No. 24-5618

IN THE
SUPREME COURT OF THE UNITED STATES

ARAMIAN SCOTT, Petitioner,

vs.

KIM FOXX, (State's Attorney),
VINCENT M. GAUGHAN, (Trial Court Judge),
BRITTNEY GREENE, (Warden).

PETITION FOR WRIT OF CERTIORARI
(TO THE SUPREME COURT FOR THE STATE OF ILLINOIS)

ARAMIAN H. SCOTT SR., B-37232
W.I.C.C. 2500 Rt.99 South
Mount Sterling, IL. 62353

QUESTION PRESENTED

IS PETITIONER'S 25-YEAR SENTENCE ENHANCEMENT, FOR PERSONAL DISCHARGE OF A FIREARM VOID, WHERE THE STATE COURT LACKED SUBJECT MATTER JURISDICTION TO ENTER JUDGMENT, WHERE PETITIONER WAS NOT GIVEN WRITTEN NOTICE OF THE AGGRAVATING FACTOR IN HIS INDICTMENT AND/OR BEFORE TRIAL, AND WHERE THE AGGRAVATING FACTOR WAS NEVER SUBMITTED TO THE JURY AS AN AGGRAVATING FACTOR; IN VIOLATION OF STATE STATUTORY LAW, AND PETITIONER'S SUBSTANTIVE DUE PROCESS RIGHTS UNDER ART. 1 SEC. 2 AND 8, IL CONST.; AND THE 5th, 6th, AND 14th AMEND. UNDER THE U.S. CONST.

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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TABLE OF AUTHORITIES

OPINION BELOW

October 3, 2022, the State Trial Court entered an opinion, see attached hereto, at App. exh. A

September 28, 2023, the State Appellate Court entered an opinion, see attached hereto, at App. exh. C

March 27, 2024, the Illinios Supreme Court entered an opinion, see attached hereto, at App. exh. D

JURISDICTION

On the date of March 27, 2024, the Illinois Supreme Court entered judgment; and no petition for rehearing was filed.

Hence, the Jurisdiction of this Court is invoked, under 28 U.S.C. § 1257.

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

725 ILCS 5/111-3 (c-5); Pages 2,3,4, and 7

Article 1 Sections 2 and 8, of the Ill. Const. Pages 2,3,5,6, and 8

Amendents 5, 6, and 14, of the U.S. Const. Pages 2,3,6, and 8

720 ILCS 5/9-1 (a)(1) and 9-1 (a)(2); Pages 3,4,5, and 6

730 ILCS 5/5-8-1 (a)(1)(d) (iii) Pages 3,5, and 6

725 ILCS 5/111-3 (a)(1)(2) and (3); Page 5

Pattern Jury Istruction 28.06; Pages 6 and 7

STATEMENT OF THE CASE

On the date of October 3, 2022; the Trial Court entered judgment, where the court held, in relevant part:

("Petitioner's contention regarding the constitutionality of 25-year enhancement penalty was reviewed by this court and this court found that the jury instructions included the language that Petitioner 'personally discharged a firearm' and was required to be proven beyond a reasonable doubt. Because the jury was correctly instructed to prove beyond a reasonable doubt that Petitioner personally discharged a firearm and the enhancement was correctly applied to the Petitioner's sentence, Petitioner's contention here is frivolous and without merit.

This Court agrees with the previous order and opines the 25-year enhancement was both properly charged under 725 ILCS 5/111-3 (c-5) and applied in petitioner's case. Therefore, the 25-year enhancement cannot be said to be void and Petitioner is not entitled to relief sought.") See Appendix exh. A, (Trial Court's order).

On Appeal, appellate counsel filed a Finley motion, where counsel discounted Petitioner's claim. In counsel's Finley motion, counsel stated, in relevant part:

("Because the indictment properly apprised Scott of the firearm enhancement, and because the fact supporting the firearm enhancement was submitted to the jury and found proven beyond a reasonable doubt, Scott's argument fails on the merits, and he is not entitled to mandamus to strike the firearm enhancement from his sentence.") See App. exh. B, (Apprllate Counsel's Finley motion, see pages 7-11).

On September 28, 2023; the Appellate Court granted counsel's Finley motion, and dismissed Petitioner's appeal. See App. exh. C, (Appelate Court's order).

Petitioner filed a timely Petition for Leave to Appeal to the Supreme Gourt of Illinois, and on March 27, 2024; Petitioner's Petition for Leave to Appeal to the Supreme Court of Illinois was denied. See App. exh. D, (Supreme Court order).

Here, Petitioner believes, that the State's notion will be that the mere statement "personally discharged a firearm", was enough information to put Petitioner on notice that fact would be considered in aggravation, during sentencing.

