

23-6300
No. 3

IN THE

SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED

DEC 15 2023

OFFICE OF THE CLERK

Richard Lee Paiva — PETITIONER
(Your Name)

vs.

State of Rhode Island — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Rhode Island Supreme Court

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI
(DIRECT COLLATERAL REVIEW)

Richard Lee Paiva

(Your Name)

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Cranston, RI 02920

(City, State, Zip Code)

N/A

(Phone Number)

QUESTION(S) PRESENTED

1. Are the protections of the 14th Amendment Due Process Clause triggered, when an incarcerated person has a statutory right to be parole-eligible during his or her sentence of imprisonment?
2. Does an incarcerated person whom has a statutory right to be parole-eligible during his or her sentence of imprisonment, have a constitutional due process right to be heard for consideration of parole, a minimum of once, **prior** to the expiration of the term of his or her sentence of imprisonment?
3. Can an incarcerated person be "eligible for parole" **after** he or she completes the entire term of his or her sentence of imprisonment?

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:

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI
(DIRECT COLLATERAL REVIEW)

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[] is unpublished.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[] is unpublished.

[X] 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 State v. Paiva, 2019 RI LEXIS 16; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

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 decided 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 a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___ A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[X] For cases from **state courts**:

The date on which the highest state court decided my case was 6-30-22. A copy of that decision appears at Appendix A.

[X] A timely petition for rehearing was thereafter denied on the following date: 10-13-23, and a copy of the order denying rehearing appears at Appendix B.

[] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___ A _____.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

14th Amendment Due Process Clause

R.I.G.L. 10-9.1-1

R.I.G.L. 10-9.1-9

R.I.G.L. 11-23-1

R.I.G.L. 11-23-2

R.I.G.L. 12-19-21

R.I.G.L. 13-8-8

R.I.G.L. 13-8-9

R.I.G.L. 13-8-13

28 U.S.C. 1257

STATEMENT OF THE CASE

On September 23, 2010, Petitioner was sentenced as part of a plea agreement with the State of Rhode Island (RI) (Appendix C, Exhibit A), to serve a Life sentence, with the possibility of parole, for a 2009 first-degree murder charge (R.I.G.L. 11-23-1, 11-23-2, 13-8-13(a)), and a consecutive 15 year full sentence, with 10 years to serve (non-parolable), and 5 years suspended sentence/probation, for a habitual criminal enhancement. (R.I.G.L 12-19-21)

On September 6, 2017, Petitioner filed a "Motion to Correct Sentence" in the RI Superior Court (Superior Court Rules of Criminal Procedure, Rule 35), arguing that his 15 year habitual criminal sentence is illegal, due to the 10 years to serve portion of the 15 year full sentence being ordered as "non-parolable" (App. C, Ex. B), in light of the habitual criminal statute mandating that parole eligibility be set by the court. (R.I.G.L. 12-19-21(b) "the court **shall** order the defendant to serve a minimum number of years of the sentence before he or she becomes **eligible for parole.**")

The Superior Court denied Petitioner's motion to correct sentence on September 20, 2017, finding that "those 10 years are non-parolable. Once you complete those, then you're eligible for parole." (App. C, Ex. C page 5)

Petitioner subsequently timely appealed the Superior Court's denial of his motion to correct sentence to the RI Supreme Court (App. C, Ex.'s D through M), which was ultimately denied on February 22, 2019, (App. C, Ex. N), with the Supreme Court finding that "the sentencing justice correctly complied with the statute at issue by

ordering Mr. Paiva to 'serve a minimum number of years of the sentence before he... becomes eligible for parole." (App. C, Ex. I page 4) And "that the parole eligibility date on Mr. Paiva's habitual offender sentence is the date on which ten years of (the 15 year full) sentence will have been served." (App. C, Ex. I page 4)

On December 15, 2021, Petitioner filed an "Application for Post-Conviction Relief" (PCR) in the Superior Court, pursuant to R.I.G.L. 10-9.1-1 et seq. (App.'s C and D), arguing that his 15 year habitual criminal sentence is illegal, **and unconstitutional**, because the 10 years to serve portion was ordered as "non-parolable", and effectively "has no opportunity at all, under any circumstance, to be seen or heard by the parole board for the entirety of his fifteen (15) year sentence." (App. C page 8)

The Superior Court denied Petitioner's PCR application on June 30, 2022 (App. A), on the grounds of res judicata, and further found that "there's nothing in (Mr. Paiva's) application for post-conviction relief which argues anything differently than what was already heard by the Supreme Court in this case." (App. D page 20)

The Superior Court clearly overlooked the fact that the Petitioner was arguing in his PCR application for the first time that his 15 year habitual criminal sentence is **unconstitutional**, in addition to being illegal (App. C page's 8-9), but never reached the merits of this argument. Importantly, Petitioner was not permitted to bring a due process challenge to his non-parolable 15 year habitual criminal sentence in his Rule 35 motion to correct sentence; State V. Linde,

965 A.2d 415 (RI 2009) (holding that defendants constitutional claims could not be brought under a motion to correct an illegal sentence under Rule 35 of the Superior Court Rules of Criminal Procedure), and his only available avenue to bring his constitutional challenge was in his PCR application. (R.I.G.L 10-9.1-1(a)(1))

Lastly, on August 4, 2022, Petitioner timely filed a "Petition for Writ of Certiorari" in the RI Supreme Court (App. E), pursuant to R.I.G.L. 10-9.1-9, which was ultimately denied on October 13, 2023. (App. B)

While it is clear that the United States Constitution does not provide an inherent right to be **eligible for parole** during incarceration, Petitioner strictly argues that when a State's statute provides a right to be **eligible for parole**, the protections of the 14th Amendment are triggered.

