

No.: 23-7639

IN THE
SUPREME COURT OF THE UNITED STATES

LOUIS CHARLES BOUIE,

Plaintiff

VS.

PENNSYLVANIA DEPARTMENT OF
CORRECTIONS,

Defendant

PETITION FOR REHEARING

Petition for Rehearing upon the October 7, 2024 dismissal from the Conference initiated by the *Petition for Writ of Certiorari* from the *Per Curiam* Order Supreme Court of Pennsylvania dated February 21, 2024 affirming the *Memorandum Opinion* dated July 10, 2023 from the Commonwealth Court of Pennsylvania sustaining the Department of Corrections,' (D.O.C.), *Preliminary Objections* and dismissing the Petition for Review filed by Mr. Bouie on April 4, 2022.

Louis Charles Bouie, # QF-6982
Pro Se, Plaintiff
State Correctional Institution at Waymart
11 Fairview Drive, P.O. Box 256
Waymart, PA 18472



QUESTION PRESENTED FOR REVIEW

I. Does the factor that the Department of Corrections implemented a sentencing statute, 61 Pa.C.S.A. § 4105, through discretion thereby eliminating retroactive application of said statute by improperly splitting what is, or should be, a single statute with connected parts withstand constitutional muster when the split sections of the act were automatically utilized as retroactive in a manner to obtain financial gain on one side, and on the other side are disregarding/violating Mr. Bouie's liberty interest through improper applications in violation of the long standing holdings in Calder v. Bull, 3 U.S. 386 (1798); Hewitt v. Helms, 482 U.S. 755 (1987) and this Court's recent decision in Pennsylvania v. Muniz, 138 S.Ct. 925 (2018)?

(Proposed Answer in the Negative)

LIST OF PARTIES

The indispensable parties in the matter herein are as follows:

- I. Mr. Bouie is the *Pro Se*, Plaintiff, who is presently incarcerated within the State Correctional Institution at Waymart, located at 11 Fairview Drive, P.O. Box 256, Waymart, PA 18472.
- II. The D.O.C. is the Defendant in the above captioned matter who is represented by Abby N. Trovinger, Esq., whose office is located within D.O.C. headquarters at 1920 Technology Parkway, Mechanicsburg, PA 17050.

Order Denying Certiorari

The order of this Honorable Court stated herein verbatim is as follows:

"The Court today entered the following order in the above-entitled case: The Petition for a Writ of Certiorari is denied." (See Attached page)

REASONS RELIED UPON FOR REHEARING

I. Does the factor that the Department of Corrections implemented a sentencing statute, 61 Pa.C.S.A. § 4105, through discretion thereby eliminating retroactive application of said statute by improperly splitting what is, or should be, a single statute with connected parts withstand constitutional muster when the split sections of the act were automatically utilized as retroactive in a manner to obtain financial gain on one side, and on the other side are disregarding/violating Mr. Bouie's liberty interest through improper applications in violation of the long standing holdings in Calder v. Bull, 3 U.S. 386 (1798); Hewitt v. Helms, 482 U.S. 755 (1987) and this Court's recent decision in Pennsylvania v. Muniz, 138 S.Ct. 925 (2018)?

It is well understood that "[a] State creates a protected *liberty interest* by placing substantive limitations on official discretion."¹ "A procedural due process claim is subject to a two-stage inquiry: (1) whether the plaintiff has a property interest protected by procedural due process, and (2) what procedures constitute due process of law."² "Although inmates do not have a constitutional right to educational and work programs, once the state grants such rights to prisoners it may not invidiously discriminate against a class of inmates in connection with those programs unless the difference in treatment is rationally related to the legitimate governmental interest used to justify the disparate treatment."³

¹ Olim v. Wakinekona, 461 U.S. 238, 248 (1983)(citing Hewitt v. Helms, 482 U.S. 755 (1987)).

² Fanti v. Weinstock, 629 F. Appx 325, 330-331 (3d Cir. 2015)(quoting Schmidt v. Creedon, 639 F.3d 587, 595 (3d Cir. 2011)).

³ Willowbrook v. Olech, 528 U.S. 562, 564 (2000).

