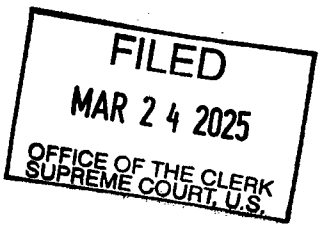
No. 24-7172 24A643

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES



Erick Alfredo Peralta — PETITIONER
(Your Name)

vs.

The State of Texas — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

Erick Alfredo Peralta
(Your Name)

2665 Jovian Motley Blvd.
(Address)

Lovelady, Texas 75851
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

Does the Eighth Amendment prohibit sentences which are disproportionate? If so, is Life Without Parole disproportionate for a capital murder conviction under Texas Penal Code 7.02(b) when the requisite element of intent is removed from the primary offense of Texas Penal Code 19.03 in order to obtain a conviction?

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

Peralta v. State, 2024 Tex.App. LEXIS 4948

In re Peralta, 2024 Tex.Crim.App. LEXIS 888

State of Texas v. Erick Alfredo Peralta, 182nd District Court, Harris Co., Texas Cause No. 1577092

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STATE

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[ ] is unpublished.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[ ] is unpublished.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 N/A to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished. Note: Applicant does not have a copy of the opinion.

The opinion of the Court of Appeals court appears at Appendix N/A to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished. Note: No opinion was issued.

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 October 30, 2024
A copy of that decision appears at Appendix N/A.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[x] An extension of time to file the petition for a writ of certiorari was granted to and including March 29, 2024 (date) on January 2, 2025 (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Constitutional Amendment VIII.

The Eighth Amendment provides:

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

U.S. Constitutional Amendment XIV - in pertinent part.

Sectoin 1. - No 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

Peralta was indicted for Capital Murder along with two co-defendents. He was later convicted in a jury trial and assessed an automatic sentence of Life Without Parole. The jury charge allowed for a conviction under the law of parties statute as Peralta was never shown to have anything more than a tangent role in the offense.

REASONS FOR GRANTING THE PETITION

Although originating in Texas, the question presented to this Court carries nationwide implications. This is because the Eighth Amendment is applied to each of the separate states through the Fourteenth Amendment.

Consider this Court's holding in Harmelin v. Michigan, 501 US 957 (1991) and due to its multiple dissenting opinions clarification is needed. This is evident by the Fifth Circuit's evaluation in McGruder v. Puckett, 954 F2d 313 (5th Cir. 1992) and its opinion based on the dissent by Justice Kennedy that proportionality survives Harmelin. Thus, there is some uncertainty as to the exact stance on the issue of disproportionality as it relates to the Eighth Amendment.

The Eighth Amendment states that "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted."

This sentiment is derived from the established law of England dating back to 1688. The United States adopted this philosophy as seen in the Eighth Constitutional Amendment and in the constitutions to several of the states. It is intended as a perpetual security against the oppression of the citizens from any of these causes.

There is, however, little evidence of the Framer's intent behind the Cruel and Unusual Punishment Clause among the restraints being placed upon the government. In fact, the absence

of such a restraint was only discussed within two of the state ratifying conventions, Massachusetts by Mr. Holmes and Virginia by Mr. Henry. These two instances shed light on the Framer's mindset.

Holmes referred to "the most cruel and uhheard of punishments" and Henry to "tortures, cruel and barbarous punishment." These were cited due to the unrestrained legislative power to prescribe punishments for crimes and the need to restrain said power. As such, it is only logical that they would envision the most drastic punishments the legislature may implement.

Further evidence of the Framer's intent is found within the debates of the First Congress. While there was little debate over the Clause, there is one discussion by Mr. Livermore that is of import: "[I]t is sometimes necessary to hang a man, villians often deserve whipping, and perhaps having their ears cut off..." Anals of Congress 754 (1789).

While Holmes and Henry were in support of the Clause, Livermore was not. He objected that the Clause might someday prevent the Legislature from inflicting punishments that were quite common at the time, and "necessary" in his view, e.g. death, whipping, and earcropping. No member of the House commented that the Clause was only intended to prevent torture.

Considering the available information, several conclusions can be made: 1) The Framer's concern was directed specifically at the exercise of legislative power; 2) The called for a constitutional check to be in place;

3) They intended to ban torturous punishments; and 4) They did not intend to only forbid punishments deemed cruel and unusual at the time.

