a judgment or order.” Riley v. State, 2011 Ark. App. 511, at 8, 385 S.W.3d 355, 360.

LaQuince Hogan was convicted of a Class Y felony after having been convicted of four or more prior felonies. Consequently, he was subject to the penalty range of 10 years to life in the Arkansas Division of Correction. He received a valid sentence.

The trial court allowed the State to amend the Information to include the habitual allegation. Subsequently, the trial court instructed the jury on the proper sentencing range, the jury was given a proper verdict form, and the jury imposed a verdict within the appropriate penalty range.

The fact that the prosecutor misspoke during voir dire is not sufficient to warrant habeas relief. The judgement is not invalid on its face and the trial court had jurisdiction over the matter. Any error by the prosecutor when initially telling the trial court what the penalty range was and in submitting an inaccurate judgment is harmless as it was appropriately corrected. The petition is denied.

IT IS SO ORDERED.



Honorable Chris E Williams
Circuit Judge

Date: 6/27/2022

Prepared by:

Jeff Weber
Deputy Prosecuting Attorney

Approved as to form by:

/s/ Jeremy Lowrey
Attorney for Mr. Hogan

SENTENCING ORDER

AMENDED

IN THE CIRCUIT COURT OF LITTLE RIVER COUNTY, ARKANSAS,
9 WEST JUDICIAL DISTRICT 1ST DIVISION

On 6/4/2009 the Defendant appeared before the Court, was advised of the nature of the charge(s), of Constitutional and legal rights, of the effect of a guilty plea upon those rights, and of the right to make a statement before sentencing.

ELECTRONICALLY FILED
 Little River County Circuit Court
 Lauren Abney, Circuit Clerk
 2019-Jun-20 15:27:12
 41CR-08-54
 C09WD01 : 6 Pages

