

No. 23-6627 ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

FILED
JAN 22 2024
OFFICE OF THE CLERK
SUPREME COURT, U.S.

In re:

Reginald Bernard Hatton,

PETITIONER.

PETITIONER'S ORIGINAL PETITION FOR A WRIT OF HABEAS CORPUS

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Petitioner, In propria persona.

QUESTION(S) PRESENTED

QUESTION No. 1

WHETHER THE PETITIONER HAS BEEN DEPRIVED OF HIS CONSTITUTIONAL RIGHTS UNDER THE 8TH AND 14TH AMENDMENT TO THE UNITED STATES CONSTITUTION BECAUSE THE EXECUTION OF THE PETITIONER'S SENTENCE IS ILLEGAL, UNAUTHORIZED, AND VOID DUE TO AN UNCONSTITUTIONAL CUMULATION ORDER ENTERED ON THE JUDGMENT & SENTENCE OF CONVICTION?

QUESTION No. 2

WHETHER THE PETITIONER HAS BEEN DEPRIVED OF HIS CONSTITUTIONAL RIGHTS UNDER THE 14TH AMENDMENT TO THE UNITED STATES CONSTITUTION DUE TO THE DEPRIVATION OF TIME SERVED CREDITED AGAINST A SENTENCE THAT COMMENCED THE DAY IT WAS ASSESSED AND PRONOUNCED AGAINST THE PETITIONER IN OPEN COURT?

QUESTION No. 3

WHETHER THE STATE AS A MATTER OF DUE PROCESS AS IMPLICATED BY THE 14TH AMENDMENT TO THE UNITED STATES CONSTITUTION OBLIGATED TO FOLLOWING ITS STATUTORY SENTENCING SCHEME THAT LIMITS THE SENTENCING COURT'S DISCRETION AS TO HOW THE DEFENDANT WILL SERVE THE SENTENCE UPON EXECUTION?

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: Ken Paxton, Attorney General, State of Texas, P.O. Box 12548, Austin, Texas, 78711-2548

RELATED CASES

1. *Ex Parte Hatton*, 2015 Tex.Crim.App.Unpub.LEXIS 879 (Tex.Cr.App. 2015).
2. *Hatton v. Davis*, No. #6:17-CV-00014-RP (W.D. Tex. Mar. 08, 2017).
3. *Hatton v. Davis*, No. #6:19-CV-00249-ADA (W.D. Tex. apr. 10, 2019).
4. *In re Reginald Bernard Hatton*, No. #19-50308 (5th Cir. May 29, 2019).
5. *Hatton v. Lumpkin*, No. #W-23-CV-454-ADA (W.D. Tex. June 20, 2023).

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TABLE OF AUTHORITIES CITED

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IN THE
SUPREME COURT OF THE UNITED STATES
ORIGINAL PETITION FOR A WRIT OF HABEAS CORPUS

The Petitioner respectfully moves and prays, that a Writ of Habeas Corpus issue directing the Respondent to show cause why the writ should not be granted within transferring the instant petition for hearing and determination by the district court having jurisdiction to entertain it for the purpose of reviewing the execution of the Sentence below.

OPINION BELOW

The Opinion of the State's highest criminal court to review the case is an Unpublished Written Opinion delivered by the Texas Court of Criminal Appeals found and cited as Ex Parte Hatton, 2015 Tex.Crim.App.Unpub.LEXIS 879 (Tex.Cr.App. 2015).

JURISDICTION

The Texas Court of Criminal Appeals decided this case on November 20, 2015. A copy of that decision appears at Ex Parte Hatton, 2015 Tex.Crim.App.Unpub.LEXIS 879 (Tex.Cr.App. Nov. 25, 2015).

No motion for rehearing was filed.

This Court's jurisdiction is invoked pursuant to Title 28 U.S.C., Section 1251(b)(3).

Further, this Court's jurisdiction is invoked pursuant to Title 28 U.S.C., Section 1651(a), Title 28 U.S.C., Section 2241(a), Rule 20.1 of the Supreme Court Rules, and Rule 20.4 of the Supreme Court Rules.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, 8TH Amendment: Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment.

