

23-6512

No. _____

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SUPREME COURT, U.S.

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Douglas Sokell

— PETITIONER

(Your Name)

vs.

U.S. Appeals Court-9th

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Unites States Court of Appeals, 9th Circuit

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

PETITION FOR WRIT OF CERTIORARI

Douglas Sokell

(Your Name)

EOC, 2500 Westgate

(Address)

Pendleton, OR 97801

(City, State, Zip Code)

None

(Phone Number)

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QUESTION(S) PRESENTED

1. Was it constitutional to be sentenced to life in prison without the possibility of parole or release, using recidivism (3 strikes) as a main factor, where one of the offenses was inchoate and all 3 crimes were non-violent?
2. Does this sentence, as described here, qualify as cruel and unusual punishment under the Eighth Amendment to the United States Constitution, for non-violent crimes, including an inchoate offense?
3. Was it constitutional to be sentenced to life in prison, a very onerous punishment which violates the 8th Amendment as cruel and unusual punishment, where the petitioners claim as such, was never reviewed by any court due to state appeal counsel ^{failure} ~~failed~~ to properly exhaust that claim?
4. Was the crime committed serious enough to warrant a sentence that harsh?

LIST OF PARTIES

None

[] All parties appear in the caption of the case on the cover page. N/A

[] 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: N/A

RELATED CASES

• State v. Sokell, No. C1315 532 CR, Circuit Court of The State of Oregon for The County of Washington, Judgement entered December 30, 2013.

• State v. Sokell, No. A156133, Court of Appeals of The State of Oregon. Judgement entered September 16, 2015.

• State v. ~~Sokell~~ Sokell, No. SC 5063607, Supreme Court of The State of Oregon. Judgement entered September 22, 2016.

Sokell v. Amsberry, No. 2:18-cv-0211⁸ - SB, U.S. District Court For The District of Oregon. Judgement entered September 27, 2022.

• Sokell v. Amsberry, No. 17CV34382, Circuit Court of The State of Oregon For The County of Umatilla, Judgement Sept. 5, 2018.

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APPENDIX A	<u>United States Court of Appeals For the Ninth Circuit, No. 2:18-CV-02118-SB, Order 8-8-2023</u>
* APPENDIX B	<u>United States District Court For the District of Oregon, No. 2:18-CV-02118, Judgement 9-27-22</u>
APPENDIX C	<u>Court of Appeals of The State of Oregon, No. A156133, Decision 9-16-2015</u>
APPENDIX D	<u>Supreme Court of The State of Oregon, SC 5063607, Decision 9-22-2016</u>
APPENDIX E	<u>Circuit Court of The State of Oregon For The County of Umatilla, No. 17CV34382, Post Conv., Judge. 9-12-2018</u>
APPENDIX F	<u>Circuit Court of The State of Oregon For The County of Washington, No. C131532 CR, Judgement & Sentence 12-31-2013</u>
* APPENDIX G	<u>United State District Court For The District of Oregon, No. 2:18-CV-02118-SB, Findings and Recommendation, 8-30-22.</u>

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

United States v. D. W., 198 F. Supp. 3d 218. ~~2~~ 6

United States v. Rios, 201 F. Supp. 3d 1266 ~~2~~ 6

STATUTES AND RULES

Eighth Amendment to The United States Constitution

Oregon Constitution, Article One, Section 16

ORS 137.719(2)

OAR 213-~~008~~-0003(1)

ORS 161.605(2)

OTHER

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 A 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 B 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 D to the petition and is

☒ reported at Sokell v. State 360 OR 372, 386 P3d 975; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

The opinion of the Court of Appeals, State of Oregon court appears at Appendix C to the petition and is

☒ reported at 273 OR App. 654, 362 P3d 251; 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 August 8, 2023.

☒ 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).

☐ For cases from **state courts**:

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

☐ 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 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

□ 8th Amendment to the U.S. Constitution, "nor cruel and punishment be inflicted"

□ Article I, Section 16, of the Oregon Constitution, "Cruel and unusual punishment shall not be inflicted"

□ ORS 137.719(2). Permits the court to impose a lesser sentence upon making certain findings.

□ OAR 213-008-0003(1). An upward durational departure shall not more than double the maximum duration of the presumptive prison term.

□ ORS 161.605(2). The maximum term of an ~~int~~ indeterminate sentence of imprisonment for a felony is as follows:

• For a Class B felony, 10 years maximum sentence.

□ ORS 163.427. Sex abuse I is a Class B Felony.