Offender

Court Info

Legal Statement

Offense #1

<p>Defendant [Last, First, MI] <u>HOGAN, LAQUINCE, T</u> DOB <u>1/19/1974</u> Sex <input type="checkbox"/> Male <input type="checkbox"/> Female</p>		Total Number of Counts <u>2</u>
<p>Race & Ethnicity <input type="checkbox"/> White <input checked="" type="checkbox"/> Black <input type="checkbox"/> Asian <input type="checkbox"/> Native American <input type="checkbox"/> Pacific Islander <input type="checkbox"/> Unknown <input type="checkbox"/> Other <input type="checkbox"/> Hispanic</p>		
<p>Supervision Status at Time of Offense</p>		
<p>Judge <u>TOM COOPER</u></p>		File Stamp
<p>Prosecuting Attorney/Deputy <u>BRYAN CHESSHIR/AL SMITH</u></p>		
<p>Defendant's Attorney <u>MICHAEL BOOKER</u></p>		<input checked="" type="checkbox"/> Private <input type="checkbox"/> Public Defender <input type="checkbox"/> Pro Se <input type="checkbox"/> Appointed
<p>Change of Venue <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, from:</p>		
<p><input type="checkbox"/> Pursuant to A.C.A. <input type="checkbox"/> §§16-93-301 et seq., or <input type="checkbox"/> §§ _____ this Court, without making a finding of guilt or entering a judgment of guilt and with the consent of the Defendant defers further proceedings and places the Defendant on probation.</p>		
<p>There being no legal cause shown by the Defendant, as requested, why judgment should not be pronounced, a judgment: is hereby entered against the Defendant on each charge enumerated, fines levied, and court costs assessed. Defendant was advised of the conditions of the sentence and/or placement on probation and understands the consequences of violating those conditions. The Court retains jurisdiction during the period of probation/suspension and may change or set aside the conditions of probation/suspension for violations or failure to satisfy Department of Community Correction (D.C.C) rules and regulations.</p>		
<p><input checked="" type="checkbox"/> of conviction is hereby entered against the Defendant on each charge enumerated, fines levied, and court costs assessed. The Defendant is sentenced to the Arkansas Department of Correction (A.D.C) for the term specified on each offense shown below.</p>		
<p>Defendant made a voluntary, knowing, and intelligent waiver of the right to counsel. <input type="checkbox"/> Yes <input type="checkbox"/> No</p>		
<p>A.C.A. # of Offense/ Name of Offense+ <u>5-64-401 POSSESSION OF CRACK COCAINE W/INTENT TO DELIVER</u></p>		Case # <u>CR2008-54-1</u>
<p>A.C.A. # of Original Charged Offense</p>		<p>ATN Offense was <input type="checkbox"/> Nolle Prossed <input type="checkbox"/> Dismissed <input type="checkbox"/> Acquitted</p>
		<p>Appeal from District Court <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Probation/SIS Revocation+ <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>
<p>Offense Date <u>8/5/2008</u></p>		<p>Offense is <input type="checkbox"/> Felony <input type="checkbox"/> Misd. <input type="checkbox"/> Viol. Offense Classification <input type="checkbox"/> Y <input type="checkbox"/> A <input type="checkbox"/> B <input type="checkbox"/> C <input type="checkbox"/> D <input type="checkbox"/> U</p>
<p>Number of Counts: <u>1</u></p>	<p>Criminal History Score <u>N/A</u></p>	<p>Seriousness Level <u>N/A</u> Defendant <input type="checkbox"/> Attempted <input type="checkbox"/> Solicited <input type="checkbox"/> Conspired to commit the offense</p>
<p>Presumptive Sentence <input type="checkbox"/> Prison Sentence of _____ to _____ months <input type="checkbox"/> Community Corrections Center <input type="checkbox"/> Alternative Sanction</p>		
<p>Defendant Sentence* (see Page 2) Imposed <input checked="" type="checkbox"/> ADC <input type="checkbox"/> Jud. Tran. <input type="checkbox"/> County Jail <u>1500</u> months Probation _____ months SIS _____ months Other <input type="checkbox"/> Life <input type="checkbox"/> LWOP <input type="checkbox"/> Death</p>		<p>If probation or SIS accompanied by period of confinement, state time: _____ days or _____ months. Sentence was enhanced _____ months, pursuant to A.C.A. §§ _____ Enhancement(s) is to run: <input type="checkbox"/> Concurrent <input type="checkbox"/> Consecutive. Defendant was sentenced as a habitual offender, pursuant to A.C.A. §5-4-501, subsection <input type="checkbox"/> (a) <input checked="" type="checkbox"/> (b) <input type="checkbox"/> (c) <input type="checkbox"/> (d)</p>
<p>Victim Info# (See page 2) <input checked="" type="checkbox"/> N/A [Multiple Victims] <input type="checkbox"/> Yes <input type="checkbox"/> No</p>		<p>Sex <input type="checkbox"/> Male <input type="checkbox"/> Female Race & Ethnicity <input type="checkbox"/> White <input type="checkbox"/> Black <input type="checkbox"/> Asian <input type="checkbox"/> Native American <input type="checkbox"/> Pacific Islander <input type="checkbox"/> Other <input type="checkbox"/> Unknown <input type="checkbox"/> Hispanic</p>
<p>Defendant voluntarily, intelligently, and knowingly entered a <input type="checkbox"/> negotiated plea of <input type="checkbox"/> guilty or <input type="checkbox"/> nolo contendere. <input type="checkbox"/> plea directly to the court of <input type="checkbox"/> guilty or <input type="checkbox"/> nolo contendere.</p>		<p>Defendant: <input type="checkbox"/> was sentenced pursuant to <input type="checkbox"/> §§16-93-301 et seq., or <input type="checkbox"/> other §§ _____ <input type="checkbox"/> entered a plea and was sentenced by a jury. <input type="checkbox"/> was found guilty by the court & sentenced by <input type="checkbox"/> court <input type="checkbox"/> jury. <input checked="" type="checkbox"/> was found guilty at a jury trial & sentenced by <input type="checkbox"/> court <input checked="" type="checkbox"/> jury. <input type="checkbox"/> was found guilty of lesser included offense by <input type="checkbox"/> court <input type="checkbox"/> jury.</p>
<p>Sentence is a Departure <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>		<p>Sentence Departure is <input type="checkbox"/> Durational or <input type="checkbox"/> Dispositional. If durational, state how many months above/below the presumptive sentence:</p>
<p>Departure Reason (See page 2 for a list of reasons)</p>		<p>Sentence will run: <input type="checkbox"/> Cons to Offense # <u>2</u> Case # _____</p>
<p>Aggravating # _____ or Mitigating # _____ For Agg. #17 or Mit. #9, or if departing from guidelines, please explain: _____</p>		

Reasons for Departure

(Please see complete list of departure criteria found at A.C.A. §16-90-804)