United States Constitution, 14TH Amendment: 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.

Texas Code of Criminal Procedure, Article 42.08(a): When the same defendant has been convicted in two or more cases, judgment and sentence shall be pronounced in each case in the same manner as if there had been but one conviction. Except as provided by Subsections (b) and (c), in the discretion of the court, the judgment and the subsequent convictions may either be that the sentence imposed or suspended shall begin when the judgment and the sentence imposed or suspended in the preceding conviction has ceased to operate, or that the sentence imposed or suspended shall run concurrently with the other case or cases, and sentence and execution shall be accordingly...

Texas Penal Code, Section 3.03(a): When the accused is found guilty of more than one offense arising out of the same criminal episode prosecuted in a single criminal action, a sentence for each offense for which the accused has been found guilty shall be pronounced. Except as provided by Subsections (b) and (c), the sentences shall run concurrently.

STATEMENT OF THE CASE

The relief sought is from the execution of a Sentence by a State court entered by the 77TH Judicial District Court of Limestone County, Texas, in Case No. #12029-A-1 for the alleged offense of Murder and Case No. #12115-A-1 for the allege offense of Tampering with Physical Evidence.

The Petitioner under the provisions of Title 28 U.S.C., Section 2254(b)(1)(A) has exhausted all available State remedies regarding the claims presented in this petition for an extraordinary writ, by presenting them to the State's highest criminal court, the Texas Court of Criminal Appeals. See., Ex Parte Hatton, 2015 Tex.Crim.App.Unpub.LEXIS 879 (Tex.Cr.App. 2015).

The Petitioner has made application(s) for federal habeas corpus relief to the United States District Court for The Western District of Texas, Waco Division pursuant to Title 28 U.S.C., Section 2241 and 2254 to no avail. Thus, it would be futile for the Petitioner to make any further application(s) to the district court of the district in which the Petitioner is confined. The United States Court of Appeals for The Fifth Circuit has denied the Petitioner's Motion for Authorization To File A Successive Petition. (Appendix A). The motion pressed the same claims that are being presented in this petition.

Pursuant to a Plea Bargain Agreement, the Petitioner entered a Plea of Guilt to the alleged offense of Murder and Tampering with Phscial Evidence. The Petitioner was sentenced to 15 years for the offense of Murder and 10 years for the offense of Tampering

with Physical Evidence. After the Petitioner had left the court court room and after sentence had been pronounced, the trial court cumulated the sentence(s) that had been pronounced against the Petitioner, that resulted in an aggregated sentence of 25 years rather than 15 years, that the Petitioner was totally unaware of the fact that the sentence(s) had been cumulative.

The Petitioner was first sentenced to 15 years for the offense of Murder and was subsequently sentenced to 10 years for the offense of Tampering with Physical Evidence. Pursuant to the trial court's Cumulation Order, the 15 year sentence was ordered to commence after the 10 year sentence had ceased to operate.

Prior to pleading guilty, the Petitioner was informed by trial counsel, that the sentences could not be cumulated, because the offense(s) arose out of the same criminal episode and was being prosecuted in a single criminal action. Further, Petitioner was informed that cumulative sentencing was not part of the Plea Bargain Agreement.

In the State habeas court, Petitioner argued that his cumulative sentence(s) were illegal and unauthorized, and violated his constitutional rights under the 8TH Amendment to the United States Constitution to be free from Cruel and Unusual Punishment. Petitioner further argued that he was being deprived of his constitutional rights under the 14TH Amendment to the United States Constitution to Due Process.

It was argued, that the trial court erred in the cumulation of the sentence(s) because only the subsequent sentence could

be ordered cumulative to the preceding sentence under Article 42.08 of the Texas Code of Criminal Procedure; and the Cumulation of the sentence(s) was not done at the time the sentence(s) were pronounced and after he had left the court room.

Within this argument, Petitioner claimed that he was being denied credit against his sentence due to the unauthorized and illegal Cumulation Order.

