

No. _____

**In The
Supreme Court of the United States**

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RICHARD DEWAYNE BEASON,

Petitioner,

versus

THE STATE OF TEXAS,

Respondent.

◆

**On Petition For A Writ Of Certiorari
To The Texas Court Of Criminal Appeals
Austin, Texas**

◆

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

- I. THIS HONORABLE COURT HELD IN *APPRENDI V. NEW JERSEY*, 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 435 THAT THE CONSTITUTION REQUIRES THAT ANY FACT THAT INCREASES THE PENALTY FOR A CRIME BEYOND THE PRESCRIBED STATUTORY MAXIMUM, OTHER THAN THE FACT OF A PRIOR CONVICTION, MUST BE SUBMITTED TO A JURY AND PROVED BEYOND A REASONABLE DOUBT. IN THIS CASE, THE TRIAL COURT INSTRUCTED THE JURY TO FIND THE PETITIONER GUILTY OF AGGRAVATED ASSAULT WITH A DEADLY WEAPON RATHER THAN SUBMITTING THE ISSUE TO THE JURY FOR A DETERMINATION BY THE JURY. WAS THAT CONSTITUTIONAL?
- II. THIS HONORABLE COURT HELD IN *APPRENDI V. NEW JERSEY*, 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 435 THAT THE CONSTITUTION REQUIRES THAT ANY FACT THAT INCREASES THE PENALTY FOR A CRIME BEYOND THE PRESCRIBED STATUTORY MAXIMUM, OTHER THAN THE FACT OF A PRIOR CONVICTION, MUST BE SUBMITTED TO A JURY AND PROVED BEYOND A REASONABLE DOUBT. IN THIS CASE, THE TRIAL COURT INSTRUCTED THE JURY TO FIND THE PETITIONER GUILTY OF AGGRAVATED ASSAULT WITH A DEADLY WEAPON WHICH ELEVATED THE OFFENSE TO A SECOND DEGREE FELONY WITH A PUNISHMENT RANGE OF TWO YEARS TO TWENTY YEARS IN THE PENITENTIARY BUT FAILED TO SUBMIT,

QUESTIONS PRESENTED – Continued

EVEN ON A DIRECTED VERDICT BASIS, THE SECOND AGGRAVATING FACTOR THAT THE USE OF THE DEADLY WEAPON CAUSED SERIOUS BODILY INJURY TO THE FAMILY MEMBER WHICH WOULD HAVE MADE THE OFFENSE A FIRST DEGREE FELONY WITH A RANGE OF PUNISHMENT OF FIVE YEARS TO 99 YEARS OR LIFE IN THE PENITENTIARY. DOES THIS VIOLATE SETTLED CONSTITUTIONAL LAW UNDER *APPRENDI*?

- III. PETITIONER WAS DENIED DUE PROCESS OF LAW AS THIS HONORABLE COURT HELD IN *APPRENDI V. NEW JERSEY*, 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 435 THAT THE CONSTITUTION REQUIRES THAT ANY FACT THAT INCREASES THE PENALTY FOR A CRIME BEYOND THE PRESCRIBED STATUTORY MAXIMUM, OTHER THAN THE FACT OF A PRIOR CONVICTION, MUST BE SUBMITTED TO A JURY AND PROVED BEYOND A REASONABLE DOUBT AND THERE IS NO MENTION OF THE JURY BEING REQUIRED TO RETURN A VERDICT ON THE AGGRAVATING FACTOR NECESSARY TO RAISE THE PENALTY RANGE TO A FIRST DEGREE FELONY. IS THE SIXTY YEAR SENTENCE ASSESSED UNCONSTITUTIONAL?

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record for Richard Dewayne Beason certifies that this is a criminal case and that the persons having an interest in the outcome of this case are the Petitioner and the Respondent.

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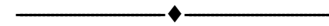
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**PETITION FOR WRIT OF CERTIORARI
TO THE HONORABLE JUSTICES OF THE SUPREME COURT:**

The Petitioner respectfully prays that a Writ of Certiorari issue to review the final decision of the Texas Court of Criminal Appeals in this case denying the writ of habeas corpus on January 31, 2018.