Aggravating	Mitigating
1. Offender's conduct manifested deliberate cruelty to the victim during commission of current offense.	1. Victim played an aggressive role or provoked the incident or was a willing participant.
2. Offender knew victim vulnerable due to extreme youth, advanced age, disability or ill health.	2. Offender played a minor or passive role in commission of the offense.
3. Offense was major economic offense established by one of the following criteria: (a) multiple victims/incidents, (b) monetary loss substantially greater than typical, (c) degree of sophistication or time, (d) misuse of fiduciary duty, or (e) other similar conduct.	3. Offender compensated/made an effort to compensate for damage or injury before detection.
4. Current Offense was major controlled substance offense if two or more of the following are present: (a) Three or more separate transactions involve sale, transfer or possession with purpose; (b) Amount substantially larger than the statutory minimums which define the offense; (c) Offense involved a high degree of planning or lengthy period or broad geographic area; (d) Offender occupied a high position in the drug distribution hierarchy; (e) Offender misused position of trust or status or fiduciary duty to facilitate commission; (f) Offender has received substantial income or resources from drug trafficking.	4. Offender was lesser participant showing caution/concern for safety or well-being of victim. 5. Offender or offender's children acted in response to continuing physical/sexual abuse by victim. 6. Policy on multiple offenses in single course of conduct in offender's prior criminal history results in sentence which is excessive for the offense. 7. Offender voluntarily admitted sexual offense and sought and participated in treatment before detection. 8. Offender made effort to provide assistance in investigation or prosecution of another as indicated by motion of state (can weigh timeliness of assistance, nature and extent of assistance, and truthfulness, completeness, and demonstrable reliability of info or testimony).
5. Current offense is a felony and the offender employed a firearm in furtherance or flight unless such use is element of offense.	9. Other
6. Current offense was sexual offense and part of pattern with same or different victims under eighteen manifested by multiple incidents over a prolonged period of time.	
7. Policy on multiple offenses in a single course of conduct in offender's prior criminal history results in a sentence that is clearly too lenient.	
8. Offense was committed in manner that exposed risk of injury to others.	
9. Offense was a violent or sexual offense committed in victim's zone of privacy.	
10. Offender attempted to cover or conceal the offense by intimidation of witnesses, tampering of evidence, or misleading authorities.	
11. Offense committed to avoid arrest or effecting an escape from custody.	
12. Offender lacks minimum insurance in a vehicular homicide.	
13. Statutory minimum sentence overrides the presumptive sentence.	
14. Multiple concurrent sentences being entered at this time require a higher sentence.	
15. Sentence is higher as a result of other charges being dropped or merged.	
16. Sentence is outside the presumptive range but is not a departure due to statutory override or because the offender/offense is ineligible for a Community Correction Center.	
17. Other:	

NOTE:

* **Defendant Sentence.** "Imposed ADC" means incarceration in an Arkansas Department of Correction facility. "Imposed Judicial Transfer" means incarceration in a Department of Community Correction Center. "Imposed County Jail" means incarceration in a county jail facility. Indicate in months the total time the Defendant was sentenced to a term of incarceration. DO NOT INCLUDE TIME FOR SIS.

Victim Info. For more than one victim, please use the "Additional Victim Information" page to disclose additional victim demographics. If there is no victim, check not applicable.

+ **A.C.A. # of Offense/Name of Offense & Probation/SIS Revocation.** If an offender is being sentenced as a result of a revocation of probation or SIS, check the box indicating this is a "Probation/SIS Revocation", and enter the A.C.A. number and name of the offense for which the defendant was originally convicted. Do not enter the code provision for revocation or the cause of the revocation.

A.C.A. # of Offense/ Name of Offense+ 5-64-401 POSSESSION OF MARIJUANA				Offense was <input type="checkbox"/> Nolle Prossed <input type="checkbox"/> Dismissed <input type="checkbox"/> Acquitted	
A.C.A. # of Original Charged Offense		ATN		Appeal from District Court <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Probation/SIS Revocation+ <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Offense Date 8/5/08		Offense is <input type="checkbox"/> Felony <input checked="" type="checkbox"/> Misd. <input type="checkbox"/> Viol.		Offense Classification <input type="checkbox"/> Y <input checked="" type="checkbox"/> A <input type="checkbox"/> B <input type="checkbox"/> C <input type="checkbox"/> D <input type="checkbox"/> U	
Number of Counts: 1	Criminal History Score	N/A	Seriousness Level	N/A	Defendant <input type="checkbox"/> Attempted <input type="checkbox"/> Solicited <input type="checkbox"/> Conspired to commit the offense
Presumptive Sentence <input type="checkbox"/> Prison Sentence of _____ to _____ months <input type="checkbox"/> Community Corrections Center <input type="checkbox"/> Alternative Sanction					

