

24 - 6843

CASE NO. _____

FILED

MAR 12 2025

OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE SUPREME COURT OF THE UNITED STATES

ALBERT TOWNSEND,

Petitioner,

-vs-

JERRY SPATNY, WARDEN,

Respondent.

:

:

:

:

:

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

FOR PETITIONER:

Albert Townsend Sr. #: A580-463
Grafton Corr. Inst.
2500 S. Avon-Belden Rd.
Grafton, Ohio 44044
Petitioner, in pro se

FOR APPELLEE:

Stephanie L. Watson (63411)
Assistant Ohio Attorney General
30 E. Broad St. 23rd Floor
Columbus, Ohio 43215
614-644-7233
855-665-2568 (FAX)

Statutory Counsel for Respondent

LIST OF PARTIES

All parties to this proceeding are listed in the caption of the case.

QUESTIONS PRESENTED FOR REVIEW:

- I. WHETHER PETITIONER SUFFICIENTLY DEMONSTRATED THE SUBSTANTIAL DENIAL OF A CONSTITUTIONAL RIGHT TO REQUIRE THE ISSUANCE OF A CERTIFICATE OF APPEALABILITY UNDER 28 U.S.C. §2253?

II. SECOND QUESTION PRESENTED FOR REVIEW:

WHETHER PETITIONER SUFFICIENTLY DEMONSTRATED A CONSTITUTIONAL RIGHT OF A 10-YEAR CONCURRENT PLEA DEAL OFFERED BY PRO SE (TR. P. 16,17), As to United States v. Day, 969 F.2d (3rd Cir. 1992), State v. Weakley, 2017-Ohio-8404?

III. THIRD QUESTION PRESENTED FOR REVIEW:

WHETHER THE CONTINUING CUSTODIAL SUPERVISION OF PETITIONER IN THE ABSENCE OF A SENTENCE AND WITHOUT IN REM, IN PERSONA, OR SUBJECT MATTER JURISDICTION CONSTITUTES CRUEL AND UNUSUAL PUNISHMENT, IN VIOLATION OF THE EIGHTH AMENDMENT TO THE UNITED STATES CONSTITUTION?

IV. FOURTH QUESTION PRESENTED FOR REVIEW:

WHETHER PETITIONER SUFFICIENTLY DEMONSTRATED A CONSTITUTIONAL RIGHT OF HAVING BEEN SUBSEQUENTLY INDICTED 11-YEARS LATER WITHOUT ANY EVIDENCE OR NEW EVIDENCE FROM AN ORIGINAL INDICTMENT THAT HAD BEEN DISMISSED FOR WANT OF PROSECUTION IN CR-07-491536-A. (TR.639-640) IN cr-17-614508-A. as to United States v. Mclemore, 447 F. Supp. 1229, State v. Robertson 2010-Ohio-6185, State v. Michailides, 2018-Ohio-2399?

FIFTH QUESTION PRESENTED FOR REVIEW

V.

WHETHER PETITIONER SUFFICIENTLY DEMONSTRATED A CONSTITUTIONAL RIGHT OF PROSECUTORIAL MISCONDUCT OF WITHHELD ALL EXCULPATORY BRADY DISCOVERY EVIDENCE R.16 WHICH FILED MOTION DATED 11/21/2017, Brady v. Maryland 373 U.S. at 87

TABLE OF CONTENTS

	<u>PAGE</u>
List of Parties	i
Questions Presented for Review	i
Table of Authorities	ii
Opinions Below	iii
Basis for Jurisdiction	iii
Constitutional and Statutory Provisions Involved	iv
Statement of the Case	1,2
<u>Argument:</u>	
First Question Presented for Review	2
Second Question Presented for Review	3
Third Question Presented for Review	3
Fourth Question Presented for Review	4
Appendix Table of Contents	24
Conclusion	6