Petitioner is raising, that where the State's indictment stated "personally discharged a firearm in the course of the offense", and only cited 720 ACT 5 SECTION 9-1 (a)(1) and 720 ACT 5 SECTION 9-1 (a)(2); there was no way for Petitioner to apprehend from the face of the indictment that his minimum sentence would be increased by 25 years, and up to a term of natural life, if Petitioner went to trial and got found guilty.

ARGUMENT

IS PETITIONER'S 25-YEAR FIREARM ENHANCEMENT VOID; WHEREIN THE STATE COURT EXCEEDED ITS STATUTORY AUTHORITY, AND LACKED JURISDICTION TO ENTER JUDGMENT. BECAUSE THE PROSECUTION NEVER COMMENCED, AND/OR PUT PETITIONER ON NOTICE IN THEIR INDICTMENT, OR BEFORE TRIAL THAT THEY WOULD BE SEEKING AN ENHANCED SENTENCE, BASED ON PERSONAL DISCHARGE OF A FIREARM; NOR DID THE PROSECUTION SUBMIT SAID ISSUE TO THE JURY AS AN AGGRAVATING FACTOR. IN VIOLATION OF STATE STATUTORY LAW (725 ILCS 5/111-3 (c-5); AND PETITIONER'S SUBSTANTIVE DUE PROCESS RIGHTS, UNDER ART. 1, § 2 AND 8, OF THE ILL. CONST.; AND THE 5th, 6th, AND 14th AMEND. UNDER THE U.S. CONST.

1. 725 ILCS 5/111-3 (c-5) (West. 2002); provides in relevant part:

("Notwithstanding any other provisions of law, in all cases in which the imposition of the death penalty is not a possibility, if an alleged fact (other than a prior conviction) is not an element of an offense but sought to be used to increase the range of penalties for an offense, the alleged fact [must] be included in the charging instrument or otherwise provided to defendant through a written notification before trial, submitted to the trior of fact as an aggravating factor, and proved beyond a reasonable doubt. Failure to prove the fact beyond a reasonable doubt is not a bar to a conviction for the commission of the offense, but is a bar to increasing, based on that fact, the range of penalties for the offense beyond the statutory maximum that could otherwise be imposed for that offense.") Id.

2. ("The fundamental rule of statutory interpretation is to give effect to the intention of the legislature... 'When the statutory language is clear, it must be given effect without resorting to other tools of interpretation.'") Quoting, Zaabel v. Konetski, 282 Ill. Dec. 748; (2004). Hence, the State should defer to the plain language of the statutory provisions under 725 ILCS 5/111-3 (c-5).

3. The State's notion has been, that the mere statement (personally discharged a firearm) was enough information to put Petitioner on notice, that said issue would be used to seek an enhanced sentence. In the State's indictment it only cites the first degree murder statute (720 Act 5 § 9-1 (a)(1), and (a)(2); the State did not cite any sentence enhancement statutes, or mention anything about seeking an enhanced sentence.

4. Petitioner raises, that the State's failure to specifically cite 730 ACT 5 SECTION 5-8-1 (a)(1)(d) (iii), in conjunction with 720 ACT 5 SECTION 5/9-1 (a)(1) and (a)(2); left Petitioner no way to apprehend from the face of the indictment, that the State was seeking an enhanced sentence, and that Petitioner's minimum sentence would be increased by 25 years.

5. ("A criminal defendant has a fundamental right to be informed of the nature and cause of criminal accusations made against him. See U.S. Const., amend. VI; Ill. Const. 1970, art. 1, § 8. In Illinois, this right is implemented by section 111-3 of the Code (725 ILCS 5/111-3 (West 2016), which sets forth specific pleading requirements for a criminal charge. Carey, 2018 IL 121371, ¶20, 423 Ill. Dec. 61, 104 N.E.3d 1150. In relevant part, section 111-3 (a) requiers any criminal charge to (1) '[state] the name of the offense,' (2) '[cite] the statutory provision alleged to have been violated,' and (3) '[set] forth the nature and elements of the offense charged.' 725 ILCS 5/111-3 (a)(1) to (a)(3) (West 2016).") Quoting, People v. Edwards, 2021 IL App (4th) 210116-U. Also see, People v. Edwards, 2019 IL 123370, ¶31, 433 Ill. Dec. 142, 131 N.E.3d 500 (referring to the State's failure to cite the statutory penalty provision as a "fundamental defect")

6. Also, in U.S. v. Arnold, 485 F.3d 290 (2007); the Court held, in relevant part:

("Government's statutory citation error in its pre-trial sentencing enhancement notice which announced government's intention to seek a sentence of ten years to life, instead of the mandatory life sentence it was actually seeking, was prejudicial, since without notice that he would face a mandatory life sentence, defendant did not have adequate information to decide whether to enter a plea or go to trial.") Id.