Defendant Sentence* (see Page 2) Imposed <input type="checkbox"/> ADC <input type="checkbox"/> Jud. Tran. <input checked="" type="checkbox"/> County Jail 12 months Probation _____ months SIS _____ months Other <input type="checkbox"/> Life <input type="checkbox"/> LWOP <input type="checkbox"/> Death		If probation or SIS accompanied by period of confinement, state time: _____ days or _____ months. Sentence was enhanced _____ months, pursuant to A.C.A. §§ _____. Enhancement(s) is to run: <input type="checkbox"/> Concurrent <input type="checkbox"/> Consecutive. Defendant was sentenced as a habitual offender, pursuant to A.C.A. §5-4-501, subsection <input type="checkbox"/> (a) <input type="checkbox"/> (b) <input type="checkbox"/> (c) <input type="checkbox"/> (d)				
Victim Info# (See page 2) <input checked="" type="checkbox"/> N/A [Multiple Victims <input type="checkbox"/> Yes <input type="checkbox"/> No]		Age	Sex <input type="checkbox"/> Male <input type="checkbox"/> Female	Race & Ethnicity <input type="checkbox"/> White <input type="checkbox"/> Black <input type="checkbox"/> Asian <input type="checkbox"/> Native American <input type="checkbox"/> Pacific Islander <input type="checkbox"/> Other <input type="checkbox"/> Unknown <input type="checkbox"/> Hispanic	Defendant: <input type="checkbox"/> was sentenced pursuant to <input type="checkbox"/> §§16-93-301 et seq., or <input type="checkbox"/> other §§ _____. <input type="checkbox"/> entered a plea and was sentenced by a jury. <input type="checkbox"/> was found guilty by the court & sentenced by <input type="checkbox"/> court <input type="checkbox"/> jury. <input type="checkbox"/> was found guilty at a jury trial & sentenced by <input type="checkbox"/> court <input type="checkbox"/> jury. <input type="checkbox"/> was found guilty of lesser included offense by <input type="checkbox"/> court <input type="checkbox"/> jury.	
Sentence is a Departure <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Sentence Departure is <input type="checkbox"/> Durational or <input type="checkbox"/> Dispositional. If durational, state how many months above/below the presumptive sentence:					