TABLE OF AUTHORITIE

	<u>PAGE</u>
Brady v. Maryland 373 U.S. at 87	i
Cooper Industries v. Inc. Leatherman Tool Group, Inc. (1991) 532 U.S. 42	3,4
Giglio v. United States 405 U.S. 150,154-55,92 S.Ct. 763 (1972)	5
Gulett v. Haines (S.D. Ohio 2002) 2229 F. Supp. 2d 806	3
Hudson v. Palmer (1984) 468 U.S. 517, 524	3
Lewis v. Comm'r of Corr., 790 F.3d 109 (2 nd Cir.)	5
Lindsey v. Washington (1937) 301 U.S. 397	4
Pressley v. Brown (W.D. Mich. 1990) 754 F. Supp. 112	4
Ryder v. United States (1995) 515 U.S. 177	4
State v. Michailides 2018-Ohio-2399 8 th Dist. Cuyahoga	i
State v. Morton 2022-Ohio-2358	1
State v. Reese 2024-Ohio-2331	1
State v. Robertson 201-Ohio-6185	i
State v. Weakley 2017-Ohio-8404	3
United States v. Bagley 473 U.S. at 681-2	5
United States v. Day 969 F.2d (3 rd Cir. 1992)	i,2,3
United States v. McLemore 447 F. Supp. 1229	i
Weaver v. Graham (1980)	4

OPINIONS BELOW

Order denying Writ of Habeas Corpus, U.S. Dist. Court No. 1:20-CV-0420-BYP
6/30/2020 (Exhibit A).

Order denying Certificate of Appeal ability, 6th Cir. No. 24-3536, 12/6/24 (Exhibit B).

Report and Recommendation United States Dist. Court No. 1:21-cv-02264 3/08/2024
(Exhibit C)

Memorandum of Opinion & Order, United States Dist. No. 21-cv-02264-BYP May 13,
2024 (Exhibit D).

Judgment Entry U.S. Dist. Court No. 1:21-cv-02264-BYP May 13, 2024 (Exhibit E)

Appendix F: Supreme Court of Ohio Notice: DECISION WITOUT PUBLISHED OPINION May
21, 2021 Decided 2021-0221 (Exhibit F).

BASIS FOR JURISDICTION

The Sixth Circuit Court of Appeals denied the Application for Certificate of Appealability on December 6, 2024. This Petition for Writ of Certiorari is, therefore, timely. This Court has original jurisdiction to issue a Writ of Certiorari pursuant to Article III of the United States Constitution, and to issue all writs in aid of its jurisdiction pursuant to 28 U.S.C. §1651.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Eighth Amendment, United States Constitution:

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

Fifth Amendment, United States Constitution

“No person shall [...] be deprived of life, liberty or property without due process of law [...]”

Fourteenth Amendment, United States Constitution:

“[...] 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

Petitioner was Subsequently Re-Indicted from an original Case in CR-07-491536-A, that had been Dismissed for Want of Prosecution on April 29, 2008, without the case moving forward for almost two years. The victim never once showed up trial and No evidence existed. While Petitioner having been already incarcerated on another case, while into his eight-year term of a 12-year sentence, Nine-years later without any evidence or new evidence whatsoever the State chose to subsequently re-indict Petitioner-Townsend on the same original case with the same set of facts circumstances which the state known about, adding two separate cases with additional counts which the state also aware of within the same indictment given a new case number CR-17-614508-A "Multiplicity Prejudicial Misjoinder of offenses" When first appointed counsel came to visit Petitioner-Townsend on May 10, 2017 62-Days later after attending numerous pre-trials without Townsend's presence. Counsel and petitioner reviewed partial discovery together of both alleged victims prior **original** statement to police etc... that was obtained from the prosecution, Jane Doe One, after shown numerous photos of defendant and defendant's twelve-year-old son playing in their yard by Detective J. Butler Badge 468 at the address they resided at with his wife, mother who has been deceased since March 18, 2005 and their 3-year old son. Jane Doe One *specifically* stated that it *wasn't any of those guys* that live at that address, which is stated in Face to Face Interview 1/22/2003 Page 5A 2nd Dist. 03-32948. As to Jane Doe Two, who *specifically* stated that Defendant was a friend of her mother and they Never had sex, that she was assaulted by an unknown male while at a friend's house. As to Jane Doe Three, there was not any new evidence or any evidence whatsoever to have illegally re-indicted petitioner a second time 11-years later, giving him a new case no. CR-17-614508-A. Petitioner had made an offer of 10-years ran concurrent to his twelve-year sentence that he was serving.

