

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Leland James Dodd PETITIONER
(Your Name)

vs.

Tracy McCallum, Warden RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. Court of Appeals For the 10th Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Leland James Dodd 106915
(Your Name)

NFCC D-S-262
1605 E Main Street
(Address)

Sayre OK 73662
(City, State, Zip Code)

- NONE -
(Phone Number)

QUESTION(S) PRESENTED

- 1) Is it a violation of the United States Constitution's 14th amendment for the state of Oklahoma to make a substantive change to a statute, which now allows a jury to determine punishment based on the merits of the crime, and not allow every person to be afforded this same opportunity?
- 2) Is it a violation of the United States Constitution's 14th amendment for the state of Oklahoma to make a substantive change to a statute, which if not applied to all persons equally, creates a small, separate class of inmates who are sentenced by the Oklahoma legislature to a mandatory life without parole for a drug crime, but now can be sentenced by a jury who have the facts of the case and can determine punishment based on the merits of the crime committed?
- 3) When the Courts use the term "*like circumstances*" in deciding issues of retroactivity, is it Constitutionally proper to use a date on the calendar to determine "*like circumstances*", or is "*like circumstances*" more constitutionally accurate when this term is used it should only deal with the actual crime and the merits of said crime?

LIST OF PARTIES

☒ 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:

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APPENDIX I	ORDER Denying Second Application for
APPENDIX J	Post-Conviction Relief OKLA Dist Court

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

14 Amendment to the US Constitution

Coggins v. Champion 188 F.3d 518, 1999
WL 614700 (1st Cir. 1999)

Teague v. Lane, 489 U.S. 288 (1989)

Montgomery v. Louisiana, 136 S. Ct. 718 (2016)

Note Pg 5 Appendix A the Ct. found no case law

STATUTES AND RULES

OS 63 § 2-415 (D)(3) (1989)

OS 63 § 2-415 (D)(3) (2015)

OTHER

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 A 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 C to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix D 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 District Court of OK County court appears at Appendix E to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was November 7 2017

☐ 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).

☒ For cases from **state courts**:

The date on which the highest state court decided my case was April 8 2016.
A copy of that decision appears at Appendix D .

☐ 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

14th Amendment to the US Constitution

63 O. Supp 1989 § 63-2-415(D)(3)

63 O.S. 2013 § 63-2-415(D)(3)

STATEMENT OF THE CASE

Petitioner filed an Application for Post-Conviction Relief (case number CF-90-3070) in the District Court of Oklahoma County on December 3, 2015. The state District Court denied Petitioner's Post Conviction Application on January 5, 2016.

Petitioner appealed the state District Court ruling to the Oklahoma Court of Criminal Appeals on January 29, 2016. The Oklahoma Court of Criminal Appeals affirmed the denial by the state District Court on April 8, 2016. Petitioner filed a petition for Habeas Corpus on July 13, 2016. The Western District Court denied the Habeas Petition on August 11, 2017. Petitioner appealed to the United States Court of Appeals, tenth circuit, and was denied by the tenth circuit on November 7, 2017.

On May 15, 2015 the Governor of Oklahoma signed into law the changes made to O. S. 63 § 2-415 (D) (3) modifying certain penalties and defining circumstances before penalty is imposed. The changes to O.S. 63 § 2-415 (D) (3) went into effect on November 1, 2015.

(This change put the responsibility for determining the penalty, based on the merits and evidence of the offense committed, back into the hands of the jury. This is the main issue Petitioner claims is in violation of his U. S. Constitution, 14th Amendment (1868), right, to equal protection of the law. Petitioner was never given the opportunity to be sentenced on the merits of his committed offense by his jury. The jury was given no choice in determining Petitioner's penalty, as life without parole was mandatory by statute).

The statute has now changed and Petitioner believes the change is unconstitutional if it is not used on every person equally.

The Courts have failed to cite any case law, or Supreme Court decision which supports their position that it is constitutionally legal to create a separate class of persons, and it is constitutionally legal to discriminate against this separate class, by not applying state law in an equal manner as the 14th amendment to the U.S. Constitution requires.

REASONS FOR GRANTING THE PETITION

a. It is Petitioner's position the *plain language* of O.S. 63 § 2-415 (D), states "Any Person" without a directive saying "any person" except, or "any person" after the effective date. O.S. 63 § 2-415 (D) said "Any Person" the day Petitioner was sentenced more than 26 years ago and this same language has not been changed to this date meaning he is still that same "Any Person", as he was when this law was applied to him.

There is no language in this statute which causes the statute to not be used in a retroactive manner and any other interpretation of this law would call into question the constitutionality of the law.

b. The real problem of not using the change to O.S. 63 § 2-415 (D) (3) (2015) in a retroactive manner is the creation of a separate class of persons and not affording the same benefit to both classes. To not apply the law equally to both classes is discrimination and does harm to this separate class of persons.

Petitioner has not been given the benefit of being sentenced by a jury on the merits of the convicted offense. The jury had no choice and was not allowed to choose punishment. The sentence given to Petitioner was a mandatory sentence. Their only choice was to sentence Petitioner to Life without Parole for a marijuana conviction.

A jury can now sentence a person convicted in a similar circumstances to a range of punishment, with the least punishment, being 20 years, and base their decision on the actual offense and on the merits of the offense.

Legislative change to O.S. 63 § 2-415 (D) (3) (2015) corrected this injustice and once again placed punishment back into the hands of the jury where it belongs.

c. The District Court sites *Coggin v, Champion* 188 F.3d 518, 1999 WL 614700 (10th Circuit 1999) and uses the term 'like circumstances in a unconstitutional and inappropriate manner.

The term 'like circumstances does not, and must not be used to describe a time frame as being 'like circumstances'.

(To use a time frame to define 'like circumstances would be the same as saying, 'because Petitioner was born, (sentenced), on this date and not on this date the law cannot be applied to him, but only to those born, (sentenced), on the appropriate date.')

This logic, if used, is a clear violation of the U.S. Constitution, amendment 14 (1868), which is clearly established federal law.

The term 'like circumstances clearly means the actual offense committed and the circumstances as outlined in O.S. 63 § 2-415 (D) (3) which clarifies the circumstances which must be in play, in order to apply the law to Any Person.

d. The District Court seems to agree a change in penalty, (*Teague v. Lane*), constitutes a **substantive** change in law and is used in *Montgomery v. Louisiana*, in a retroactive manner, but claims this is only for federal law changes.

The Supreme Court logic used in *Montgomery v. Louisiana*, must be adhered to in state, or federal law, as the decisions by the higher Court is based on Constitutional law.

Petitioner believes 14th amendment Constitution rights are the supreme law of the land and is just as much Federal law, as it is State law.

e. Legislative intent and the reasoning behind legislative intent should be considered. Exhibit, marked 7 and Attachment A, titled "An Act" shows the bill as introduced was meant to 'modify penalty, and give the jury a range of punishment they could use based on the merits and circumstances of the committed offense. This law corrected the unjust law Petitioner was sentenced under.

Surely the legislative intent was not to create a separate class of persons, as the change to O.S. 63 § 2-415 (D) (3) 2015, clearly does if not used for every person, as the law plainly states.

The 14th amendment to the U.S. Constitution means exactly what it says when stating no state shall make a law that does not apply to all people equally.

CONCLUSION

Petitioner is asking to be given the same opportunity, as any person is now given, by the change to O.S. 63 § 2-415 (D) (3) 2015, the right to be sentenced by a jury of his peers, based on the merits of the committed offense.

The petition for writ of certiorari should be granted.

Respectfully submitted,

Yeland J. Dodd

Date: January 9 2018