Departure Reason (See page 2 for a list of reasons) Aggravating # _____ or Mitigating # _____. For Agg. #17 or Mit. #9, or if departing from guidelines, please explain: _____				Sentence will run: <input type="checkbox"/> Consecutive Concurrent <input checked="" type="checkbox"/> to Offense # 1 _____ or Case # _____		
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A.C.A. # of Offense/ Name of Offense+				Case #		
A.C.A. # of Original Charged Offense		ATN		Offense was <input type="checkbox"/> Nolle Prossed <input type="checkbox"/> Dismissed <input type="checkbox"/> Acquitted		
Appeal from District Court		<input type="checkbox"/> Yes <input type="checkbox"/> No		Probation/SIS Revocation+ <input type="checkbox"/> Yes <input type="checkbox"/> No		
Offense Date		Offense is <input type="checkbox"/> Felony <input type="checkbox"/> Misd. <input type="checkbox"/> Viol.		Offense Classification <input type="checkbox"/> Y <input type="checkbox"/> A <input type="checkbox"/> B <input type="checkbox"/> C <input type="checkbox"/> D <input type="checkbox"/> U		
Number of Counts:	Criminal History Score	Seriousness Level	Defendant <input type="checkbox"/> Attempted <input type="checkbox"/> Solicited <input type="checkbox"/> Conspired to commit the offense			
Presumptive Sentence <input type="checkbox"/> Prison Sentence of _____ to _____ months <input type="checkbox"/> Community Corrections Center <input type="checkbox"/> Alternative Sanction						
Defendant Sentence* (see Page 2) Imposed <input type="checkbox"/> ADC <input type="checkbox"/> Jud. Tran. <input checked="" type="checkbox"/> County Jail _____ months Probation _____ months SIS _____ months Other <input type="checkbox"/> Life <input type="checkbox"/> LWOP <input type="checkbox"/> Death		If probation or SIS accompanied by period of confinement, state time: _____ days or _____ months. Sentence was enhanced _____ months, pursuant to A.C.A. §§ _____. Enhancement(s) is to run: <input type="checkbox"/> Concurrent <input type="checkbox"/> Consecutive. Defendant was sentenced as a habitual offender, pursuant to A.C.A. §5-4-501, subsection <input type="checkbox"/> (a) <input type="checkbox"/> (b) <input type="checkbox"/> (c) <input type="checkbox"/> (d)				
Victim Info# (See page 2) <input type="checkbox"/> N/A [Multiple Victims <input type="checkbox"/> Yes <input type="checkbox"/> No]		Age	Sex <input type="checkbox"/> Male <input type="checkbox"/> Female	Race & Ethnicity <input type="checkbox"/> White <input type="checkbox"/> Black <input type="checkbox"/> Asian <input type="checkbox"/> Native American <input type="checkbox"/> Pacific Islander <input type="checkbox"/> Other <input type="checkbox"/> Unknown <input type="checkbox"/> Hispanic	Defendant: <input type="checkbox"/> was sentenced pursuant to <input type="checkbox"/> §§16-93-301 et seq., or <input type="checkbox"/> other §§ _____. <input type="checkbox"/> entered a plea and was sentenced by a jury. <input type="checkbox"/> was found guilty by the court & sentenced by <input type="checkbox"/> court <input type="checkbox"/> jury. <input type="checkbox"/> was found guilty at a jury trial & sentenced by <input type="checkbox"/> court <input type="checkbox"/> jury. <input type="checkbox"/> was found guilty of lesser included offense by <input type="checkbox"/> court <input type="checkbox"/> jury.	
Sentence is a Departure <input type="checkbox"/> Yes <input type="checkbox"/> No	Sentence Departure is <input type="checkbox"/> Durational or <input type="checkbox"/> Dispositional. If durational, state how many months above/below the presumptive sentence:					

Departure Reason (See page 2 for a list of reasons) Aggravating # _____ or Mitigating # _____. For Agg. #17 or Mit. #9, or if departing from guidelines, please explain: _____				Sentence will run: <input type="checkbox"/> Consecutive Concurrent <input type="checkbox"/> to Offense # _____ or Case # _____		
--	--	--	--	---	--	--

Defendant's Full Name: HOGAN, LAQUINCE, T

Special Conditions

Sex Offenses Defendant has been adjudicated guilty of an offense requiring sex offender registration and must complete the Sex Offender Registration Form and pay the Mandatory Sex Offender Fee of \$250. <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		Domestic Violence Offenses Defendant has been adjudicated guilty of a domestic-violence related offense and must pay additional court costs of \$25 under Act 583 of 2017. <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Defendant has committed an aggravated sex offense as defined in A.C.A. §12-12-903. <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		Defendant was originally charged with a domestic-violence related offense. <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If yes, state the A.C.A. # of the offense:
Defendant is alleged to be a sexually dangerous person and is ordered to undergo an evaluation at a facility designated by A.D.C. pursuant to A.C.A. §12-12-918. <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
Defendant, who has been adjudicated guilty of an offense requiring registration, has been adjudicated guilty of a prior sex offense under a separate case number. <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If yes, list prior case numbers:		If yes to either question, identify the relationship of the victim to the Defendant by offense number.

Fines, Fees, Restitution

DNA Sample/Qualifying Offense Defendant has been adjudicated guilty of a qualifying offense or repeat offense (as defined in A.C.A. §12-12-1103). <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Defendant is ordered to have a DNA sample drawn at <input type="checkbox"/> A.C.C. facility <input type="checkbox"/> the A.D.C. or <input type="checkbox"/> other _____		Drug Crime Defendant has been convicted of a drug crime, as defined in §12-17-101. <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
--	--	--

Court Costs Fines Booking/Admin Fees (\$20) Drug Crime Assessment Fee (\$125) DNA Sample Fee (\$250) Children's Advocacy Center Fund Fee Public Defender User Fee Public Defender Attorney Fee Other (explain) _____	\$200.00 \$26,000.00 \$20.00 \$0 \$0 \$0 \$150.00 \$0	Restitution \$ _____ Payable to [If multiple beneficiaries, give names and payment priority] _____ Terms <input type="checkbox"/> Due Immediately <input type="checkbox"/> Installments of: <input type="checkbox"/> Payments must be made within _____ days of release from A.D.C. <input type="checkbox"/> Upon release from confinement, Defendant must return to court to establish payment of restitution <input type="checkbox"/> Restitution is joint and several with co-defendant(s) who was found guilty – List name(s) and case number(s) _____
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Sentence Options