Since time brings with it changes and new conditions, as an evolving society we must be capable of a wider application of the rights guaranteed by the Constitution than that which was originally envisioned, e.g. search and seizure laws and privacy laws. As society grows and technology advances the acknowledgment of these rights must grow and advance as well.

The Cruel and Unusual Punishment Clause, as other portions of our Constitution, is inherently imprecise, rather than one marked by a simple mathematical formula. Weems v. United States, 217 US 349, 368 (1910). Yet, the values embodied within the Clause are central to our government. Therefore, the Clause imposes a duty upon the Court, when properly presented, to determine if a challenged punishment, whatever it may be, is in violation of the Eighth Amendment. Furman v. Georgia, 408 US 238, 258 (1972) (concurring Brennan, J.). Punishments are cruel when they involve torture or a lingering death. It means more than the mere extinguishment of life. In re Kemmler, 136 US 436, 447 (1890).

The whole inhibition is against those things which can be assessed in a legal action, not only against infractions of the items mentioned, but against all punishments which by their excessive length or severity are greatly disproportionate to the offenses charged. O'Neil v. Vermont, 144 US 323, 339-40 (1892) (Field, J. dissenting).

REASONS FOR GRANTING THE PETITION (cont.)

It is well settled a state has broad powers to regulate, through the legislature, the definition of crimes and their punishments. It is not for the judiciary to decide the wisdom of any particular choice by a state. This is so long as it is within the allowable spectrum and does not run afoul of rights guaranteed by the Constitution. In such an instance, the legal duty of the judiciary, which is strickly defined, is invoked and the legislative power becomes subject to a superior power. Hence, wherever rights acknowledged and protected by the Constitution are denied or invaded under the shield of state legislation and sustained by a state court, this Court is authorized to interfere. Murray v. Charleston, 96 US 432, 441 (1877). This act is not to be taken lightly, nor should it be. Weems v. United States, 217 US at 378-79; Murray v. Charleston, 96 US at 441.

Despite the broad discretion that States possess with respect to the imposition of criminal penalties and punative damages, the Due Process Clause of the Fourteenth Amendment of the Constitution imposes substantive limits on that discretion. The Fourteenth Amendment declares in pertinent part that "[n]o state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States." Thus, this Clause makes the Eighth Amendment prohibition against cruel and unusual punishments applicable to the States. This has been seen in cases decided by this Court in Enmund v. Florida, 458 US 782, 787, 801 (1982)

and Solem v. Helm, 463 US 277, 279, 303 (1983). In these cases, the constitutional violations were predicated on judicial determinations that the punishments were grossly disproportional to the gravity of the offense it was intended to punish. Rummell v. Estelle, 445 US 263, 271 (1980).

In more recent years it is noted that proportionality challenges have ben primarily focused on death penalty cases. This is most likely due to the death penalty for a criminal punishment is unique in its total irrevocability, its rejection of rehabilitation, and its absolute renunciation of our concept of humanity. Furman v. Georgia, 408 US at 306. Due to this uniqueness, a death sentence differs from any sentence of imprisonment, no matter how long. Thus, the decisions of this Court in those cases is of limited value in this case of life without parole.

There have been, however, a select few examples of non-capital cases, e.g. Weems v. United States, 217 US 349 (1910); Rummel v. Estelle, 445 US 263 (1980); Hutto v. Davis, 454 US 370 (1982); and Solem v. Helm, 463 US 277 (1983). Nevertheless, the principle and its contours are unclear. Harmelin v. Michigan, 501 US 957, 998 (1991)(Kennedy, J. concurring).

For the last century plus the principle of proportionality within the Eighth Amendment has been recognized by this Court.

The Court noted "it is a precept of justice that punishment for a crime should be graduated." The court went on to preclude a sentence that is grossly disproportionate to the offense, as such sentences are "cruel and unusual". Weems at 367, 368. The court thus endorsed the principle of proportionality as a constitutional standard. Id at 372, 373. See also Enmund supra and Coker v. Georgia, 433 US 584 (1977).

In Solem v. Helm, 463 US 277 (1983) we see what is perhaps the most dramatic application of this principle in a non-capital case. In Solem the Court asserted a three prong analysis of objective factors to be used in determining proportionality. These factors are: "1) the gravity of the offense relative to the harshness of the penalty; 2) the sentences imposed for other crimes in the jurisdiction; and 3) the sentences imposed for other crimes in other jurisdictions." Solem at 272. Of course Solem must now be viewed from the light of Harmelin v. Michigan, 501 US 957 (1991) which provoked a host of minority opinions.