Petitioner also argued that he was deprived of his constitutional rights under the 6TH and 14TH Amendment to the United States Constitution to effective assistance of counsel, because trial counsel fail to object to the cumulation order for reasons that it was not part of the plea bargain agreement, and fact that the offense(s) were part of the same criminal action prosecuted in a single criminal action that prohibited the sentence(s) from being cumulated.

The Texas Court of Criminal Appeals denied the Petitioner's State habeas application without written order, and did not provide any reasonable explanation for it's decision.

The United States District Court for the Western District of Texas, Waco Division dismissed the Petitioner's initial federal habeas corpus petition as time-barred under Title 28 U.S.C., Section 2244(d). Several federal habeas petitions followed, to include a request for permission to file a second or successive federal habeas petition.

The district court asserted that the claims existed prior to the Petitioner filing his first federal habeas petition. However,

it would not have matter, because the petition was dismissed as time-barred never considering any claims presented, thus, it cannot be assumed that the claims were first presented in his first federal habeas petition.

REASONS FOR GRANTING THE PETITION

Following this Court's instructions in *Felker v. Turpin*, 116 S.Ct. 2333 (1996), the petitioner sought federal habeas relief, via a writ of habeas corpus addressed to this Court. This Court explicitly held that it did not have jurisdiction by way of a Writ of Certiorari to review a decision of a United States Court of Appeals exercising its gatekeeping function over a second or successive federal habeas petition in view of the newly passed Antiterrorism Effective Death Penalty Act of 1996. (AEDPA). See., Title 28 U.S.C., Section 2244(b). However, this Court did entertain the petitioner's request for a writ of habeas corpus as a matter addressed to this Court.

As a matter addressed to this Court and in entertaining the petitioner's request for habeas corpus relief, this Court held that the AEDPA did not preclude this Court from entertaining an application for habeas corpus relief filed as an original matter in this Court pursuant to Title 28 U.S.C., Section 2241, and thus, the AEDPA did not deprive this Court of its jurisdiction to entertain original habeas petition, because the AEDPA did repeal this Court's authority to hear habeas petition(s) filed as original matters in this Court, but this Court did hold that it's authority to grant relief was limited by Title 28 U.S.C., Section 2254 et seq. However, this Court was explicit when it held that Rule 20.4(a) delineates the standard under which this Court will grant an original writ of habeas corpus before this Court.

Rule 20.4(a) of the Supreme Court Rules provides, that: To justify the granting of a writ of habeas corpus, the petitioner

must show exceptional circumstances warranting the exercise of this Court's discretionary powers and must show that adequate relief cannot be obtain in any other form or from any other court.

Thus, the hurdle before this Court, is of matter whether or not the Petitioner can show exceptional circumstances warranting the exercise of this Court's discretionary powers...

This Court is yet to define the term "exceptional circumstances," however, the productivity of a writ of habeas corpus is to inquiry into the legality of a person(s) detention, to enforce and protect a person(s) constitutional rights. It cannot be seen and/or pictured that the unlawful detention and illegal restraint of a persons life and liberty in violation of a person(s) constitutional rights is not an exceptional circumstance warranting the exercise of this Court's discretionary powers to inquire into such detention, when it is shown that the lower court abused it's discretion that contributed to the constitutional violations, and then decline to follow the law and its ministerial duty to protect the constitutional rights of the person.

Under some circumstances a State law error might constitute an independent basis for federal habeas relief if the error was so egregious or prejudicial as to amount to a federal constitutional violation such as a denial of Due Process as implicated by the 14TH Amendment to the United States Constitution.

This Court has to review relevant State law to determine whether or not the Petitioner's constitutional rights to Due Process rights under the 14TH Amendment to the United States

Constitution were violated; whether or not the Petitioner's constitutional rights under the 8TH Amendment to the United States Constitution were violated. Each of the alleged constitutional violation stem from the execution of the Petitioner's sentences that is far from a challenge as to the Judgment & Sentence of Conviction...

