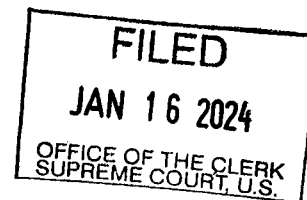


No. 23-7207



IN THE

SUPREME COURT OF THE UNITED STATES

DWAYNE K. TAYLOR — PETITIONER
(Your Name)

vs.

People of the State of Illinois — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

SUPREME COURT OF ILLINOIS

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

PETITION FOR WRIT OF CERTIORARI

DWAYNE K. TAYLOR
(Your Name)

P.O. Box 1000

(Address)

Menard Illinois 62259

(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

- 1). Whether the trial court committed reversible error in denying the defense's request for jury instructions on self-defense and necessity, even though there was some evidence in the trial record of these affirmative defenses, entitling Duwayne Taylor to a new trial.
- 2). Whether DWAYNE Taylor is entitled to a new Sentencing hearing where the same prior Class X felony conviction was used to both establish an element of the offense of armed habitual criminal, and to qualify him for a life sentence under the habitual criminal statute, constituting an improper double enhancement.

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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TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
People v Kite 153 Ill.2d 40,44-45 (1992) _____	7
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STATUTES AND RULES

U.S Const. Amend VI, XIV . Ill Const, art 2ss 2,8	
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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 _____ to the petition and is

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☐ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

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☐ is unpublished.

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

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☒ is unpublished.

The opinion of the Illinois Appellate Court Illinois 4th District court appears at Appendix B to the petition and is

- ☒ reported at People v. Taylor - 2023 Ill App 4th 220381; 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).

☒ For cases from **state courts**:

The date on which the highest state court decided my case was 9/27/23.
A copy of that decision appears at Appendix A.

☐ 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 ^{REQUESTED} to and including _____ (date) on _____ (date) in Application No. ____ A _____. *PETITION TO FILE LATE WRIT OF CERTIORARI INSTANTLY REQUESTED*

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1). U.S. CONST. AMENDMENTS ~~V~~ ~~VI~~ XIV, ILL CONST ART I SS. 2, 8

A defendant's rights to trial by jury and to due process include the right to have the jury fully and properly instructed on the law.

Including the law applicable to the defendant's theory of the case.

STATEMENT OF THE CASE

DWAYNE TAYLOR'S INDICTMENT CHARGED THAT HE WAS GUILTY BEING A ARMED HABITUAL CRIMINAL WHERE HE POSSED A WEAPON AFTER HAVING BEEN CONVICTED OF ARMED ROBBERY IN COOK COUNTY CASE 05CR1722301 AND UNLAWFUL USE OF A WEAPON BY FELON IN SANGAMON COUNTY CASE 09CF 942

DWAYNE TAYLOR WAS ALSO CHARGED WITH AGGRAVATED BATTERY WITH A FIREARM IN THAT HE INJURED ARTEMUS HUNTER BY SHOOTING HIM IN THE LEFT ARM WITH A PISTOL. DWAYNE TAYLOR WAS CHARGED WITH UNLAWFUL USE OF WEAPON BY FELON, THAT HE POSSED A LOADED UNLASED FIREARM WHILE ON (MSR) MANDATORY SUPERVISED RELEASE IN CASE NO. 09CF942

DWAYNE TAYLOR TESTIFIED IN TRIAL THAT ARTEMUS HUNTER CAME TO HIS HOME, CONFRONTED HIM AND HUNTER'S GUN WENT OFF DURING THE ALTERCATION, AND THAT DURING THE ALTERCATION DWAYNE TAYLOR PICKED UP HUNTER'S GUN AND WAS STILL CARRYING THE GUN WHEN THE POLICE ARRESTED TAYLOR A SHORT TIME LATER, AFTER FILING A WRITTEN NOTICE BY DEFENSE INFORMING THE COURT THAT DWAYNE TAYLOR WOULD BE RELYING ON AFFIRMATIVE DEFENSE OF SELF-DEFENSE AND NECESSITY INSTRUCTION OVER THE OBJECTION OF TRIAL COUNSEL. DWAYNE TAYLOR WAS FOUND GUILTY BY JURY.

REASONS FOR GRANTING THE PETITION

(ISSUE-1)

This petition should be granted because, there was evidence presented by the defense that supported Dwayne Taylor's self-defense. Trial counsel made multiple showings that Hunter was the aggressor. Dwayne Taylor even testified in trial that he was confronted at the door of his home by Artemis Hunter, who suddenly lunged forward toward him making a upward motion as a gun holster fell from Hunter's side. Just a natural reflex Dwayne grabbed Hunter's hand, Dwayne heard a shot and Hunter ran away, fearing retaliation from Hunter and his friends. Taylor picked up Hunter's gun off the ground and with the gun still on Taylor, he drove Hunter's car away from his home, met a friend to figure out what to do.