Justice Scalia, joined by the Chief Justice felt the Eighth Amendment contains no guarantee of a proportional punishment, only a guarantee against cruel forms of punishment and Solem was wrongly decided.

Justice Kennedy with Justices O'Conner and Souter joining wrote the Eighth Amendment prohibits sentences which are "grossly disproportionate".

Harmelin at 1001. Thus, Justice Kennedy concluded the three prong analysis in Solem was meant as a reference, not as a mandatory analysis, "in the rare case when a threshold comparison of the crime committed to the sentence imposed leads to an inference of gross disproportionality." Harmelin at 1005. In the end, disproportionality survived but Solem was overruled as stated by Justice Kennedy. He thus concluded that the three-pronged comparative evaluation of Solem was meant not as a mandatory analysis but as an analytic tool to be used only "in the rare case when a threshold comparison of the crime committed to the sentence imposed leads to an inference of gross disproportionality."

From here we look to the Fifth Circuit Court of Appeals for an interruption in assessing a claim of disproportionality post Harmelin. In applying a headcount analysis, the Fifth Circuit determined the following: 1) "seven members of the Court supported a continued Eighth Amendment guaranty against disproportional sentences"; and 2) "[o]nly four justices [] supported the continued application of all three factors in Solem, and five justices rejected it."

The Fifth Circuit went on to apply a modified Solem test adopted by Justice Kennedy found in Harmelin.

> "Accordingly, we will initially make a threshold comparison of the Gravity of [defendant's] offense against the severity of his sentence. Only if we infer that the sentence is grossly disproportionate to the offense will we then consider the remaining factors of the Solem test and compare the sentence received to (1) sentences for similar crimes in the same jurisdiction and (2) sentences for the same crime in other jurisdictions."
>
> McGruder v. Puckett, 954 F2d 313, 316 (5th Cir. 1992).

Peralta does not suggest that the method of punishment —Life Without Parole— is unconstitutional. Rather, it is unconstitutional to sentence a defendant to a punishment disproportionate to the severity of the role played in the offense. As shown above there is no definition of the Eighth Amendment's prohibition on cruel and unusual punishment nor on the division of what sentences are or are not grossly disproportionate.

In examining the overall opinions of Eighth Amendment claims, a clear indication is formed that there are rare and narrow circumstances where the legislature, in its exercise of statutory power, violates a defendant's Eighth Amendment rights. Just because a punishment is common does not mean it is not cruel when considering the severity of the case. Enmund v. Florida supra. The punishment of death is not unusual but cruel when given in an unusual circumstance. Also, just because a punishment is unusual does not make it cruel.

REASONS FOR GRANTING THE PETITION (cont.)

In the instant case Peralta was convicted of capital murder (Texas Penal Code 19.03). The capital murder statute in Texas requires a predicate murder as defined under Texas Penal Code § 19.02(b)(1) and any one of nine aggravating factors. The Texas Court of Criminal Appeals has stated "the gravamen of capital murder is intentionally (or knowingly) causing a death, plus any one of the various types of aggravating elements... ." Gardner v. State, 306 SW3d 274, 302 (Tex.Crim.App. 2009). In order to ensure unanimity of a verdict when multiple theories are alleged, "the jury must be instructed that it unanimously agree on one incident of criminal conduct (or unit of prosecution), based on the evidence, that meets all essential elements of the single charged offense beyond a reasonable doubt". Cosio v. State, 353 SW3d 766, 776 (Tex.Crim.App. 2011). (emphasis added).

Here, Peralta was convicted via the "law of parties" statutes (Texas Penal Code §§ 7.01, 7.02). It has already been determined by this Court that a defendant convicted of capital murder as a party to the offense that did not in fact kill the victim as prescribed by the statutory offense and defined by the penal code may not be assessed a death sentence. Enmund 458 US at 801. The Court stated: "For purposes of imposing the death penalty, Enmund's criminal culpability must be limited to his participation in the robbery, and his punishment must be tailored to his personal responsibility and moral guilt."

REASONS FOR GRANTING THE PETITION (cont.)