Under Article 42.08(a) of the Texas Code of Criminal Procedure, it is provided, that: When the same defendant has been convicted in two or more cases, judgment and sentence shall be pronounced in each case in the same manner as if there had been but one conviction. Except as provided by Subsection (b) and (c), in the discretion of the court, the judgment in the second and subsequent conviction may either be that the sentence imposed or suspended shall begin when the judgment and the sentence imposed or suspended in the preceding conviction has ceased to operate... Furthermore, under Section 3.03(a) of the Texas Penal Code, it is provided, that: When the accused if found guilty of more than one offense arising out of the same criminal episode prosecuted in a single criminal action, a sentence for each offense for which the accused has been found guilty shall be pronounced. Except as provided by Subsections (b) and (c), the sentences shall run concurrently.

This Court should not be disreputable with the operation of these statutes given their non-discretionary language, and use of the mandatory language "shall," thus, creating a liberty interest protected by the 14TH Amendment to the United States Constitution.

A protected interest in liberty may have its source in either

federal or State law. A State-created interest is not protected by the procedural component of the Due Process Clause unless the interest is an entitlement, that is, unless the asserted right to liberty is mandated by State law when specified substantive predicates exist. A State creates a protected liberty interest by placing substantive limitations on official discretion.

In *Greenholtz v. Inmates of Neb. Penal Correctional Complex*, 99 S.Ct. 2100 (1979), this Court held that the Due Process Clause applies when government action deprives a person of liberty or property. When there is a claimed denial of due process the courts inquire into the nature of the individual's claimed interest. To determine whether due process requirements apply in the first place, the court must look not to the weight but to the nature of the interest at stake. Thus, to obtain a protectable right, a person clearly must have more than an abstract need or desire for it. The person must have more than a unilateral expectation of it. The person must, instead, have a legitimate claim of entitlement.

The Green court, established that there is no constitutional or inherent right of a convicted person to be conditionally released before the expiration of a valid sentence. The natural desire of an individual to be released is indistinguishable from the initial resistance of being confined. But the conviction, with all its procedural safeguards, has extinguished that liberty right. Given a valid conviction, the criminal defendant has been constitutionally deprived of his liberty.

Is it not to say, that the execution of a criminal defendant's

sentence must meet certain due process standards with all its procedural safeguards to ensure the criminal defendant's release from confinement upon the expiration of that sentence, which requires the defendant be credited with time towards that sentence?

By the use of the mandatory language "shall," the State created a liberty protected interest protected by the Due Process Clause of the 14TH Amendment to the United States Constitution.

Under Texas law, the sentence is that part of the Judgment or order revoking a suspension of the imposition of a sentence, or that orders that punishment be carried into execution in the manner proscribed by law. Article 42.02 of the Texas Code of Criminal Procedure.

A defendant begins to serve their sentence at the adjournment of court on the day sentence is pronounced. *Ex Parte Cruzata*, 220 S.W.3d 518 (Tex.Cr.App. 2007). A Cumulation Order must be entered at the time sentence is then pronounced. Otherwise it is void and not merely voidable. *Moore v. State*, 371 S.W.3d 221 (Tex.Cr.App. 2012), and *Ex Parte Vasquez*, 712 S.W.2d 754 (Tex.Cr.App. 1986). By the wording of Article 42.08 of the Texas Code of Criminal Procedure, it is the time of pronouncementing the sentence that controls. Therefore, if the trial court's discretion is to be exercised as the statute provides, it must be done at the time of pronouncement of sentence or not at all.

In the instant case, the sentencing judge in this case abused its discretion when it entered a Cumulation Order after sentence had been pronounced in each case, and after the Petitioner had

left the courtroom.

Article 42.03, Section 1(a) provides, that except as provided in Article 42.12 of the Texas Code of Criminal Procedure, sentence "shall" be pronounced in the defendant's presence. *Ex Parte Madding*, 70 S.W.3d 131 (Tex.Cr.App. 2002).

In *Madding*, the Texas Court of Criminal Appeals held that the rationale for this rule is that the imposition of sentence is the crucial moment when all of the parties are physically present at the sentencing hearing and able to hear and respond to the imposition of sentence. Once the defendant leaves the court room, the defendant begins serving the sentence imposed.

