No. _____

24-6748

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Clifford C. Galley, II, — PETITIONER
(Your Name)

vs.

The State of Colorado — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Colorado Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Clifford C. Galley, II, #166765
(Your Name)

Colorado State Penitentiary
P.O. Box #777
(Address)

Canon City, CO. 81215-0777
(City, State, Zip Code)

None (incarcerated)
(Phone Number)

QUESTION(S) PRESENTED

1) Under the ever evolving standards that mark the progress of a maturing society, does the Eighth Amendments prohibition against cruel and unusual punishment require consideration as to whether the imposition of aggregate, consecutively imposed sentences amounting to a life without the possibility of parole sentence are grossly disproportionate?

2) Do some of Mr. Galley's individual sentences violate the Eighth Amendments prohibition against the imposition of cruel and unusual punishment given the particular facts associated with the offenses he was convicted of?

3) Were Mr. Galley's Fourteenth Amendment protections violated when Colorado failed to follow its own well-settled law when imposing sentence upon him in an illegal manner, which, under Colorado law, only allows for correction within 126 days of having done so?

LIST OF PARTIES

[X] 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:

RELATED CASES

People v. Galley, 2023 Colo. App. No. 23CA1529 (9/26/24), 2024 Colo. App. Lexis 1179, 2024 WL 4457796 (not published pursuant to C.A.R. 35(e)), attached as Appendix A.

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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[ ] is unpublished.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.

[x] 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,
[x] is unpublished.

The opinion of the Colo. Supreme Court denying certiorari court appears at Appendix B to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[x] 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).

[X] For cases from **state courts**:

The date on which the highest state court decided my case was Jan. 13, 2025. A copy of that decision appears at Appendix B.

[ ] 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

Eighth Amendment of the United States Constitution:

"Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted."

Fourteenth Amendment of the United States Constitution:

"[N]o 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."

STATEMENT OF THE CASE

In 2013, Mr. Galley was on a methamphetamine induced, days long, binge and was not rational in any sense of the word. The police, who had been investigating Mr. Galley attempted to stop him when he was in the drive through lane of a Taco Bell. The police were in unmarked vehicles and not wearing police uniforms. Mr. Galley, who was suffering from paranoid delusions and who was completely unaware that the police were attempting to stop him, believed he was being jacked by unknowns and crashed his truck through the attempted blockade, injuring one of the officers (the officer suffered a torn A.C.L.) The officers fired shots at Mr. Galley, who became further paranoid, resulting in an extensive high speed chase. shots were returned from Mr. Galley's vehicle. While his codefendant, who got a deal to testify against Mr. Galley said it was Mr. Galley who fired the shots, since Mr. Galley was driving, it is highly unlikely that he did so and rather, it was the codefendant. Regardless, shots were fired from Mr. Galley's vehicle during the chase.**

The chase ended with Mr. Galley crashing his truck, jumping out and attempting to car-jack a vehicle. This attempt failed and Mr. Galley fled on foot into a subdivision where he was apprehended some 5 hours later, hiding by a home.

The District Attorney filed a plethora of charges against Mr. Galley, including: seven counts of attempted first degree murder; one count of attempted manslaughter; one count of attempted first degree assault; four counts of aggravated motor vehicle theft; two counts of burglary, one count of attempted aggravated robbery;

** It should be noted that Mr. Galley was tested for gunshot residue and none was found.

one count of criminal mischief; and one count of vehicular eluding. Mr. Galley was convicted on all counts, receiving an aggregate sentence of 169 years, all of which were imposed in the "aggravated sentencing range" as defined by § 18-1.3-401 C.R.S. Mr. Galley received 48 years each on the attempted first degree murder convictions (sentences he submits are illegal under Colorado law, see infra) three of which were imposed consecutively, resulting in a 144 aggregate sentence on those convictions alone.

A direct appeal was filed and Mr. Galley's convictions were affirmed. See People v. Galley, Colo. App. No. 2014 CA 2257, June 21, 2018 (not published pursuant to C.A.R. 35(e)). Certiorari was sought and denied by the Colorado Supreme Court on Jan. 7, 2019.

Mr. Galley's family mortgaged their home to retain private counsel to assist Mr. Galley on a collateral attack of his convictions/sentences. Counsel sat on the case for almost three years, and just prior to the statute of limitations for seeking collateral review of one's conviction(s) expired (see § 16-5-402(1) C.R.S.) counsel filed a Crim.P. 35(c) motion, raising a sole claim that Mr. Galley's sentences were grossly disproportionate. That motion was summarily denied, at which point counsel abandoned Mr. Galley.