Eighth Appellate Dist. C.A. 108642, Had Defendant-Townsend file an Amended Brief February 10, 2020 on a timely Notice of Appeal on Post-Conviction than on 6/04/2020 Denied, failing to remand back to the trial court for a hearing, instead Appellate Court stated that they lacked jurisdiction cause trial court failed to issue findings of fact and conclusions of law as mandated pursuant to R.C. § 2952.21(H). See State v. Morton 2022-Ohio-2358 Reversed for the court's denial of a timely petition and finding of facts, conclusion of laws., State v. Reese 2024-Ohio-2331. Defendant followed all procedure filed motion in the trial court requesting findings of facts and conclusions of law. Defendant followed procedure to the Supreme Court of Ohio which did not accept review. United States Dist. Court failed to review all Supreme Court Motions and the Sixth Cir. If they did they would have seen I was timely in filing my Memorandum in Jurisdiction in Supreme Court Case No. **2021-0221**, the Supreme Court Dismissed for Want of Prosecution, Due Date was **May 21, 2021**. I Filed for Reconsideration submitted Declaration Affidavit Filed June 07, 2021²¹ See Exhibit Showing I was timely by the Supreme Court's own Filed Stamp Dates: Memorandum In Support of Jurisdiction Stamp **Received FEB 12, 2021, MAR 12, 2021**. These Stamped Dates proves Defendant-Appellant was Timely, but the Court chose not to accept review which was prejudicial and a fundamental miscarriage of justice. See Exhibit. F.

ARGUMENT

FIRST QUESTION PRESENTED FOR REVIEW:

WHETHER PETITIONER SUFFICIENTLY DEMONSTRATED THE SUBSTANTIAL DENIAL OF A CONSTITUTIONAL RIGHT TO REQUIRE THE ISSUANCE OF A CERTIFICATE OF APPEALABILITY UNDER 28 U.S.C. §2253?

LAW AND ARGUMENT

Defendant had a right to effective appointment of counsel who would represent him ~~diligently and would do a proper investigation to the alleged allegations for which~~ Petitioner was accused.

Defendant-Petitioner was denied the right to effective representation at pre-trial stage when counsel failed to investigate the allegations made by both Jane Doe I, and Jane Doe II, regarding Prosecutions Discovery R. 16. The two alleged victims original testimony that were made in their complaint prior to an indictment having been implemented against Petitioner-Townsend was changed possibly through coercion when Petitioner decided to proceed pro se just to retrieve the discovery regarding the alleged victims prior original testimony which clearly exonerated him. . This ineffective counsel at pre-trial stage occurred during Counsel's second time coming to visit Petitioner on May 10, 2017 in the morning after reviewing both victim's testimony stating that Petitioner did not sexually assault either of the two after having been showed numerous photos of Petitioner and at his home address of where Jane Doe I alleged an incident took place, but stated to Detective that it wasn't either of the two males that reside there.

Jane Doe II state Petitioner was a friend of her mother and he never sexually assaulted her, that she was assaulted by an unknown male while at a friend's house. These missing/withheld *Brady Material Evidence clearly prejudiced Petitioner's case and there would have been a different outcome* had this evidence been disclosed. Clearly Petitioner was *denied* the right to effective appointment of counsel. Petitioner wrote Bar Association, requesting new appointment of counsel when the judge denied Petitioner's request. *Sixth Amendment violation* of requesting of appointment of counsel. See *Appendix-Exhibits, Exhibit (A)* Letter to Bar Assoc. Page 4 (Paragraph 2 of the syllabus.) Dated May 24, 2017. Petitioner has a right to effective appointment of counsel when he is indigent, counsel duties were to properly investigate case and represent

Petitioner efficiently and effectively as to the Ohio and United States Constitution. Petitioner requested appointment of counsel.

SECOND QUESTION PRESENTED FOR REVIEW:

WHETHER PETITIONER SUFFICIENTLY DEMONSTRATED A CONSTITUTIONAL RIGHT OF A 10-YEAR CONCURRENT PLEA DEAL OFFERED BY PRO SE (TR. P. 16,17) as to United States v. Day, 969 F.2d (3rd Cir. 1992), State v. Weakley 2017-Ohio-8404?

LAW AND ARGUMENT

The failure to address and correct the fraud, established by proof beyond a reasonable doubt through court records, violates petitioner's right to Due Process and to Equal Protection of the Law pursuant to the Fifth and Fourteenth Amendments to the United States Constitution, and this Court should grant Certiorari review to regularize the practice of lower courts and to correct the failures in this case.

THIRD QUESTION PRESENTED FOR REVIEW:

WHETHER THE CONTINUING CUSTODIAL SUPERVISION OF PETITIONER IN THE ABSENCE OF A SENTENCE AND WITHOUT IN REM, IN PERSONA, OR SUBJECT MATTER JURISDICTION CONSTITUTES CRUEL AND UNUSUAL PUNISHMENT, IN VIOLATION OF THE EIGHTH AMENDMENT TO THE UNITED STATES CONSTITUTION?