7. Petitioner raises, that under 720 ILCS 5/9-1 (a)(1) and (a)(2); (the only statute cited in the State's indictment) holds, to wit: a person convicted under said statute, shall not be sentenced to less than 20 years, and not more than 60 years. The State did not cite 730 ILCS 5-8-1 (a)(1)(d) (iii); which holds, to wit: that if in the commission of an offense a person personally discharges a firearm that proximately causes the death, a term of 25 years up to natural life shall be added to the sentence. Also, the State did not mention in their indictment, or provide written notification before trial, that they were seeking an enhanced sentence.

Hence, Petitioner was prejudice, because without notice that he would face a mandatory minimum of 45 years, Petitioner did not have adequate information to decide whether to enter a plea or go to trial. See U.S. Const., amend. VI; Ill. Const. 1970, art. 1, § 8; see also, People v. Edgecombe, 2011 IL App. (1st) 092690 at 25, ("The alleged fact [must] be included in the charging instrument *** submitted to a trier of fact as an aggravating factor, and proved beyond a reasonable doubt."); People v. Ellis, 2012 IL App. (2d) 110815-U; and U.S. v. Arnold, 485 F.3d 290 (2007).

8. The State also contends, that the jury was intructed on the aggravating factor, the State's notion is, where the jury instruction given to find first degree murder, stated "personally discharged a firearm", that the issue was submitted to the jury as an aggravating factor. See App. exh. F (1-3); (copy of jury instructions).

9. Petitioner raises, to submit a sentence enhancing element to the jury, the State should have given a special jury instruction form (Illinois Pattern Jury Instruction 28.06); for the jury to specifically find the element of the offense, being used in aggravation, to enhance the sentence. See App. exh. G (copy of an example of jury instruction 28.06, Enhancement Instruction); also see, exh. H (copy of the jury's verdict form).

10. Petitioner raises, that the jury only returned a verdict form for first degree murder, and that the State's failure to submit a sentence enhancement jury instruction (28.06), barred the State Court from imposing an enhanced sentence, based on personal discharge of a firearm. See People v. Edgecombe, 2011 IL App. (1st) 092690 at 25, ("The alleged fact [must] be included in the charging instrument *** submitted to a trier of fact as an aggravating factor, and proved beyond a reasonable doubt."); also see 725 ILCS 5/111-3 (c-5).

11. Moreover, in Alleyne v. U.S., 133 S.Ct. 2151 (2013); the United States Supreme Court held that only a jury can determine facts which increase a mandatory minimum sentence because "a fact triggering a mandatory minimum alerts the prescribed range of sentences to which a criminal defendant is exposed." Id. 133 S.Ct. at 2160. This is because facts that increase a prescribed range of penalties are "part of the substantive offense," which under the due process clause, cannot be found by a judge without the consent of the defendant. Id.

The U.S. Supreme Court concluded in Alleyne that the distinction between mandatory minimum and maximum was illussory, and enunicated a simple rule of law: "Any fact that, by law increases the penalty for a crime is an 'element' that must be submitted to the jury and found beyond a reasonable doubt." Alleyne, 133 S.Ct. at 2163. In addition to recognizing as unconstitutional, judicial fact finding to establish mandatory minimum sentences, the Supreme Court's decision in Alleyne announced a new constitutional rule by redefining what a "crime" is in the context of the sixth amendment; acknowledging that the historic relationship between crime and punishment compels that any fact which by law increases the range of punishment to which a criminal defendant is exposed is an element of a new offense. "A distinct and aggravated crime." Therefore elements are entitled the full panoply of constitutional protections under the sixth amendment in conjunction with due process. Id.

12. Petitioner maintains, that Alleyne stands wholly and solidly on its own, as it is embeded into his rights as codified in the sixth amendment. Alleyne represents a "watershed rule" of Constitutional law on equal standing as In re Winship, 397 U.S. 358, 364, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970) and Jackson v. Virginia, 443 U.S. 307, 319, 99 S.Ct. 2781, 2789, 61 L.Ed.2d 560, 573 (1979). Accordingly, Alleyne must be given full retroactive effect and be treated as a watershed rule. The failure to observe same, jeopardizes Petitioner's Constitutional rigrts where he was subjected to a sentencing law which dose not require Notice, Submission to the Jury, or Proof beyond a Reasonable Doubt. In violation of Petitioner's Constitutional Rights under; U.S. Const., Amend. 5, 6, and 14; and Ill. Const. 1970, Art. 1, § 2 and 8.

CONCLUSION

WHEREFORE, Petitioner Aramian H. Scott, Sr., prays this Honorable Court Grants him Writ of Certiorari, to the Supreme Court for the State of Illinois.

Respectfully Submitted,

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