OPINIONS BELOW

Petitioner filed a direct appeal to the Second Court of Appeals. An opinion denying relief was issued August 29, 2008. The opinion was not designated for publication. No Petition for Discretionary Review was filed in the Texas Court of Criminal Appeals by court-appointed counsel.

Petitioner Richard Dewayne Beason filed a writ of habeas corpus pursuant to Article 11.07 of the Texas Code of Criminal Procedure in cause number WR-87,734-01. The Texas Court of Criminal Appeals denied the writ of habeas corpus filed by Petitioner on January 31, 2018. The Application for a Writ of Certiorari is due to be filed with this Honorable Court on or before May 1, 2018.



JURISDICTION

This Honorable Court has jurisdiction to review a final decision of the Texas Court of Criminal of Appeals pursuant to 28 U.S.C. §1257.



STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the Constitution of the United States of America, which reads as follows:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

The Sixth Amendment to the Constitution of the United States of America, which reads as follows:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be

confronted with the witnesses against him to have compulsory process for obtaining witness in his favor, and to have the Assistance of Counsel for his defense.

The Fourteenth Amendment to the Constitution of the United States of America, which reads as follows:

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they shall reside. 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.

TEXAS PENAL CODE, TITLE 5. OFFENSES AGAINST THE PERSON CHAPTER 22. ASSAULTIVE OFFENSES. TEXAS PENAL CODE THROUGH 2007.

§22.02. Aggravated Assault

(a) A person commits an offense if the person commits assault as defined in Section 22.01 and the person

(1) causes serious bodily injury to another, including the person's spouse; or

(2) uses or exhibits a deadly weapon during the commission of the assault.

(b) An offense under this section is a felony of the second degree, except that the offense is a felony of the first degree if:

(1) the actor uses a deadly weapon during the commission of the assault and causes serious bodily injury to a person whose relationship to or association with the defendant is described by Section 71.002a(b), 71.003, or 71.005, Family Code; or

(2) regardless of whether the offense is committed under Subsection (a)(1) or (A)(2), the offense is committed:

(A) by a public servant acting under color of the servant's office or employment;

(B) against a person the actor knows is a public servant while the public servant is lawfully discharging an official duty, or in retaliation or on account of an exercise of official power or performance of an official duty as a public servant;

(C) in retaliation against or on account of the service of another as a witness, prospective witness, informant, or person who has reported the occurrence of a crime; or

(D) against a person the actor knows is a security officer while the officer is performing a duty as a security officer.



STATEMENT OF THE CASE

A. Course of Proceedings and Disposition Below.

The Petitioner Richard Dewayne Beason was charged by Count One of the indictment with the offense of “intentionally or knowingly cause serious bodily injury to Rachel Boatner, a member of the defendant’s family, household, or a person that the defendant was involved in a dating relationship, by stabbing her, and the Defendant did use or exhibit a deadly weapon during the commission of this assault, to-wit: a knife, that in the manner of its use or intended use was capable of causing death or serious bodily injury”. There were three other counts alleging the same actions and a request for a deadly weapon finding. (Tr. Vol. 1, p. 2) Petitioner Richard Dewayne Beason pleaded guilty to count one of the indictment on November 11, 2007 with a punishment trial before the jury. In the jury charge, the trial court directed the jury to find the Petitioner Richard Dewayne Beason guilty of aggravated assault with a deadly weapon against a family member. (Court’s charge on punishment, Vol. 1, pp. 167-169) The State introduced evidence that Petitioner Richard Dewayne Beason had been placed on two years deferred adjudication for possession of methamphetamine under one gram on March 4, 2005 and that a Motion to Proceed to adjudication had been filed on January 30, 2007. His deferred adjudication was revoked and he was sentenced to ten (10) months in the State jail. (Vol. 2, pp. 108-111; 112-113)