This then raises the question of what exactly the Court intended. Did the Court reverse because, while Enmund was a party to the offense, he did not perform the killing nor had intent to kill and thus should not be subjected to capital punishment? If so, can a defendant in such a circumstance be subject to a capital punishment of life without parole as available under Texas law? Especially considering life without parole is equivalent to death by incarceration. Would not the premise set forth in Enmund of avenging two killings by capital punishment that he did not commit nor intend to commit or cause, measurably contribute to the retributive end of ensuring that a criminal gets their just deserts? It should be noted at this juncture that Peralta is not challenging the validity of legislation. The issue at bar is the disproportionality of being assessed capital punishment without evidence of having committed a capital felony.

> "An individual guilty of a capital felony in a case in which the state does not seek the death penalty shall be punished by imprisonment in the Texas Department of Criminal Justice for life without parole... ."
>
> Texas Penal Code § 12.31(a)(2).

Under the Texas capital murder statute it is clearly stated that a murder does not constitute capital murder merely because it was committed in the course of another specified felony. Patrick v. State, 906 SW2d 481, 492 (Tex.Crim.App. 1995). The statute

explicitly states "the person intentionally commits the murder in the course of" another specified felony. (emphasis added). Hence, this distinguishes capital murder from felony murder in that felony murder may be unintentional. Standing alone, this does not take into accourt the "law of parties" statutes.

> "A person is criminally responsible as a party to an offense if the offense is committed by his own conduct, by the conduct of another for which he is criminally responsible, or by both."
>
> Texas Penal Code § 7.01(a).

We now look to the next part of the law of parties statute which states in pertinent part:

> "If, in the attempt to carry out a conspiracy to commit one felony, another felony is committed by one of the conspirators, all conspirators are guilty of the felony actually committed, though having no intent to commit it if the offense was committed in furtherance of the unlawful purpose and was one that should have been anticipated as a result of carrying out the conspiracy."

We now look to the definition of intent:

> "A person acts intentionally, or with intent, with respect to the nature of his conduct or to a result of his conduct when it is his conscious objective or desire to engage in the conduct or cause the result."
>
> Texas Penal Code § 6.03(a). (emphasis added).

Thus, any necessity on the part of the State to prove the appellant had any intent to kill is eliminated. This is in spite of the fact the capital murder statute requires that murder be committed intentionally in the course of a felony. Through this

interpretation of Texas Penal Code § 7.02(b), every intent element specifically prescribed that normally guards against a capital charge for one who did not kill or intend to kill is neatly circumvented and substituted with a fiction of vicarious intent. Is this merely an anomaly in state law or is it precisely what it appears to be, a way to circumvent the mens rea in order to obtain a capital felony conviction?

Here, as stated above, Peralta was convicted of capital murder and sentenced to life without parole. During trial it was never shown that Peralta was the one who performed the killings. In fact, it was shown Peralta had nothing more than a tangent role in the offense, if any role at all. The cellphone tower data presented at trial and testified to could not place Peralta inside the residence, only in the general vicinity of it.

Due to the remoteness of discovery in relation to the time of actual death it was impossible to ascertain a time (or date) of actual death. As such, it could not be shown Peralta was actually present at the time of the killings considering there was activity shown to be occurring intermitently through the alarm's motion sensor records at the residence over a period of days.

Within the Charge of the Court provided ot the jury to use during deliberations it stated they were allowed to convict under the conspiracy section of Texas Penal Code § 7.02(b). Thus

allowing for a conviction to be had for an offense committed by another individual without Peralta having the required intent for said murder to occur.

As we see here it resulted in Peralta being convicted of capital murder and sentenced to the harshest sentence available by incarceration, life without parole, for an offense he himself was never proven to have committed. This sentence is in no way proportionate to the specific acts that were purported in trial to have been committed by Peralta. As such, Peralta is being sentenced to such a harsh sentence based upon the actions of another person whom he has no control over. This is a prime example of someone being disproportionately sentenced as asserted by the Enmund Court where it was stated that a person's punishment should be proportionate to their personal responsibility and moral guilt.

It should be noted that none of Peralta's DNA nor fingerprints were found inside the residence. This is in contrast to his co-defendants Aakiel and Khari Kendrick whose DNA was found inside the residence and upon the body of one of the deceased.

Such are the facts of the case at bar.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Erick A. Peralta

Date: March 24, 2025