Taylor and his friend was later stopped by police. Taylor did dispose of the gun which was later recovered. The state also presented evidence that Taylor confessed to intentionally shooting Hunter when Hunter lunged at him. Based on the facts of the defense intended to present to the jury affirmative defense of self-defense and necessity. However the trial court

- 5 -
Cont -

STATEMENT OF THE CASE - CONT

At Dwayne Taylors Sentencing, to prove him eligible for habitual offender status, the State showed the court certified copies of convictions for the following prior offenses:

- 1) A class X armed robbery in 92CR210801 and
- 2) Class X armed robbery in 05CR1722301.

The state argued that Taylor should be adjudged an habitual offender because this would be his third class X offense within 20 years. The court judged Taylor to be an habitual offender and imposed a natural life sentence.

Trial attorney also argued that there would be an improper double enhancement for the to use the 2005 armed robbery to prove AHC, and to use the same 2005 armed robbery again to make Dwayne Taylor an habitual offender.

Dwayne Taylor did appeal his convictions, his Appeals in the Illinois Appellate Court, and his Illinois Supreme Court were denied.

REASON FOR GRANTING THE PETITION

ISSUE I - CONT (1)

Erred by refusing to instruct the jury to these defenses even though there was "Some evidence" at trial that these defenses Applied people v kite 153 Ill.2d 40, 44-45 (1992). "Some Evidence" of a defense entitles a defendant to raise it.

The trial courts error practically gutted the defense, leaving counsel with literally ONE theory to argue to the jury, causing the defense to forgo both opening and closing arguments. this error was prejudicial to the defense This preserved error was of constitutional magnitude and was not harmless beyond a reasonable doubt. People v Hart 218 Ill.2d 275, 297 (2006) This Error of refusing an affirmative defense results in a denial of due process.

The court abused its discretion in denying Taylors request for this jury instruction on affirmative defenses of necessity with respect to his conviction for Armed Habitual Criminal, and unlawful Possession of a weapon by a felon because he presented some evidence to support the instruction.



REASONS FOR GRANTING THE PETITION

(ISSUE-1)

This petition should be granted because there was evidence presented by the defense that supported Dwayne Taylor's self defense. Trial Counsel made multiple showings that Hunter was the Aggressor. Dwayne Taylor even testified in trial that he was confronted at the door by Artemus Hunter, who suddenly lunged forward towards him making an upwards motion with his hands as a gun holster fell from Hunter's side. Just a natural reflex Dwayne grabbed Hunter's hand. Dwayne heard gunshots, and Hunter ran away. Fearing retaliation from Hunter's friends Taylor picked up Hunter's gun off the ground, and with the gun still on Taylor, he drove Hunter's car away from his home, met a friend to figure out what to do. Taylor and his friend were later stopped by the Police. Taylor did dispose of the gun which was later recovered. The State also presented evidence that Taylor confessed to intentionally shooting Hunter when Hunter lunged at him.

Based on these facts the defense intended to present to the jury affirmative defenses of self defense and necessity. However the trial court

STATEMENT OF THE CASE

Dwayne Taylor's indictment charged that he was guilty being a armed Habitual Criminal where he possed a weapon after having been convicted of armed robbery in Cook County case 05 CR 1722301, and unlawful use of a weapon by a felon in Sangamon County case 09CF 942

Dwayne Taylor was also charged with aggravated battery with a firearm in that he injured Artemus Hunter by shooting him in the left arm with a pistol.

Dwayne Taylor was charged with Unlawful Use of weapon by felon, that he possessed a loaded, unceased firearm while on mandatory supervised release in case no. 09CF 942.

Dwayne Taylor testified in trial that Artemus Hunter came to his home, confronted him and Hunter's gun went off during the altercation, and that during the altercation Dwayne Taylor picked up Hunter's gun and was still carrying the gun when the police arrested Taylor a short time later.

After filing a written notice by the defense informing the court that Dwayne Taylor would be relying on the affirmative defenses of self-defense and necessity. The trial court denied Dwayne Taylor's self defense and necessity instruction over the objection of trial counsel. Dwayne Taylor was found guilty by jury.

REASON FOR GRANTING THE PETITION
ISSUE I CONT (2)

Section 7-13 of the Criminal Code of 2012 defines the defense of necessity as follows

Conduct which would otherwise be an offense is justifiable by reason of necessity if the accused was without blame in developing the situation and reasonably believed such conduct was necessary to avoid a public or private injury greater than the injury which might reasonably result from his own conduct. 720 ILCS 5/7-13 (West 2018).

To be entitled to such an instruction, Dwayne Taylor is required to show some evidence of each of the following elements. the defendant

- (1) was without blame in occasioning or developing the situation.

- (2) "reasonably believed such conduct was necessary to avoid a public or private injury greater than the injury which might reasonably result from his own conduct. People v Janik, 127 Ill.2d 390.

REASON FOR GRANTING THIS PETITION

ISSUE 2 - Cont (3)

Dwayne Taylor did present evidence which required the trial court to give Self-defense instructions requested by the defense, but failed to do so.

The Appellate Courts decision denying Taylors Appeal was erroneous. The Appellate court focused on Taylor fearing Hunters friends would retaliate, and that no evidence of any of Hunters friends wasnt supported by the State nor defense as being an immediate threat.