The evidence at the punishment hearing showed that on January 15, 2007 Officer Christen Domingous received a dispatch to a domestic disturbance at 2117 Wagner Ave., Fort Worth, Texas. (Vol. 2, pp. 118-119) The officer announced his presence and Petitioner Richard Dewayne Beason and his Aunt Birdie Claygon opened the door and invited the officer into the home. (Vol. 2, pp. 119-120) Once inside, the officer noticed a female lying on a couch. (Vol. 2, pp. 121-122) The officer saw nothing amiss at first but when the female moved her hand from her chest and neck he called for an ambulance. (Vol. 2, pp. 121-124) Petitioner Richard Dewayne Beason at that point told the officer that he had stabbed the lady and he had called the police to make sure she was doing ok. (Vol. 2, p. 124) Rachel Boatner was the injured party who had been lying on the couch. (Vol. 2, p. 127) The officer saw Petitioner Richard Dewayne Beason reaching for Rachel Boatner and the officer used a Taser on Petitioner Richard Dewayne Beason. (Vol. 2, pp. 127-128) An ambulance arrived at the 2117 Wagner Ave address in about fifteen minutes after the officer's call for assistance. (Vol. 2, p. 132) Petitioner Richard Dewayne Beason consented to a search of the house. (Vol. 2, pp. 139-140)

Doctor David Smith saw Ms. Rachel Boatner at the emergency room at Harris Methodist Hospital. (Vol. 2, pp. 153-154) When she arrived at the Hospital, Rachel Boatner was in a relatively stable condition but she had a hole in her neck which was about 2½ to 3 inches deep. (Vol. 2, p. 157) Because of the bleeding, she needed help and if Petitioner Richard Dewayne Beason

had not called the police she could have had serious complications. (Vol. 2, pp. 157-163) Rachel Boatner had a portion of her vocal cord paralyzed making her a little hoarse and she could not yell or sing. (Vol. 2, pp. 165-66) Rachel Boatner had two surgeries and a follow up visit. (Vol. 2, pp. 167-168) On the follow up visit Rachel Boatner was doing very well. (Vol. 2, p. 168)

The trial judge, Sharon Wilson, instructed the jury to find the defendant guilty of aggravated assault with a deadly weapon, which the jury did. The jury then, in accordance with the instructions given as to the range of punishment, assessed Petitioner Richard Dewayne Beason, a sixty year sentence, even though the maximum sentence for aggravated assault with a deadly weapon on a family member is 20 years. TEXAS PENAL CODE, TITLE 5, Article, 22.02(a)(2).

There was no submission to the jury, nor was there any affirmative finding by the jury that Petitioner Richard Dewayne Beason used the deadly weapon to cause serious bodily injury to raise the punishment range to a first degree felony.

Petitioner Richard Dewayne Beason filed a writ of habeas corpus which was denied by the Texas Court of Criminal Appeals on January 31, 2018. This Petition for Writ of Certiorari is filed contesting that denial.



REASONS FOR GRANTING THE WRIT

There are special and important reasons for granting this writ. This Honorable Court should grant certiorari because the Petitioner, Richard Dewayne Beason has been denied due process of law by being sentenced to sixty (60) years in the penitentiary for an offense carrying only a twenty (20) year maximum sentence. In addition, the Petitioner Richard Dewayne Beason was denied his Sixth Amendment right to a jury trial pursuant to this Honorable Court's ruling in *Apprendi v. New Jersey*, 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000) which held that the Constitution requires that any fact that increases the penalty for a crime beyond a prescribed statutory maximum, other than the fact of a prior conviction, must be submitted to a jury and proved beyond a reasonable doubt. *Apprendi v. New Jersey*, supra 474-497. The Fifth, Sixth, and Fourteenth Amendments to the Constitution of the United States require that any fact that increases the maximum penalty for a crime must be charged in an Indictment, submitted to a jury and proved beyond a reasonable doubt. The gist of Petitioner Richard Dewayne Beason's argument is that the trial court judge instructed the jury to find Petitioner Richard Dewayne Beason guilty only of the facts which raised the punishment level to a second degree felony under 22.02(a)(2) of the Texas Penal Code. There is no submission to the jury for a finding of the deadly weapon causing serious bodily injury nor is there any finding made that serious bodily injury was caused by the knife. The trial court effectively granted a directed

verdict for a lesser included offense, whether or not it was intentional is irrelevant.

I.

