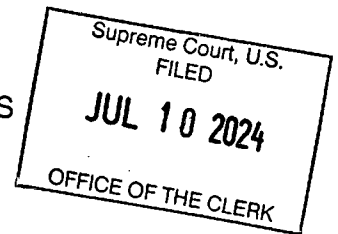


24-5065

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



DAMON JOHN BROUSSARD — PETITIONER
(Your Name)

vs.

STATE OF LOUISIANA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

LOUISIANA COURT OF APPEALS (3rd Circuit)
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

DAMON JOHN BROUSSARD
(Your Name)

C/O D.W.C.C 670 BELL HILL RD.
(Address)

HOMER, LA 71040
(City, State, Zip Code)

NONE
(Phone Number)

QUESTION(S) PRESENTED

Does Petitioner's, harsh and unprecedented, sentence of forty years, without benefits, constitute cruel and unusual punishment, in violation of the Eighth Amendment?

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:

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
<u>STATE V. BROUSSARD</u> 373 So.3d 504 2023-293 (La.App. 3 Cir. 10/25/23)	1
<u>STATE V. BROUSSARD</u> 383 So.3d 155 (Mem) 2023-01529 (La. 4/16/24)	1
<u>STATE V. JONES</u> 54,264 (La.App. 2 Cir (3/9/22), 335 So.3d 532), writ denied, 22-656 (La. 6/22/22 339 So.3d 642)	3,6
<u>STATE V. WASHINGTON</u> 51,818 (La.App. 2 Cir. (4/11/18), 245 So.3d 1234), writ denied, 18-783 (La. 12/17/18), 259 So.3d 343	3,6
<u>STATE V. WILLIAMS</u> 52,052 (La.App. 2 Cir. (6/27/18), 250 So.3d 1200)	3,6
<u>STATE V. COLLINS</u> 53, 704 (La.App. 2 Cir. (1/13/21), 309 So.3d 974), writ denied, 21-369 (La. 6/8/21), 317 So.3d 329	3,7

STATUTES AND RULES

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APPENDIX C Decision of State Supreme Court Denying Review

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☐ is unpublished.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 373 So.3d 504 2023-293 (La.App. 3^{Cir.} 10/25/23); or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the LOUISIANA SUPREME court appears at Appendix C to the petition and is

- ☒ reported at 383 So.3d 155 (Mem), 2023-01529 (La. 4/16/24); 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 10/25/2023.
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 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

STATE V. JONES, 5⁴,264 (La. App. 2 Cir. (3/9/22),
335 So. 3d 532), writ denied, 22-656
(La. 6/22/22), 339 So. 3d 642

STATE V. WASHINGTON, 51,818 (La. App. 2 Cir. (4/11/18),
245 So. 3d 1234), writ denied, 18-783
(La. 12/17/18), 259 So. 3d 343

STATE V. WILLIAMS, 52,052 (La. App. 2 Cir. (6/27/18),
250 So. 3d 1200)

STATE V. COLLINS, 53,704 (La. App. 2 Cir. (1¹³/21),
309 So. 3d 974), writ denied, 21-369
(La. 6/8/21), 317 So. 3d 329

STATEMENT OF THE CASE

The sentence of 40 years at hard labor without the benefit of parole, probation, or suspension of sentence is unconstitutionally harsh and excessive given the facts and circumstances of this case. The sentence is not appropriately tailored to the Petitioner, or the facts of the isolated offense in this case. Accordingly, the sentence should be vacated, and a sentence which is not constitutionally excessive imposed.

REASONS FOR GRANTING THE PETITION

After trial and sentencing in this matter, an appeal was taken. The Third Circuit of Appeals Court vacated the sentence and remanded the matter for resentencing. An error patent was cited in the Trial Court's denial of diminution of sentence. The Trial Court also failed to state what portion of the sentence was to be served without benefits².

On remand for sentencing held January 11, 2023, the Trial Court imposed a sentence of 40 years at hard labor without the benefit of parole, probation, or suspension of sentence. Petitioner was given credit for time served and the Trial Court recommended confinement in a facility where he would receive sex offender treatment. Additionally he was advised of the requirements to register as a sex offender on release.

Petitioner argues that the sentence of 40 years at hard labor is excessive given the facts and circumstances of this case. This sentence is not appropriately tailored to the Petitioner or the facts of the offense in this case. Thus, this sentence should be vacated, and a sentence which is not constitutionally excessive imposed.