The Appellate court focused on everything except the fact that Hunter drove to Dwayne Taylors residence, causing a commotion about money after being told that the person Hunter was looking for wasnt there. Hunter tried to Swing or punch Taylor. Taylor saw Hunters hand go up and grabbed Hunters arm and a pop goes off, and Hunter drops the gun then run. (See attached Appellate court opinion) (Appendix B)

This evidence cant be ignored There is

REASON FOR GRANTING THIS PETITION

ISSUE - I Cont. (4)

Clearly a immediate threat. Just the incident at the door meet the criteria in Section 7-13 of the Criminal Code of 2012 - 720 ILCS 5/7-13 (West 2018)

This petition must be granted to enable this court to review the Criminal Code and 720 ILCS 5/7-13 (2018) and correct the erroneous decision made by both the Circuit, and Appellate court in this cause.

REASON FOR GRANTING THE PETITION

ISSUE - II

This petition should be granted because Dwayne Taylor is entitled to a new Sentencing hearing where his life-without-parole sentence was the result of improper double enhancement. Dwayne Taylor was previously convicted of two class X felonies, a class X armed robbery in 92CR 2210801 and Class X armed robbery in 05CR 1722301. The armed robbery conviction in 05CR 17220301, was used to establish an essential element of armed habitual criminal, a class X felony.

At Sentencing the trial court used the same conviction in 05CR 1722301 to sentence Taylor to life imprisonment as an habitual criminal. This sentence, life in prison without parole was harsher than the normal class X felony sentencing range. Therefore, the same conviction was used to establish an element of the offense and also to subject Taylor to a higher sentencing range. As a result of this improper double enhancement of Taylor's sentence, is improper.

As a general principle, a single factor cannot be

used both as a element of the offense and as an aggravating factor justifying the imposition of a harsher sentence than might otherwise have been imposed. See *People v Gonzalez* 151 Ill.2d 79, 83-84. *People v. Ferguson* 132 Ill.2d 86, 97 (1989). Such dual use of a single factor is often referred to as double enhancement. *Gonzalez*, 151 Ill.2d at 84. Imposition of an extended-term sentence after conviction for an offense that requires proof of a defendant's prior felony is not improper double enhancement as long as different felonies are used to establish the offense and eligibility for the extended sentence. *Gonzalez*, 151 Ill.2d at 85.

In *Divayne Taylor* case, the essential elements of armed habitual criminal, a class X felony, are (1) possession of a firearm, and (2) two prior convictions for felonies enumerated in the statute 720 ILCS 5/24-1.7(a)(2020). Class X felonies are punishable by 6 to 30 years imprisonment 730 ILCS 5/65(a)(2020). However, under the general recidivism statute, a defendant with three separate class X felony convictions within 20 years, excluding time in custody, is subject to a mandatory life without

parole Sentence 730 ILCS 5/5-4.5.95(a) (2020)
people v Debordeleben 2018 711 App (1st) 151741⁵ 7.

At trial Taylor's robbery conviction 05CR1722301
was used to establish an essential element of
armed habitual criminal, a class X felony. At
sentencing the trial court used the same
conviction in 05CR1722301 to sentence Taylor
to life imprisonment as a habitual criminal.
See attached (Appendix-D) (sentencing hearing)

Dwayne Taylor asks that this court review
this issue because there are conflicts with
two different appellate courts in Illinois
which must be resolved so that Dwayne
Taylor or any other future defendants
won't be improperly sentenced under the habitual
criminal statute.

In people v O'neal 2021, 711 App (4th) 170682)
the Illinois Appellate Court rejected a similar
argument, stating that defendant's sentence
resulted from a double enhancement, but
concluded that the life without parole sentence

Automatically triggers a natural life Sentence. O'neal also cites no other authority in which such a double enhancement had been deemed proper.

People v. Graham 399 Ill. App 3d 1169, 1172 (4th dist) (2010) is instructive. There, the court found that an impermissible double enhancement occurred where a single felony conviction established the defendant's status as a felon for a class 2 restricted weapon possession offense, and qualified him for Class X Sentencing under Section 5-4.5.95 (b). Other Appellate Courts have reached the same conclusion. See O'neal 377 Ill App 3d at 304. People v. Melvin 2015 IL App (2d) 131005 13. This is because "nothing in the statutory language of Section 5-4-5.95(b) expressly indicates the legislature's intended double enhancement to be permissible in this situation. Owens 377 Ill App 3d 302, 305 (1st dist) (2007). These courts concluded that prescription of a mandatory elevated Sentencing range for repeat offenders alone, is insufficient to find that the legislature clearly intended to allow double enhancement.

Nothing in Section 5-4.5-95(b) expressly permits use of the same class X felony to establish an element of the third class X offense and then also to impose a life without parole sentence in the absence of any clearly expressed intent. Then, Dwayne Taylor is currently serving a life sentence without parole based on an unequivocal legislative directive permitting double enhancement, but rather a reading of two statutes that both merely happen to require proof of two prior felony convictions. Onal 2021 ILL App (4th) 170682.

This Court should grant this petition because the opinion of the Illinois Appellate Court is erroneous, and Dwayne Taylor asks that this Court review this issue. a grant Dwayne Taylor a new sentencing hearing to correct his improper sentence.)