THIS HONORABLE COURT HELD IN *APPRENDI V. NEW JERSEY*, 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 435 THAT THE CONSTITUTION REQUIRES THAT ANY FACT THAT INCREASES THE PENALTY FOR A CRIME BEYOND THE PRESCRIBED STATUTORY MAXIMUM, OTHER THAN THE FACT OF A PRIOR CONVICTION, MUST BE SUBMITTED TO A JURY AND PROVED BEYOND A REASONABLE DOUBT. IN THIS CASE, THE TRIAL COURT INSTRUCTED THE JURY TO FIND THE PETITIONER GUILTY OF AGGRAVATED ASSAULT WITH A DEADLY WEAPON RATHER THAN SUBMITTING THE ISSUE TO THE JURY FOR A DETERMINATION BY THE JURY. WAS THAT CONSTITUTIONAL?

Due Process under the Fifth and Fourteenth Amendments to the Constitution of the United States requires that a defendant be punished in accordance with the range of punishment provided for the offense for which he or she is found guilty. In this case, the trial court judge took it upon herself to order the jury to find the Petitioner guilty of the offense of aggravated assault with a deadly weapon. Since there is no finding nor even a request for the jury to consider whether or not the Petitioner used a knife that in the manner of its use or intended use caused serious bodily injury,

Petitioner Richard Dewayne Beason was sentenced three times greater than the maximum sentence for the offense for which he was ordered to be convicted. As in *Apprendi v. New Jersey*, 530 U.S. 466, at 494 (2000), the element which increased the offense from a second degree felony to a first degree felony was not found by the jury. The trial court did not even instruct the jury to find Petitioner Richard Dewayne Beason had caused serious bodily injury to the complaining witness which would have elevated the crime to a first degree felony. In *Apprendi v. New Jersey*, 530 U.S. 466, at 490 (2000) this Honorable Court ruled ‘it is unconstitutional for a legislature to remove from the jury the assessment of facts that increase the prescribed range of penalties to which a criminal defendant is exposed. It is equally clear that such facts must be established by proof beyond a reasonable doubt.’ Petitioner submits that it is also equally clear that a trial judge cannot take that power away from the jury as well.

The fact that increases the punishment is a part of the statute itself does not exempt the requirement that the facts be presented to the jury as an element of the offense. *Alleyne v. United States*, ___ U.S. ___, 133 S.Ct. 2151 (2013). Even if this Honorable Court holds that the fact is sufficiently “submitted to the jury”, by a directed verdict from the trial court, in this case, the trial court only directed the jury to find the Petitioner Richard Dewayne Beason guilty of aggravated assault with a deadly weapon, a second degree felony with a sentence range of 2 years to a maximum confinement for 20 years rather than a maximum confinement for

10 years. Since *Apprendi v. New Jersey*, 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000) was a plea of guilty to the jury, it would seem that an instructed verdict to the jury to find even one of the aggravating factors would be improper. Petitioner Richard Dewayne Beason was denied a jury trial on the instructed verdict on the deadly weapon and denied any jury involvement regarding the deadly weapon being used to cause serious bodily injury which is the second enhancement finding necessary to elevate the offense to a first degree felony. This Honorable Court should grant certiorari to address this situation.

II.

THIS HONORABLE COURT HELD IN *APPRENDI V. NEW JERSEY*, 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 435 THAT THE CONSTITUTION REQUIRES THAT ANY FACT THAT INCREASES THE PENALTY FOR A CRIME BEYOND THE PRESCRIBED STATUTORY MAXIMUM, OTHER THAN THE FACT OF A PRIOR CONVICTION, MUST BE SUBMITTED TO A JURY AND PROVED BEYOND A REASONABLE DOUBT. IN THIS CASE, THE TRIAL COURT INSTRUCTED THE JURY TO FIND THE PETITIONER GUILTY OF AGGRAVATED ASSAULT WITH A DEADLY WEAPON WHICH ELEVATED THE OFFENSE TO A SECOND DEGREE FELONY WITH A PUNISHMENT RANGE OF TWO YEARS TO TWENTY YEARS IN THE PENITENTIARY BUT FAILED TO SUBMIT, EVEN ON A DIRECTED VERDICT BASIS, THE SECOND AGGRAVATING FACTOR THAT THE USE OF THE DEADLY WEAPON CAUSED SERIOUS BODILY INJURY TO THE FAMILY MEMBER WHICH WOULD HAVE MADE THE OFFENSE A FIRST DEGREE FELONY WITH A RANGE OF PUNISHMENT OF FIVE YEARS TO 99 YEARS OR LIFE IN THE PENITENTIARY. DOES THIS VIOLATE SETTLED CONSTITUTIONAL LAW UNDER *APPRENDI*?