Defendant was convicted of a target offense(s) and is sentenced pursuant to provisions of the Community Punishment Act. <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No The Court hereby orders a judicial transfer to the Department of Community Correction. <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Pursuant to the Community Punishment Act, the Defendant shall be eligible to have his/her records sealed. <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		Extended Juvenile Jurisdiction Applied <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
JAIL TIME CREDIT 105	TOTAL TIME TO BE SERVED FOR ALL OFFENSES In months: 1500 <input type="checkbox"/> Life <input type="checkbox"/> LWOP	Death Penalty <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If Yes, State Execution Date:
DEFENDANT IS ASSIGNED TO: <input checked="" type="checkbox"/> ADC <input type="checkbox"/> ADC, Admin. Transfer Authorized Conditions of disposition or probation are attached. <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
A copy of the pre-sentence investigation or sentencing information is attached <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Defendant has previously failed a drug court program. A copy of the Prosecutor's Short Report is attached <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
DEFENDANT WAS INFORMED OF APPELLATE RIGHTS <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Appeal Bond \$ _____		
The County Sheriff is hereby ordered to: <input type="checkbox"/> transport the defendant to county jail <input type="checkbox"/> take custody for referral to CCC <input checked="" type="checkbox"/> transport to ADC		
Defendant shall report to ACC probation officer for report date to CCC <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		

Prosecuting Attorney/Deputy (Print Name): BRYAN CHESSHIR/AL SMITH Signature: <u>Alvin A. Smith</u>		Date: 6/13/2019
Circuit Judge (Print Name): TOM COOPER Signature: _____		Date: 6/13/2019
Additional Info: _____		

JUDGMENT AND COMMITMENT ORDER
IN THE CIRCUIT COURT OF LITTLE RIVER COUNTY, ARKANSAS
9W DISTRICT 1 DIVISION

On 6-4-09 the Defendant appeared before the Court, was advised of the nature of the charge(s), of constitutional and legal rights, of the effect of a guilty plea upon those rights, and of the right to make a statement before sentencing. The Court made the following findings:

DEFENDANT'S FULL NAME: LAQUINCE T. HOGAN

DATE OF BIRTH: 1-19-74

RACE: BLACK

SEX: MALE

SID #:

DEFENDANT'S ATTORNEY: MICHAEL BOOKER

PROSECUTING ATTORNEY OR DEPUTY: BRYAN L. CHESSHIR / AL SMITH

CHANGE OF VENUE FROM:


* 2009R001076 4 *

2009R001076

CONTRACT AND AGREEMENT

RECORDED ON

06/04/2009 04:29:52PM

ANDREA BILLINGSLEY

CIRCUIT CLERK

LITTLE RIVER COUNTY, AR

Defendant was represented by private counsel appointed counsel
 public defender himself/herself

Defendant made a voluntary, knowing and intelligent waiver of the right to counsel:

Yes No

There being no legal cause shown by the Defendant, as requested, why judgment should not be pronounced, a judgment of conviction is hereby entered against the Defendant on each charge enumerated, fines levied, and court costs assessed. The Defendant is sentenced to the Arkansas Department of Correction (A.D.C.) for the term specified on each offense shown below:

TOTAL NUMBER OF COUNTS: 2

Offense # 1

Docket #: CR-2008-54-1

Arrest Tracking #:

A.C.A. # of Offense: 5-64-401

Name of Offense: POSSESSION OF CONTROLLED SUBSTANCE WITH INTENT TO DELIVER - CRACK COCAINE

Seriousness Level of Offense: N/A

Criminal History Score: N/A

Presumptive Sentence: N/A

Sentence is a departure from the sentencing grid. Yes No.

Offense is a felony misdemeanor.

Classification of offense: A B C D U Y

Sentence imposed: 1500 months.

Suspended imposition of sentence: _____ months.

Defendant was sentenced as an Habitual Offender under A.C.A. 5-4-501, Subsection (a) (b) (c) (d).

