

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Bandy R. Smith — PETITIONER
(Your Name)

vs.

State of Michigan — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Michigan Supreme Court
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Bandy R. Smith # 494672
(Your Name)

3500 N. Elm Rd.
(Address)

Jackson, MI, 49201
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

1. Did the State Court of last resort decide an important question of federal law that conflicts with recent decisions of the United States Supreme Court?
2. Is the doctrine of "stare Decisis" applicable to the State of Michigan?
3. Is the State Court of last resort required, at a minimum, to utilize the retroactivity rule set forth in *Teague v Lane*, to the state court decision regarding retroactive application of its laws?

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:

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	5-6
CONCLUSION.....	7

INDEX TO APPENDICES

APPENDIX A Order from the michigan Court of Appeals

APPENDIX B Trial Court Order denying relief from judgement

APPENDIX C michigan Supreme Court Order denying Leave to Appeal

APPENDIX D

APPENDIX E

APPENDIX F

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

Alleyne v United States, 570 US 99 (2103)	4
Blakely v Washington, 542 US 296 (2004)	4
Johnson v United States, 526 Fed. App'x 708 (8th Cir 2013)	4
Michigan v Lockridge, 577 US ____; 136 Sct 590 (2015)	5
People v Carp, 449 Mich 903; 877 NW2d 716 (2016)	5
People v Lockridge, 498 Mich 358; 870 NW2d 502 (2015)	4,5
Saffle v Parks, 494 US 484, 495 (1990)	6
Smith v Boynton, 2009 US Dist LEXIS 66294	4
Teague v Lane, 489 US 288 (1989)	4,5
Welch v United States, 578 US ____; 136 Sct 1257 (2016)	5

STATUTES AND RULES

28 USC § 1738	3
MCL 750.227 (b)	4
MCL 750.317	4
MCL 769.34	4,5
MCL 769.34(2)	4,5

OTHER

6th Amendment	4
Fourteenth Amendment	6
Article IV § 1	3
Article XV § 1	3

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.

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits 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.

The opinion of the Michigan Court of Appeals court 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.

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).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was 10/31/2017.
A copy of that decision appears at Appendix C.

☐ 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

Article IV § 1 of the United States Constitution:

Section 1. Full faith and credit shall be given in each State to the public Acts, records, and judicial proceedings of every other State. And the Congress may by general laws prescribe the manner in which such acts, records and proceedings shall be provided, and the effect thereof.

Article XIV § 1 Amendment to the 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.

28 USC § 1738.

State and territorial statutes and judicial proceedings; full faith and credit.

STATEMENT OF THE CASE

Petitioner was charged with and convicted by jury of felony firearm [MCL 750.317] and second degree murder [MCL 750.317] in the December 7, 2003 shooting death of 16 year old "Ashleigh Moomaw." The state appellate courts eventually denied relief and the United States District Court for the Eastern District of Michigan denied a petition for writ of habeas corpus. See Smith v. Boynton, 2009 US Dist LEXIS 66294. In all of the above proceedings petitioner raised a sentencing claim under Blakely v. Washington, 542 US 296 (2004).

At the time of petitioner's sentencing, the Michigan sentencing guidelines were mandatory and constrained a state sentencing courts sentence decision. See [MCL 769.34(2)]. Subsequently, this Court decided Alleyne v. United States, 570 US 99 (2013). In Alleyne, this Court held that judicial fact-finding of factors not found by a jury nor admitted by a defendant which caused an increase in the ceiling of the sentence violating the 6th Amendment.

Thereafter, the Michigan Supreme Court decided People v. Lockridge, 498 Mich 358; 870 M2d 502 (2015). In Lockridge, the Michigan severed the mandatory section of the Act and done away with the "substantial and compelling" reason for a departure. Of concern here is whether the Lockridge decision constitutes a new substantive rule to be applied retroactively.

Petitioner moved for collateral review arguing that under Teague v. Lane, 489 US 288 (1989) the decision of the Michigan Supreme Court in People v. Lockridge, must be given retroactive effect as Lockridge severed a portion of the statute MCL 769.34 thereby creating a new substantive rule. The state trial court declined to accept Petitioner's contention. See Appendix B. The Michigan Court of Appeal, as well as the Michigan Supreme Court denied leave to appeal. See Appendixes A and C.

REASONS FOR GRANTING THE PETITION

On July 29, 2015 the Michigan Supreme Court rendered its decision in People v Lockridge, 498 Mich 358; 870 Nw2d 502 (2015) cert. den., Michigan v Lockridge, 577 US ____; 136 Sct 590 (2015). The Lockridge Court severed as unconstitutional, section 34(2) of the then Michigan's mandatory sentencing guidelines. See e.g., MDL 769.34 et seq. The severance reduced Michigan's sentence guidelines from mandatory to discretionary. The Lockridge Court also eliminated that portion of the statute requiring a sentencing court to state on the record substantial and compelling reasons for a departure. The Michigan Supreme Court did not expressly state whether Lockridge was to be given retroactive application on direct and collateral review.

To date, the Michigan Supreme Court has failed or otherwise refused to retroactively apply the mandate espoused in People v Lockridge, supra, to cases on collateral review People v Carp, 449 Mich 903; 877 Nw2d 716 (2016). The Michigan Supreme Court's refusal to extend the dictate of People v Lockridge, supra, to cases on collateral review is inconsistent with this Honorable Courts' holdings in Teague v Lane, 489 US 288 (1989) and Welch v United States, 578 US ____; 136 Sct 1257 (2016). The facts and the acts undertaken by the Michigan Supreme Court in People v Lockridge, supra (i.e., severance of the unconstitutional section of the public act, MDL 769.34(2)) is a mirror image of the action taken by this Honorable Court in Welch v United States, supra.

In Welch, supra, this Honorable Court overruled the lower courts decision in Johnson v United States, 526 Fed. App'x 708 (8th Cir 2013), and ruled that by "striking down the residual clause as void for vagueness"____ the Johnson Court "changed the substantive reach of the ACCA, altering the range of conduct or the class of persons that the [Act] punishes." In other words, it was the "striking down" as unconstitutional, a section of the statute that constituted a substantive rule change that must be applied retroactively to cases on collateral review. See e.g., Teague v Lane, supra.

In the same vein, when the Michigan Supreme Court severed [struck down] as unconstitutional section 34(2) of MDL 769.34 the Court altered the range of conduct (sentencing) of the statute, thereby causing a substantive rule change that must be given retroactive application under Teague v Lane, supra. The

Michigan Supreme Court's failure or refusal to afford the petitioner the minimum safeguards espoused in Teague deprives the petitioner of Due Process of Law under the Fourteenth Amendment.

Moreover, Petitioner submits the Lockridge decision may be classified as a new watershed rule of criminal procedure "implication the fundamental fairness and accuracy of the criminal proceeding." See e.g., Saffie v Parks, 494 US 484, 495 (1990). The Lockridge Court expressly recognized that Michigan's mandatory sentencing scheme was unconstitutional in violation of the Sixth Amendment. That being true, every sentence imposed under the mandatory sentence guidelines is unconstitutional; i.g., implication the fundamental fairness and accuracy of the sentence proceeding.

In conclusion, Petitioner contends that under the doctrine of "stare Decisis," as well as the "full faith and Credit Clause" of the United States constitution, this Honorable Court should grant Petitioners writ of certiorari and grant him the relief sought.