LAW AND ARGUMENT

This Court has held that "lawful imprisonment deprives citizens of freedom and other rights" **Hudson v. Palmer** (1984) 468 U.S. 517, 524. The key to this doctrine is that imprisonment must be lawful. Where, as here, there has been no pronouncement of guilt or proper adjudication in a lower court of competent jurisdiction, the state is prohibited from administering punishment lest such punishment violate the Eighth Amendment. See, e.g. **Gulett v. Haines** (S.D. Ohio, 2002). 229 F. Supp. 2d 806. This Court has long held that Eighth Amendment safeguards protect citizens from cruel and unusual punishment by the states. See, e.g. **Cooper Industries, Inc. v.**

Leatherman Tool Group, Inc. (1991) 532 U.S. 42. States may only punish citizens properly convicted of a crime. See, e.g. **Pressley v. Brown** (W.D. Mich., 1990) 754 F. Supp. 112.

Moreover, the failure to address and refusal to correct the continuing and ongoing Constitutional deprivation by the lower court continues and perpetuates the Eighth Amendment violation, warranting the grant of Certiorari by this Court to regularize the practices of all Courts and in aid of this Court's appellate and supervisory jurisdiction.

FOURTH QUESTION PRESENTED FOR REVIEW:

WHETHER PETITIONERS SUFFICIENTLY DEMONSTRATED A CONSTITUTIONAL RIGHT OF HAVING BEEN SUBSEQUENTLY INDICTED 11-YEARS LATER WITHOUT ANY EVIDENCE OR NEW EVIDENCE FROM AN ORIGINAL INDICTMENT THAT HAD BEEN DISMISSED FOR WANT OF PROSECUTION IN CR-07-491536-A. (TR.639-640) IN cr-17-614508-A. As to **United States v. Mclemore** 447 F. Supp. 1229, **State v. Michailides** 2018-Ohio-2399, **State v. Robertson** 2010-Ohio-6185?

LAW AND ARGUMENT

This Court has long maintained that the Separation of Powers doctrine is "a bulwark against one branch of the government aggrandizing its' power at the expense of another branch". **Ryder v. U.S.** (1995) 515 U.S. 177. Thus, it is axiomatic that the executive branch cannot create or carry into effect a sentence in a criminal case that was never imposed by the judiciary. See, e.g. **Weaver v. Graham** (1980) 450 U.S. 24, citing, e.g. **Lindsey v. Washington** (1937) 301 U.S. 397. This Court should grant Certiorari to regularize the practices of all courts, as well as in aid of its appellate and supervisory jurisdiction to ensure that citizens confined in prisons are properly sentenced thereto and not through the usurpation of authority as occurred in this case.

FIFTH QUESTION PRESENTED FOR REVIEW

WHETHER PETITIONER SUFFICIENTLY DEMONSTRATED A CONSTITUTIONAL RIGHT OF PROSECUTORIAL MISCONDUCT OF WITHHELDING ALL EXCULPATORY BRADY DISCOVERY EVIDENCE R.16 WHICH FILED MOTION DATED 11/21/2017, Brady v. Maryland 373 U.S. at 87 Lewis v. Comm'r of Corr., 790 F.3d 109 (2nd Cir.).

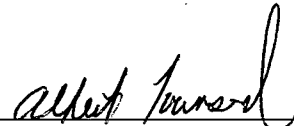
LAW AND ARGUMENT

Established federal law; Brady and its progeny well-established Supreme Court precedent holds that the prosecution has a clear and unconditioned duty to disclose ~~all~~ material, exculpatory evidence, see Brady, 373 U.S. at 87. This duty exists whether or not the defense request exculpatory evidence. See Bagley, 473 at 681-2: Giglio v. United States 405 U.S. 150, 154, 92 S.Ct. 763 31 Led 2d 104 (1972).

CONCLUSION

For the foregoing reasons, this Court should grant Certiorari to regularize the practices of all courts, as well as in aid of its appellate and supervisory jurisdiction to ensure that citizens confined in prisons are properly sentenced thereto and not through the usurpation of authority as occurred in this case and to ensure that citizens are not being subjected to cruel and unusual punishment by way of unauthorized incarceration and supervision and that Due Process and Equal Protection of the laws are being afforded to citizens seeking redress of grievances in this Nation.

Respectfully submitted,



Albert Townsend, #: A580-463
Grafton Corr. Inst.
2500 S. Avon-Belden Rd.
Grafton, Ohio 44044
Petitioner, in pro se