In this case, Petitioner Richard Dewayne Beason plead guilty to count one of the indictment which alleged a third degree felony assault on a family member with a maximum possible sentence of ten (10) years

confinement. The count also contained facts, if proven, would elevate the maximum possible sentence to a second degree felony with a possible sentence of two (2) years to twenty (20) years if a deadly weapon were used during the commission of the offense. The count also contained language that would raise the maximum possible sentence to 99 years or life if the evidence showed and the jury found that he caused serious bodily injury with the deadly weapon. The charging instrument does not clearly allege that he did cause serious bodily injury with the knife, rather only that he used a deadly weapon and caused serious bodily injury. A person can stab someone with a knife and not cause serious bodily injury. The Fourteenth Amendment to the Constitution of the United States commands that any fact, except a prior conviction that increases the maximum sentence must be charged in an indictment, submitted to a jury, and proven beyond a reasonable doubt. *Apprendi v. New Jersey*, 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000). In this case, Petitioner Richard Dewayne Beason was denied his right to any jury participation in finding the second elevating factor in the statute which would have increased the offense from the second degree felony found pursuant to the instruction from the trial court to a first degree felony allowing the punishment assessed at 60 years to be within the punishment range for the offense.

This Honorable Court should grant certiorari to address this situation.

III.

PETITIONER WAS DENIED DUE PROCESS OF LAW AS THIS HONORABLE COURT HELD IN *APPRENDI V. NEW JERSEY*, 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 435 THAT THE CONSTITUTION REQUIRES THAT ANY FACT THAT INCREASES THE PENALTY FOR A CRIME BEYOND THE PRESCRIBED STATUTORY MAXIMUM, OTHER THAN THE FACT OF A PRIOR CONVICTION, MUST BE SUBMITTED TO A JURY AND PROVED BEYOND A REASONABLE DOUBT AND THERE IS NO MENTION OF THE JURY BEING REQUIRED TO RETURN A VERDICT ON THE AGGRAVATING FACTOR NECESSARY TO RAISE THE PENALTY RANGE TO A FIRST DEGREE FELONY. IS THE SIXTY YEAR SENTENCE ASSESSED UNCONSTITUTIONAL?

This Honorable Court has held that any fact, other than a prior conviction, that elevates the maximum sentence must be alleged in the indictment, submitted to a jury, and found by the jury upon proper instructions beyond a reasonable doubt. See *Apprendi v. New Jersey*, 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000); *Ring v. Arizona*, 536 U.S. 584, 122 S.Ct. 2428, 153 L.Ed.2d 556 (2002); *Alleyne v. United States*, ___ U.S. ___, 133 S.Ct. 2151 (2013). In the State Courts, in capital murder cases, in federal prosecutions, this Honorable Court has consistently held that any fact, except a prior conviction, that increases the maximum sentence must be charged in the indictment, found by the jury, and be proved beyond a reasonable doubt.

In *Apprendi v. New Jersey*, 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000) this Honorable Court noted a limitation on sentencing authority in finding and repeating “We have often noted that judges in this country have long exercised discretion of this nature in imposing sentence within statutory limits in the individual case. See, e.g., *Williams v. New York*, 337 U.S. 241, 246 (1949).” This Court further noted that ‘both before and since the American colonies became a nation, courts in this country and in England practiced a policy under which a sentencing judge could exercise a wide discretion in the sources and types of evidence used to assist him in determining the kind and extent of punishment to be imposed *within limits fixed by law.*’ {emphasis in original opinion}. The statutory limits in Petitioner Richard Dewayne Beason’s case is twenty (20) years rather than the sixty (60) years imposed.

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CONCLUSION AND PRAYER

Accordingly, Petitioner Richard Dewayne Beason respectfully prays that the petition for certiorari to the Texas Court of Criminal Appeals sitting in Austin, Texas issue herein to address the denial of these substantial constitutional and statutory rights and for

such other and further relief to which he may be justly entitled.

Respectfully submitted,

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