Mr. Galley filed a pro-se appeal, which affirmed the trial court's summary denial of the proportionality claim. See Appendix A, People v. Galley, Colo. App. No. 2023 CA 1529, Sept. 26, 2024 (not published pursuant to C.A.R. 35(e)). Certiorari

was sought and denied by the Colorado Supreme Court on Jan. 13, 2025. This petition for the issuance of a writ of certiorari filed to this Court followed.

REASONS FOR GRANTING THE PETITION

1) Under the ever evolving standards that mark the progress of a maturing society, does the Eighth Amendment's prohibition against cruel and unusual punishment require consideration as to whether the imposition of aggregate, consecutively imposed sentences, amounting to a life without the possibility of parole sentence, are grossly disproportionate?

The Eighth Amendment of the U.S. Constitution prohibits the imposition of any sentence that is grossly disproportionate to the severity of the crime. See Ewing v. Calif., 538 U.S. 11, 21, 123 S. Ct. 1179 (2003); see also, Miller v. Alabama, 567 U.S. 460, 469, 132 S. Ct. 2455 (2012). In Ewing, this Court held that while determinations that any sentence is grossly disproportionate will be exceedingly rare, in Rummel v. Estelle, 455 U.S. 263, 274-75, 100 S. Ct. 1133 (1980), this Court also held that "'Eighth Amendment judgments should not be, or appear to be, merely the subjective views if individual Justices; judgment should be informed by objective factors to the maximum possible extent.'" Id, (quoting Coker v. Georgia, 433 U.S. 584, 592, 97 S. Ct. 2661 (1977); see also, Atkins v. Virginia, 536 U.S. 304, 313, 122 S. Ct. 2242 (2002).

In Miller supra,[1] this Court determined that a mandatory life without parole sentence was unconstitutional under the Eighth Amendment's prohibitions, as it failed to take into account a juvenile offender's age. Id; see also e.g., Graham v. Flordia, 560 U.S. 48, 130 S. Ct. 2011 (2010)(finding a life without the possibility of parole sentence for a non-homicide offense was unconstitutional. i.e., the juvenile offender must have a meaningful opportunity at parole).

1. Miller addressed automatic life without parole sentences for homicide offenses.

To date this Court has never set a clear path for the courts to follow as to whether a defacto life without the possibility of parole sentence, i.e., a term of years that exceeds a defendant's life expectancy can violate Eighth Amendment protections. See Lockyer v. Andrade, 538 U.S. 63, 71, 123 S. Ct. 1166 (2003)(citing Ewing supra). Given his 169 year sentence of which 4, 48-years terms are illegal, Mr. Galley invites this Court to do so. He does so, especially because he was only 22 when he committed these offenses and had been chronically addicted to methamphetamine for the previous 5-years. See e.g., State v. Henry, 991 N.W. 534, 2023 WL 381184 at **14-20 (Iowa Ct. App. 2023)(discussing the effects of meth. induced psychosis with respect to a murder charge and an insanity defense); Angel v. Ariz. Dept. of Econ. Sec., 2003 Ariz. Unpub. Lexis 306, ¶ 12 (presenting a psychological expert who opines a well known fact in drug/alcohol addiction clinics that maturity levels cease to advance in those who chronically use drugs or alcohol).

At no time did the State of Colorado take into account the particular facts of Mr. Galley's previous adolescent life and his drug addiction; or that he was in a meth. induced psychosis at the time he committed the offenses he was convicted of. Instead, the courts merely imposed the maximum level of penalty it could, when in fact, Mr. Galley should have been considered, given his drug use, a juvenile offender. See Graham supra.

Mr. Galley in no way attempts to not be accountable for the offenses he was

convicted of. And while a police officer was injured and society at large was put in danger by his actions, Mr. Galley, due to the meth. psychosis believed someone was trying to jack him (and not the police, again who were in unmarked vehicles and did not clearly identify themselves.)

In support of Mr. Galley's request for this Court to grant review, he notes that multiple states consider aggregate/consecutive sentences with respect to proportionality analyis; as well as consider the particular facts of the individual case concerning said. See Thomas v. State, 333 Md. 84, 634 A.2d 1 (1992); State v. Green, 329 So.3d 917 (LA. App. 3 Cir. 2024); Yuille v. State, 654 S.W.3d 416 (Mo. App. W.D. 2022); State v. Delehoy, 929 N.W.2d 103 (S.D. 2009). One would presume that this Court would wish its controlling precedents to be applied uniformly and it is clear that because there aren't any with respect to proportionality analysis on consecutively imposed sentences there is no set course. Mr. Galley moves this Court to set said in his case.