Sentence was enhanced by _____ months pursuant to A.C.A. _____.

Defendant attempted solicited conspired to commit the offense.

Offense date: 8-5-08

Number of counts: 1

Defendant was on probation parole at time of conviction.

Commitment on this offense is a result of the revocation of Defendant's probation or suspended imposition of sentence. Yes No.

Victim of the offense was under over the age of 18 years.

Defendant voluntarily, intelligently, and knowingly entered a

negotiated plea of guilty or nolo contendere.

plea directly to the court of guilty or nolo contendere.

Defendant

entered a plea as shown above and was sentenced by a jury.

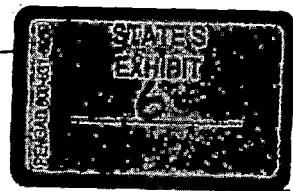
was found guilty of said charge(s) by the court, and sentenced by the court a jury.

was found guilty at a jury trial, and sentenced by the court X a jury.

FILED

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ANDREA BILLINGSLEY
CIRCUIT CLERK



Offense # 2

Docket #: CR-2008-54-1

Arrest Tracking #:

A.C.A. # of Offense: 5-64-401

Name of Offense: POSSESSION OF CONTROLLED SUBSTANCE - MARIJUANA

Seriousness Level of Offense: N/A

Criminal History Score: N/A

Presumptive Sentence: N/A

Sentence is a departure from the sentencing grid. Yes No.Offense is a felony misdemeanor.Classification of offense: A B C D U Y

Sentence imposed: 12 months COUNTY JAIL.

Suspended imposition of sentence: months.

Defendant was sentenced as an Habitual Offender under A.C.A. 5-4-501, Subsection (a) (b) (c) (d).

Sentence was enhanced by months pursuant to A.C.A.

Defendant attempted solicited conspired to commit the offense.

Offense date: 8-5-08

Number of counts: 1

Defendant was on probation parole at time of conviction.Commitment on this offense is a result of the revocation of Defendant's probation or suspended imposition of sentence. Yes No.Victim of the offense was under over the age of 18 years.

Defendant voluntarily, intelligently, and knowingly entered a

 negotiated plea of guilty or nolo contendere. plea directly to the court of guilty or nolo contendere.

Defendant

 entered a plea as shown above and was sentenced by a jury. was found guilty of said charge(s) by the court, and sentenced by the court a jury. was found guilty at a jury trial, and sentenced by the court X a jury.

Offense #

Docket #:

Arrest Tracking #:

A.C.A. # of Offense:

Name of Offense:

Seriousness Level of Offense:

Criminal History Score:

Presumptive Sentence:

Sentence is a departure from the sentencing grid. Yes No.Offense is a felony misdemeanor.Classification of offense: A B C D U Y

Sentence imposed: months.

Suspended imposition of sentence: months.

Defendant was sentenced as an Habitual Offender under A.C.A. 5-4-501, Subsection (a) (b) (c) (d).

Sentence was enhanced by months pursuant to A.C.A.

Defendant attempted solicited conspired to commit the offense.

Offense date:

Number of counts:

Defendant was on probation parole at time of conviction.Commitment on this offense is a result of the revocation of Defendant's probation or suspended imposition of sentence. Yes No.Victim of the offense was under over the age of 18 years.

Defendant voluntarily, intelligently, and knowingly entered a

 negotiated plea of guilty or nolo contendere. plea directly to the court of guilty or nolo contendere.

Defendant

 entered a plea as shown above and was sentenced by a jury. was found guilty of said charge(s) by the court, and sentenced by the court a jury. was found guilty at a jury trial, and sentenced by the court a jury.

DEFENDANT'S FULL NAME:
LAQUINCE T. HOGAN

Indicate which sentences are to run consecutively:

Death Penalty: Execution Date:

Total time to serve on all offenses listed above: 1500 months.

Time to be served at: Department of Correction Regional Punishment Facility.

Jail time credit: 105 days.

Defendant was convicted of a target offense under the Community Punishment Act. The Court hereby orders that the Defendant be judicially transferred to the Department of Community Correction (D.C.C.). Yes No

Failure to meet the criteria or violation of the rules of the D.C.C. could result in transfer to the A.D.C.