Here, the liberty interest is two-fold, First, Mr. Bouie retains a *liberty interest* through the discretionary aspects granted to the Department of Corrections, (D.O.C.) codified within the statutory construct at 61 Pa.C.S.A. § 4105, *et seq.*, as shown *supra*. Secondly, Mr. Bouie retains a *liberty interest* due to the fact that the D.O.C. granted the State Drug Treatment Program, (S.D.T.P.), to the general population who fit the statutory criterion from the date of enactment, but rendered non-retroactive to those who fit said criterion prior to the effective date, even though the remainder of that same statutory construct was deemed solely retroactive based upon a clear financial benefit for the D.O.C. Said retroactivity cannot withstand constitutional muster, as the initial Acts, specifically Act 2009-33, (S.B. 112), and Act 2019-115, (S.B. 501), were improperly split to receive this result.

Calder specifies that a law is violative of the prohibition of the *ex post facto* clause when that law "inflicts a greater punishment than the law annexed to the crime when committed."⁴ Here, the Act raised the punishment for Mr. Bouie as he was required to complete the Therapeutic Community Program instead of lessening his sentence through S.D.T.P.

⁴ Calder v. Bull, 3 U.S. 386, 390 (1798).

It is improper to split what is in essence a single, statutory construct into several segments just to financially benefit a state entity. Here, Pennsylvania circumvents its own rule of law, stating "[l]egislation which affects rights will not be construed to be retroactive, unless it is declared so in the act; but, where it concerns merely the mode of procedure, it is applied, as of course, to litigation existing at the time of its passage."⁴

Here, as the Act was made retroactive in part and non-retroactive in part, however, this was only for the benefit of the Commonwealth through financial gain based upon collection of fines/costs of inmates. This action improperly raised the punishment for Mr. Bouie as he was required to complete the Therapeutic Community Program instead of lessening his sentence through the State Drug Treatment Program, (S.D.T.P.), Mr. Bouie would have been eligible for a significantly lower sentence had he been sentenced to S.D.T.P., however, Mr. Bouie was compelled through D.O.C. sentencing to complete an additional program, and undergo further scrutiny for release. This Act created a direct "liberty interest" in the S.D.T.P., as it was a tool that could be utilized to obtain liberty by reducing the punishment of crimes that qualify. As this benefit, limits the punishment for a crime, the direct liberty interest created eliminates the right

⁴ Lane v. White, 21 A. 437 (1891)(Supported and explained by New York Life Ins. Co. v. Cumins, 24 F.2d 1 (1928)).

for Mr. Bouie to obtain the benefit. As such, the provisions must be held retroactive, otherwise, it is violative of the *ex post facto* clauses of both Pennsylvania and the United States Constitutions and the rule within Calder.

It is well understood that "a statute is impermissibly retroactive if it 'attaches new legal consequences to events completed before its enactment. Retroactive application occurs only when the statute or rule relates back and gives a previous transaction a legal effect different from that which it had under the law in effect when it transpired.'"⁴ The legal consequences accomplished through this act that were rendered retroactive did not revert back to a previous transaction, instead, they blatantly increased the financial penalty imposed upon the inmate population, a direct violation of the *ex post facto* provision. Further, this Act granted a basis for the inmate population to reduce their sentences if convicted of drug offenses. and provided a way for individuals, such as Mr. Bouie, sentenced prior to the imposition of the law, to gain entry into the program without being sentenced initially to S.D.T.P., granting them a significant reduction in their sentence yet to the detriment of the statutory provision, the Department of Corrections held only the portion of the law that it wished to be retroactive, (the financial provisions),

⁴ Commonwealth v. Childs, 113 A.3d 344, 2014 WL 10788813, *7-8 (Pa. Super. 2014) (quoting Commonwealth v. Robinson, 2010 PA Super 192, 7 A.3d 868, 871-72 (Pa. Super.2010)).

and not the other, (the S.D.T.P. provisions). This ambiguous interpretation unlawfully raises the penalty for a drug crime that now gains the benefit of the S.D.T.P., simply due to the Commonwealth splitting the statutory contract to their benefit. This action violated "[t]he central concern in incorporating *ex post facto* clauses in both federal and state constitutions 'assur[ing] that federal and state legislatures were restrained from enacting arbitrary or vindictive legislation,"⁵ along with the mandate that "individuals are entitled to "fair warning" about what constitutes criminal conduct, and what the punishments for that conduct entail"⁶

CONCLUSION

Thus, Mr. Bouie states that the actions of the D.O.C. increased punishment for Mr. Bouie's crime occurring prior to the Act's enactment and such partial retroactive application violates both federal and state constitutional bans on *ex post facto* laws. In so doing, Mr. Bouie argues the Act's partial retroactivity is therefore unconstitutional both facially and as applied to someone like him whose conviction predated its enactment.