2) Do some of Mr. Galley's individual sentences violate the Eighth Amendment's prohibitions against the imposition of cruel and unusual punishment given the particular facts associated with the offenses he was convicted of?

As already noted, the Eighth Amendment prohibits the infliction of punishment which is cruel and unusual. Id, see also, Ewing, Miller, Graham supras. This protection proscribes imposition of sentences that are grossly disproportionate

to the severity of the offenses committed. See Ewing, 538 U.S. at 21 (quoting Rummel v. Estelle, 445 U.S. 263, 271, 100 S. Ct. 1133 (1980)).

In discussing proportionality analysis, this Court has previously held that the narrow principles for conducting said should include "the gravity of the offense and the harshness of the penalty." Solem v. Helm, 463 U.S. 277, 290-91, 103 S. Ct. 3001 (1983). Moreover, this Court held that no one factor is dispositive when conducting a proportionality review. Id at 290 n.17. This said, this Court has never exclusively stated that lower courts are allowed to consider the individual facts of a particular case. As a result, some states allow for said, while others do not.

In this case, Mr. Galley received 4, 48-year sentences, 3 of which were imposed consecutively (resulting in 144-years of the 169-years imposed); all of which were the maximum sentence in the aggravated sentencing range allowed under Colorado law. See § 18-1.3-401 C.R.S.; see also, §§ 18-2-101, 18-3-102 C.R.S. All these offenses were based upon one action of Mr. Galley, i.e., when he crashed his vehicle out of the blockade of unmarked police vehicles/officers at the Taco Bell drive through, where only one officer suffered a torn A.C.L. And as previously noted, Mr. Galley, who was 22-years of age at the time was suffering from a meth. induced psychosis in which he had delusions of extreme paranoia and thought the unmarked police were attempting to jack or kill him. These four counts of attempted first degree murder, two of which were against the same officer, (hence

their concurrent sentence imposition), three of which were imposed consecutively, were imposed in this fashion as they were alleged to be "per-se" crimes of violence. See § 18-1.3-406 C.R.S. In reality they weren't "per-se" crimes of violence, as Mr. Galley was not convicted of crimes of violence, as required on any attempted first degree murder charge. See People v. Webster, 987 P.2d 836, 943-44 (Colo. App. 1998)(setting forth the fact that since first degree murder is a Class One felony, punishable only by life without the possibility of parole (previously life w/o or death), an attempt to commit such an offense (attempt under § 18-2-101 C.R.S. lowers the substantive offense one level), cannot be imposed in the aggravated sentencing range unless an individual count of a "crime of violence," is charged and proven); see also, § 3 infra, (arguing these sentences are illegal and the State refuses to follow its own laws, thereby violating Mr. Galley's due process protections.)

Mr. Galley thus respectfully submits that these four counts are all grossly disproportionate due to the facts of the case, as well as due to Webster's dictates. As a result, Mr. Galley would respectfully move this Court to grant certiorari and set guidance for all lower courts, i.e., further define what courts should consider when conducting proportionality analysis, so that it is uniform in its orchestration. It's been some twenty plus years since Lockyer was decided, and the only proportionality decisions since have dealt with juvenile offenders. Mr. Galley's case is analogous to that of a juvenile offender given he was only 22

at the time and had been using meth. for 5 plus years, thereby stopping his growth/maturity at 17. Add in the meth. induced psychosis and there are sufficient reasons for considering his sentences, as they are, collectively, a defacto life without the possibility of parole term.

3) Were Mr. Galley's Fourteenth Amendment protections violated when Colorado failed to follow its own well-settled law when imposing sentence upon him in an illegal manner, which, under Colorado law, only allows for correction within 126 days of having done so?

Colorado Rule of Criminal Procedure (Crim.P.) 35(a) states:

> "(a) Correctional of Illegal Sentence: The Court may correct a sentence that was not authorized by law or that was imposed without jurisdiction at any time and may correct a sentence imposed in an illegal manner within the time provided herein for reduction of sentence."

Id, (emphasis in original).

The time period set for reduction of sentence is 126 days. See Crim.P. 35(b).