Prior to imposition of the original sentence in this matter, the Trial Court received a presentence report, which according to trial counsel, recommended that only 25 years be served without benefit. The sentencing range in this matter is not less than 25 nor more than 99 years at hard labor. At least the first 25 years of the sentence must be served without benefit of probation, parole, or suspension of sentence.

Prior to the imposition of the original sentence, Petitioner's daughter made a statement to the Court. She spoke more to her father than the Court, telling him she felt her childhood years had been taken and her innocence shattered. Further, she explained the impact on her life not celebrating milestones with a father and struggles with male figures and trust.

²The Uniform Commitment Order indicated the entire sentence was to be served without benefit.

The Trial Court had been provided information relative to the programs completed by the Petitioner during his time incarcerated. Prior to resentencing, the Trial Court was provided a letter written by the Petitioner and additional certifications of completion of courses and programs, in which he participated while in custody.

The Petitioner is not the worst of offenders and this was not the worst of offenses. He may not have received the maximum sentence available to the Trial Court, but this is effectively a life sentence. At the Petitioner's age, a 40 year sentence without benefits, and without good time eligibility could result in him spending the rest of his life in prison. The 40 year sentence at hard labor with denial of benefits, for the entirety of the sentence, constitutes a sentence that is cruel, excessive, and unusual punishment. This serves no measurable contribution to justice and is violative of the 8th Amendment to the U.S. Constitution.

Petitioner's daughter testified that she believed the Petitioner was intoxicated the night she described being assaulted. This is not raised as justification or a defense in this matter. However, if any part of his actions were the result of his inebriation, then rehabilitation and recovery will lead him in a different direction.

Petitioner has been working to improve himself while incarcerated. Aside from acknowledging the certificates from programs he participated in had been received, there was little to no discussion regarding his efforts at rehabilitation.

The Louisiana Third Circuit Court of Appeal affirmed Petitioner's sentence, including no benefits for the entire 40 years of imprisonment. The Third Circuit cited four cases with "similar sentences for similar offenses" as justification for its position. However, the first three cases relied on by the Third Circuit all provided benefits after 25 years of incarceration. See, STATE V. JONES, 54,264 (La.App. 2 Cir. 3/9/22), 335 So.3d 532, writ denied, 22-656 (La. 6/22/22), 339 So.3d 642; STATE V. WASHINGTON, 51,818 (La.App. 2 Cir. 4/11/18), 245 So.3d 1234, writ denied, 18-783 (La. 12/17/18), 259 So.3d 343; STATE V. WILLIAMS, 52,052 (La.App. 2 Cir. 6/27/18), 250 So.3d 1200.

Furthermore, the fourth case relied on by the Third Circuit involved a defendant with an extensive criminal history, who lacked mitigating factors and who "repeatedly" engaged in acts of aggravated

incest with his stepdaughters. His sentence was only 30 years--10 less than Petitioner's whose conviction was for one isolated incident involving his daughter. See STATE V. COLLINS, 53,704 (La.App. 2 Cir. 1/13/21), 309 So.3d 974, writ denied, 21-369 (La. 6/8/21), 317 So.3d 329.

None of the cases referenced and relied on by the Third Circuit are remotely similar to Petitioner's isolated act, yet in three of the four cases, the defendant's were given benefits after the first 25 years of incarceration. The fourth case involved a sentence of only 30 years for conduct far more egregious than Petitioner's. In fact, none of those defendants were punished as harshly as Petitioner was in his sentence.

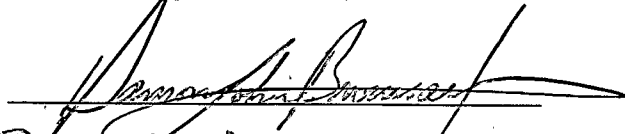
Petitioner is a first felony offender. He is capable of and willing to make the needed changes for rehabilitation and to once again become a valued member of society. Even after receiving a 40 year hard labor sentence. Petitioner continued to work to improve himself and to learn, by taking and completing classes to improve himself.

Petitioner understands that his regretful, isolated act is deserving of punishment. However, such punishment should be proportionate to act within reason. Forty years with no benefits is not only unreasonable, but clearly excessive, cruel, and unusual under the 8th Amendment.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Damien John Broussard", written over a horizontal line.

Damen John Broussard Doc#764312

Date: July 1st, 2024