STATEMENT OF THE CASE

~~Petitioner~~ Petitioner was convicted of his second Class B felony for second degree sexual abuse in 2013. The crime occurred in November, 2011, but identification and arrest didn't occur until October, 2012, eleven months later. His presumptive mandatory sentence, in November, 2013, was life in prison with no possibility of parole or release.

He had a prior conviction for attempted sexual abuse in 2012, an inchoate crime, and accepted a plea deal of 18 months in prison. His first conviction for sexual abuse in 1996 resulted in a mandatory minimum sentence of 75 months in prison.

Conduct in all cases involved inappropriate touching of minor girls. Petitioner appealed his case in each of the lower state courts, as well as both federal appeal courts; all denied his claims.

REASONS FOR GRANTING THE PETITION

Petitioners sentence of life in prison without the possibility of parole is cruel and unusual punishment and thus is a violation of the 8th Amendment to the U.S. Constitution, as well as Article 1, Section 16 of the Oregon constitution. It implicates the proportionality of both statutes, and is grossly ~~disprop~~ disproportionate to the ~~comm~~ crime committed. This extreme sentence for a single act of improper touching, based on recidivism, is a third strike conviction.

This is the same sentence given to a violent serial rapist previously convicted of ~~multib~~ multiple violent rapes (a Class A felony) with little time spent in the community between crimes. Petitioner lived conviction-free for 17 years. There is a tremendous disparity between the petitioner and this ~~and this type of~~ extreme type of criminal. Petitioner stands worlds apart from the violent rapist visualized by most people who would imagine this ~~punishment~~ ^{punishment}. This sentence of true life is similar to a death sentence owing to its

REASONS

indeterminate length, a quality shared with no other sentence, and is the second most severe criminal penalty under Oregon law.

Oregon has other laws that limit sentence length. ORS 161.605 states that the maximum term of imprisonment for a Class B felony is 10 years. According to ORS 163.427, Sex Abuse I is a Class B felony, 175 P3d 438, 343 OR 652 permits the court to impose a lesser sentence upon making certain findings. ORS 137.719(2) authorizes a departure sentence from the presumptive sentence of subsection 1 of that section. OAR 213-008-0003(1) states that an upward durational departure shall not more than double the maximum duration of the presumptive prison term. In no case may the sentence exceed the statutory maximum indeterminate sentence described in ORS 161.725. In United States v. D.W., the definitive guideline range of 292-365 months of imprisonment was deemed to be excessive. In United States v. Rios, 201 F. supp. 3d 1266, it was determined that a prior conviction was not a crime of violence and did not subject the defendant to an enhanced sentence level.

One of the petitioner's 3 strike convictions was for an inchoate offense, where he touched the bare legs of a minor female, Attempted Sexual Abuse, and was not a charge to which extended time applies, ORS 131.125(2). Attempt offenses differ from substantive crimes in that the resulting harm, at least in this case, is less than from completed crimes. The imposed 18 month sentence here should not have the same weight in determining the make-up of 3 strikes as would the normal 75 month sentence for Sex Abuse 1. That inchoate offense provided no verification of criminal intent. Thus the petitioner was unfairly sentenced here on the basis of 3 strikes law. Was it constitutional to impose a true-life sentence for non-violent offenses when one of the determining crimes was inchoate? ~~Petitioner was~~

Petitioner was denied his right to a complete and lawful review of his entire case throughout the appeal process because state appeal ^{counsel} ~~counsel~~ failed to exhaust the cruel and unusual violation of ~~federal~~ the Eighth Amendment in state appeals. Thus the state supreme court and both

federal courts did not ~~accept~~ accept a review of his federal claim. Is it lawful for a individual to be denied review of federal claims due to a serious error by state ~~counsel?~~ ^{counsel?} ~~counsel?~~

Petitioner has been incarcerated since close of trial in November, 2017, eleven years ago. He is now 81, has presumably served at least half of his sentence, and no longer presents a danger to the community. The regular sentence for this crime is 75 months, which at age 71 would have been sufficient punishment.

Regarding the ~~the~~ national importance of true-life sentences for non-violent crimes is the extreme negative impact on the lives of the thousands so incarcerated, those still awaiting trial, and their families. It contributes to the huge mass incarceration rate of this country. Evolving standards of decency and societal ~~and~~ notions of equity and justice warrant a remedy in this case. Petitioner requests the Court to reach the merits of this single constitutional challenge to a single onerous prison sentence. For these reasons, petitioner requests the Court to grant this writ of certiorari.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Douglas Sobell

Date: 11-8-23