Once a defendant is removed from the courtroom and begins serving his sentence, it is too late for the trial court to cummulate the sentence just imposed with an earlier one. A trial court doe not have the statutory authority or discretion to orally pronounce one sentence in front of the defendant, but enter a different sentence in his written judgment, outside the defendant's presence. *Id.*

At the bare minimum, due process required that the Petitioner be given notice of the punishment to which he was sentenced. To orally pronounce one sentence to the Petitioner's face and then to sign a written judgment later, when the Petitioner was not present, embodies an extravagantly different and more severe sentence than the oral sentnece, violates any notion of constitutional due process and fair notice. The Petitioner had a legitimate expectation that the sentence he had orally pronounced in the

court room is the same sentence that he will be required to serve.

It is clear that the Petitioner's claim for credit against a sentence attacks the computation and execution of the sentence, and not the sentence itself, that is ripe for consideration under Section 2241.

Also, when offenses arise out of the same criminal transaction are tried together in a single criminal action. Sentences cannot be cumulated. *La Porte v. State*, 840 S.W.2d 412 (Tex.Cr.App. 1992).

In this case both of the offense for which the Petitioner pled guilty, arose out of the same criminal transaction and were tried together in a single criminal cation, thus, the trial court had not statutory or constitutional right to cumulate the Petitioner's sentences.

Further, the Petitioner was first sentence to a term of 15 years for the offense of Murder and then was sentenced to a term of 10 years for the offense of Tampering with Physical Evidence. The trial court cumulated the preceding sentence to that of the subsequent sentence, when by virtue of State law only the subsequent or second sentence can be cumulated to the preceding sentence. As a proximate result thereof, the Petitioner has been unconstitutionally deprived of credit towards the preceding sentence for which he was sentenced and begin to serve when he left the courtroom.

Punishment within its statutory limits is not Cruel and Unusual Punishment.

Petitioner does not argue that the punishment imposed in each case were not within their statutory limits, but that the execution of the sentences constitutes the infliction of unusual punishment violative of his constitutional rights under the 8TH Amendment to the United States Constitution, because he has been effectively deprived of credit towards a sentence that he begin serving the day that sentence was pronounced, and given the effect of the Cumulation Order has been required to serve an aggregated 25 year sentence.

The well plead allegations of the Petitioner establishes a clear abuse of discretion and violation of the Petitioner's constitutional rights.

The Petitioner has been assessed an illegal sentence, that the State court has declined to correct given the adequate protection of the law that has been totally ignored.

Given the modus operandi of the AEDPA, the Petitioner's claim was not actually decided by a federal court, because the Petitioner's first federal habeas petition was dismissed as time-barred under the AEDPA. The Petitioner cannot receive and/or obtain relief from any other form or from any other court.

Given the factual allegations presented in this petition, the Petitioner has presented a prima facie claim of a constitutional violation, that has resulted in his unlawful confinement and illegal restraint. Under Section 2241(b) of Title 28 U.S.C., this Court or a Justice of the Court may decline to entertain this petition for a writ of habeas corpus and may transfer it

to the district court having jurisdiction for hearing and the determination. Given the well pled allegations, and the skimmy record in this case, it is requested that the Court issue a writ of habeas corpus in this case, thereby transferring the same to the district court having jurisdiction for hearing and the determination; or the Court issue a writ of habeas corpus directing the Respondent to show cause as to why a habeas corpus relief should not be awarded to the Petitioner.

CONCLUSION

WHEREFORE, PREMISES CONSIDERED, and in the interest of justice, Petitioner respectfully moves and prays, that for the reasons set forth above and as demonstrated, the requested relief in all be granted.

Respectfully submitted,

/s/ Reginald B. Hatton
Reginald Bernard Hatton, In propria persona.

Date: January 09, 2024

VERIFICATION

I, Reginald Bernard Hatton, state that I am the Petitioner in the foregoing proceedings, and that I have read the foregoing Petition for A Writ of Habeas Corpus and understand it's contents.

I, state that I have personal knowledge of the facts alleged in the foregoing Petition, and declare under penalty of perjury that they are all true and correct.

Executed on this the 09th day of January, 2024.

187 Reginald B. Hatton
Reginald Bernard Hatton
Declarant