Defendant was convicted of a "drug crime," as defined in Act 1086 of 2007, and codified at A.C.A. 12-17-101 *et seq.* Yes No

Fines \$26,000.00 Court Costs \$200.00

Booking and Admin. Fee (A.C.A. 12-41-505) \$20.00

Drug Crime Special Assessment (A.C.A. 12-17-106) \$ DNA Sample Fee (A.C.A. 12-12-1118) \$

A judgment of restitution is hereby entered against the Defendant in the amount and terms as shown below:

Amount \$ Due immediately Installments of:

Payment to be made to:

If multiple beneficiaries, give names and show payment priority:

Defendant has been adjudicated guilty of an offense requiring registration as a sex offender, and is ordered to complete the Sex Offender Registration Form: Yes No.

Defendant, who has been adjudicated guilty of an offense requiring registration as a sex offender, has been adjudicated guilty of a prior sex offense under a separate case number: Yes No. If yes, list prior case number(s): _____

Defendant is alleged to be a Sexually Violent Predator, and is ordered to undergo an evaluation at a facility designated by the Department of Correction pursuant to A.C.A. 12-12-918: Yes No.

Defendant has committed an aggravated sex offense, as defined in A.C.A. 12-12-903. Yes No.

Defendant was adjudicated guilty of a felony offense, a misdemeanor sexual offense, or a repeat offense (as defined in A.C.A. 12-12-1103), ordered to have a DNA sample drawn at: a D.C.C. facility the A.D.C. or _____ (other): Yes No.

Defendant was informed of the right to appeal: Yes No.

Appeal Bond: \$

The County Sheriff is hereby ordered to transport the Defendant to the Arkansas Department of Correction Regional Punishment Facility.

The short report of circumstances attached hereto is approved.

Date: 6-4-09
6-4-09

Circuit Judge:
TOM COOPER

Signature: 

I certify this is a true and correct record of this Court.

Date 6-4-09 Circuit Court:



(Seal)

Revised 01/2004



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APPRI54X19

PROSECUTOR'S SHORT REPORT OF CIRCUMSTANCES

This information is pursuant to A.C.A. 12-27-113 (C)(1) & (2) (Supp. 1993)

Defendant's Name LAQUINCE T. HOGAN

SID#

CS. CR-2008-54-1

County LITTLE RIVER

SUMMARY OF THE FACTS:

POSSESSION OF CONTROLLED SUBSTANCE WITH INTENT TO DELIVER - CRACK COCAINE, POSSESSION OF CONTROLLED SUBSTANCE - MARIJUANA

II. FACTORS:

AGGRAVATING

- Production or use of any weapon during the criminal episode.
- Threat or violence toward witness(es) or victim(s).
- Defendant knew or had reason to know the victims were particularly vulnerable (aged, handicapped, very young, etc.)
- Ability to make restitution, reparation or return property and failed to do so.
- Violation of position of public trust recognized professional ethics.
- Degree of property loss, personal injury, or threatened personal injury substantially greater than characteristic for the crime.
- There is a single conviction for a crime involving multiple victims or incidents.

Defendant on probation or parole at the time of the crime.

Persistent involvement in similar criminal offenses.

Repetition of behavior pattern which contributes to criminal conduct (e.g. return to drug or alcohol abuse).

Prior record of similar offenses

Serious prior record.

Pursuant to a Guilty or No Contest plea, other crimes were dismissed or not prosecuted.

New criminal activity while on pretrial release.

Persistent criminal misconduct while under supervision.

Efforts to conceal crime.

Other: Convicted previously of
Selling Drugs & Taxes!

SIGNED: CIRCUIT JUDGE

MITIGATING

- Victim(s) provoked the crime to substantial degree, or other evidence that misconduct by victim contributed to the criminal episode.
- Cooperation with criminal justice agencies in resolution or other criminal activity.
- Effort to make restitution or reparation (particularly before required to do so by sentencing).
- Degree of property loss, personal injury or threatened personal injury substantially less than characteristic for the crime.
- Special effort on part of perpetrator to minimize the harm or risk.
- Peripheral involvement in criminal episode, (e.g. passive accessory).
- Evidence of withdrawal, duress, necessity or lack of sustained criminal intent or diminished mental capacity (e.g. mental retardation) which is insufficient to constitute a defense but is indicative of reduced culpability.
- No prior parole or probation difficulty.
- Efforts to deal with problems associated with past criminal conduct.
- No, or minimal, prior record.
- Other: _____

SIGNED: Emy J. C. PROSECUTING ATTORNEY/DEPUTY