While the term "illegal sentence" does not appear in any context other than the title of Crim.P. 35(c), the Colorado Supreme Court has repeatedly defined an illegal sentence as being one that is inconsistent with the terms of the sentencing statutes. See Delgado v. People, 105 P.3d 634, 637 (Colo. 2005); see also, Hunsaker v. People, 2021 CO 83, ¶ 19, 500 P.3d 1110, 1114 (discussing

various ways a sentence may be illegal.)

In contrast, the Colorado Supreme Court has yet to define what an "sentence imposed in an illegal manner" is defined as. However, at least one division of the Colorado Court of Appeals has defined it as being one which "'ignores essential procedural rights or statutory considerations in forming the sentence.'" See People v. Knoeppchen, 2019 COA 34, ¶ 9, 459 P.3d 679, 682 (quoting People v. Bowerman, 258 P.3d 314, 316 (Colo. App. 2010)(citing 15 Robert J. Dieter & Nancy J. Litchenstein, Colorado Practice Series, Criminal Practice and Procedure § 21.10 n.10 (2nd ed. 2004)).

In this case, Mr. Galley received four, 48-year sentences (3 imposed consecutively) for his convictions on attempted first degree murder. These sentences, all of which were the maximum allowed in the "aggravated" sentencing ranged defined by § 18-1.3-401 C.R.S., were imposed in that range for some unknown and undefined reason, as the individual counts of a "crime of violence," (see § 18-1.3-406 C.R.S.), were dismissed.

The Colorado Court of Appeals in People v. Webster, 987 P.2d 836, 843-44 (Colo. App. 1998), recognized that because an "attempted first degree murder" charge was a Class One felony (see § 18-3-102(3) C.R.S.)(reduced to a Class Two felony under § 18-2-101(4) C.R.S.), unless a specific count of a "crime of violence" is charged and proven, or some other identifiable aggravating circumstance exists, a defendant sentenced upon conviction of such an offense, must be sentenced in

the presumptive sentencing range defined for a Class Two felony, as defined by § 18-1.3-401(1)(a)(V)(A) C.R.S. Id at 844; see also, e.g., Lucero v. Ortiz, 2007 U.S. Dist. Lexis 76754 at ** 8-12 (U.S. Dist. Ct. of Colo. Case No. 06-cv-01410-PSF-KLM, Oct. 16, 2007)(discussing requirements set in Webster and finding that, unlike in Mr. Galley's case, the Court found aggravating circumstances based upon the defendant's prior conviction.)

As noted, Mr. Galley had no other aggravating circumstances, but for the offenses he was convicted of and the record reflect that when imposing sentence upon him, the trial court found only that the elements of the offenses themselves and that they were "per-se crimes of violence," as justification for imposition of aggravated sentences. See Sentencing Transcripts of Oct. 2, 2014, pp. 56-64 (Mr. Galley sought to supplement the record before the state courts with these transcripts, of which he has a copy, to no avail and thus respectfully moves this Court to order said). Consequently, the State of Colorado failed to follow its own law.

The failure to follow its own law was exacerbated, when the Colorado Court of Appeals found that Mr. Galley's sentence was not an "illegal sentence," but rather, a sentence that was imposed in an illegal manner. See Appendix A, ¶¶ 21-31, pp. 10-15 (also rejecting Apprendi v. New Jersey, 530 U.S. 466 (2000) and Blakely v. Washington, 542 U.S. 296 (2004) issues.)

Mr. Galley respectfully submits that when a state refuses to follow it's own law that a due process violation occurs, as that law creates a liberty interest. See Clemons v. Mississippi, 494 U.S. 738, 746, 110 S. Ct. 1441 (1990); see also, Ross v. Oklahoma, 487 U.S. 81, 91, 108 S. Ct. 2273 (1988).

Here, a liberty interest was created when the mandates of Webster were put in place. Those mandates were then violated when the four attempted first degree murder charges were all imposed at the maximum of the aggravated sentencing range as defined in § 18-1.3-401(1)(a)(V)(A) C.R.S., i.e., 48 years on each count. In other words, Mr. Galley has a liberty interest in receiving presumptive range sentences on each of these four counts, that is, sentences of 8-24 years each.

Mr. Galley respectfully moves this Court to grant certiorari on this claim and find that the Colorado Court of Appeals decision finding Mr. Galleys sentences on the four counts of attempted first degree murder violated Mr. Galley's liberty interests and his protections under the Fourteenth Amendment of the United States Constitution. In turn he would move this Court to vacate those sentences and remand to the trial court for resentencing on those counts. This, as well as all available relief is respectfully requested.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Clifford Galley, II, #166765

Date: 2-25-25