⁵ Pennsylvania v. Muniz, 138 S.Ct. 925 (2018)(quoting Commonwealth v. Muniz, 164 A.3d 1189, 1195 (2018)).

⁶ Id. at 1195,

WHEREFORE, for the foregoing reasons, Mr. Louis Charles Bouie, *Pro Se*, Petitioner in the above captioned matter hereby prays this Honorable Court grant **REHEARING** in this matter upon the denial of the **CONFERENCE** on October 7, 2024; and/or any other applicable remedy this Honorable Court deems prudently appropriate under the circumstances.

Respectfully Submitted,

Date: October 30, 2024

Louis Charles Bouie
Louis Charles Bouie, # QF-6982
Pro Se, Plaintiff
S.C.I. Waymart
11 Fairview Drive, P.O. Box 256
Waymart, PA 18472

IN THE
THE SUPREME COURT OF THE UNITED STATES,

LOUIS CHARLES BOUIE,
PLAINTIFF

No.: 23-7639

VS.

CIVIL ACTION - LAW

PENNSYLVANIA DEPARTMENT
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DEFENDANT

PETITION FOR REHEARING

CERTIFICATE OF SERVICE

I, Louis Charles Bouie, Pro-Se, Plaintiff in the above captioned matter do hereby certify that on this 30 day of October, 2024, sufficient true and correct copies of the forgoing *Cover Letter, Letter from S.C.I. Waymart Librarian, Certificate Attesting to Compliance of Page (15) and Word (3000) Limitations, Praecipe For Appearance, Praecipe to Proceed In Forma Pauperis*, with attachments and *Petition for Rehearing* have been served upon the following persons, and in the following manner.

Pursuant to Supreme Court of United States, Rule 29, and Fed. R.C.P. Rule 5, this service satisfies the *Prisoner's Mailbox Rule*, under Unsworn Falsification to Authorities penalties. In *accord w/ Houston v. Lack, 487 U.S. 266 (1988)*; and 28 U.S.C. § 1746.

Service by First Class Mail:

Scott S. Harris, Clerk of Court
Supreme Court of the United States
1 1ST Street NE
Washington, D.C. 20543-0001

Service by First Class Mail:

(*Counsel for the D.O.C.*)
Abby Trovinger, Esq.
Assistant Counsel
Office of Chief Counsel
1920 Technology Parkway
Mechanicsburg, PA 17050

Respectfully Submitted,

Louis Charles Bouie

Louis Charles Bouie, Pro-Se, Plaintiff
ID# QF-6982
S.C.I. Waymart
11 Fairview Drive, P.O. Box 256
Waymart, PA 18472-0256s

Date October 30, 2024

IN THE
SUPREME COURT OF THE UNITED STATES

LOUIS CHARLES BOUIE : No.: _____
PLAINTIFF :
VS. : CIVIL ACTION - LAW
PENNSYLVANIA DEPARTMENT OF :
CORRECTIONS, :
DEFENDANT : PETITION FOR REHEARING

VERIFICATION

I, Louis Charles Bouie, verify that the facts and statements set forth in the foregoing are true correct to the best of my personal knowledge or information and belief. I understand that any false statements herein are made subject to the penalties for Unsworn Falsification to Authorities, 28 U.S.C.. § 1746.

Respectfully Submitted,

Date: October 30, 2024

Louis Charles Bouie
Louis Charles Bouie, # QF-6982
Pro Se, Plaintiff
S.C.I. Waymart
11 Fairview Drive, P.O. Box 256
Waymart, PA 18472

**Additional material
from this filing is
available in the
Clerk's Office.**