Petitioner's 15 year habitual criminal sentence is subject to the control of the RI Parole Board (R.I.G.L. 13-8-8). But is only excluded from the standard one-third eligibility (R.I.G.L 13-8-9(a)), or the fifty-percent eligibility . (R.I.G.L. 13-8-9(b))

Instead, parole eligibility for habitual criminal sentences is specified in R.I.G.L 12-19-21(b): "the court **shall** order the defendant to serve a minimum number of years of the sentence before he or she becomes **eligible for parole.**" (Emphasis added)

Petitioner's 15 year habitual criminal sentence was clearly ordered as "non-parolable", and cannot somehow be "eligible for parole" **after** he completes the 10 years to serve portion of his

15 year full sentence. Because once Petitioner completes the 10 years to serve portion of his 15 year full sentence, he will be discharged from incarceration, and then be required to serve 5 years of probation. And no person in RI is subject to the control of the RI Parole Board (R.I.G.L. 13-8-8) while on probation, nor is otherwise "eligible for parole" from probation.

While the RI Supreme Court agreed with the Petitioner that R.I.G.L. 12-19-21(b) requires that parole eligibility be set by the court; State V. Paiva, 2019 R.I. LEXIS 16, at*5 ("The statute simply provides that a defendant must serve a minimum number of years (to be determined by the sentencing justice) before being eligible for parole."), the Supreme Court erroneously found that Petitioner will be "eligible for parole" once he completes the 10 years to serve portion of his 15 year full sentence.

Since the time that State V. Paiva was decided, the RI Superior and Supreme Courts have made findings that clearly contradict Paiva; Brown V. Coyne-Fague, 2022 R.I. Super. LEXIS 96, at *30 ("this court is not required under the habitual offender statute to make some of the sentence parole eligible."); and State V. Davis, 2023 R.I. LEXIS 62, at *5 ("12-19-21(b) does not require that a defendant be eligible for parole at all during the habitual offender sentence, (but rather) simply requires that a defendant who is deemed to be a habitual criminal be ordered to serve an additional period of **nonparolable** incarceration").

In conclusion, R.I.G.L. 12-19-21(b) clearly mandates that the

court order parole eligibility "in a minimum number of years" of all habitual criminal sentences. And therefore provides all persons sentenced as habitual criminals under R.I.G.L. 12-19-21 with a statutory right, as well as a **constitutional due process right**, to be provided with an opportunity to be heard for parole; State V. Higham, 2012 R.I. LEXIS 100, at *9-10 ("Parole applicants are entitled only to 'an opportunity to be heard and to be informed in what respects the applicant falls short of qualifying for parole.'")

And it only follows that non-parolable sentences under R.I.G.L. 12-19-21 are therefore illegal and unconstitutional. Notably, every sentence of imprisonment for a term of years of more than six months, is parole-eligible in RI (R.I.G.L. 13-8-8), including habitual criminal sentences. There are no sentences of imprisonment for a term of years of more than six months, which are specified to be non-parolable in RI.

PROCEEDINGS CITED ABOVE

1. Rule 35 motion to correct sentence; Judgment entered on 9-20-17. State v. Paiva, P1-2009-1596A (RI Superior Court) *see App. G pages 1-10 for docket sheet.
2. Appeal of Superior Court denial of Rule 35 motion to correct sentence; Judgment entered on 1-29-19. State v. Paiva, SU-2018-0100-CA (RI Supreme Court) *see App. G pages 11-13 for docket sheet.
3. Application for post-conviction relief; Judgment entered on 6-30-22. Paiva v. State, PM-2022-00557 (RI Superior Court) *see App. G pages 14-17 for docket sheet.
4. Petition for writ of certiorari; Judgment entered on 10-13-23. Paiva v. State, SU-2022- 0232-MP (RI Supreme Court) *see App. G pages 18-20 for docket sheet.

REASONS FOR GRANTING THE PETITION

1. To create clearly established federal law, i.e., minimum due process rights for parole-eligible inmates.
2. To clarify that R.I.G.L. 12-19-21 does not **require** non-parolable sentences (as found in State V. Davis, 2023 R.I. LEXIS 62, at *5), but rather, mandates that parole eligibility be set by the court.
3. To establish that an incarcerated person cannot be eligible for parole (while serving a parole-eligible sentence) **after** he or she **completes** the entire term of the sentence of imprisonment which was ordered to be served.
4. There are numerous incarcerated inmates in RI that are currently serving illegal, **unconstitutional** non-parolable sentences under R.I.G.L. 12-19-21.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Richard Lee Paiva

Date: December 5, 2023