

No. _____

**IN THE
SUPREME COURT OF THE UNITED STATES**

DAVID WARD—PETITIONER

Vs.

WARDEN DEVILLE

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

CIVIL ACTION No. 17-cv-02292-MLCF

PETITION FOR WRIT OF CERTIORARI

DAVID WARD

WINN CORRECTIONAL CENTER, P.O. BOX 1260

WINNFIELD, LA 71483

QUESTION(S) PRESENTED

1. The petitioner is sentenced under **R.S. 15:529.1** and has claimed his “actual innocence” of the aggravating element, which increased the sentencing guidelines of the prison sentence dramatically as a Habitual Offender. Did the trial judge exceed his jurisdiction to accept a plea without amending or creating a new Bill of Information not containing false information?
2. The petitioner claims his sentence is excessive because he has been sentenced illegally under a recidivism statute, due to the indictment not alleging a prior conviction that was never committed by the petitioner. Should the sentence be vacated and the petitioner subjected to common-law statute?
3. The petitioner asks that the court consider his claim of ineffective assistance of counsel. The petitioner was ignorant of the rules of law and details pertaining to the Multiple Offender Hearing and did not understand fully what was going on during this process. Petitioner relied fully on his counsel whom clearly failed to look out for the his best interests and legality of this sentencing, allowing erroneous and false information to increase the penalty of the petitioner under **R.S. 15:529.1**.

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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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 United States Court of Appeals, 5th Circuit.

The opinion of the United States district court appears at Appendix B to the petition and is

☒ reported at United States District Court, Eastern District of Louisiana.

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 Louisiana State Supreme Court.

The opinion of the appellate court appears at Appendix D to the petition and is

☒ reported at Louisiana First Circuit Court of Appeals.

JURISDICTION

For cases from **Federal Courts:**

The date on which the United States Court of Appeals decided my case was November 29, 2017

☒ No petition for rehearing was timely filed in my case.¹

☐ A timely petition for a rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears in Appendix _.

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 May 27, 2016. A copy of that decision appears at Appendix C.

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

¹ On September 6, 2017 (APPENDIX A) the United States Court of Appeals gave me a notice with 15 days to pay \$505 docketing fee. I attempted to proceed *forma pauperis* timely with this court, nevertheless they stated that I failed to timely comply for Certificate of Appealability. Moreover, throughout "APPENDIX B" I show that I diligently sought COA and did timely comply for COA and *forma pauperis* to no avail.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Due Process Clauses, US Constitution, **Amendment V and XIV, Louisiana**

Constitution Article 1 Section 2, precludes the information, to a reasonable extent, which the district court may consider. The court cannot use materials containing false information such as unconstitutionally obtained prior convictions that do not conform, and are nonresponsive to enhance one's sentence.

Concerning Constitutional Law §840.3, 841, 848, if the defendant faces punishment beyond that provided by statute when an offense is committed under certain circumstances but not others, then the defendant should not, at the moment that the state is put to proof of those circumstances, be deprived of protections that have, until that point, attached. **Apprendi v New Jersey.**

STATEMENT OF THE CASE

Petitioner David Ward, Jr., was sentenced on the following offenses, pleading guilty as a second offender. Count 1, Distribution of Marijuana, where the Court sentenced the Defendant under the Provisions **La. R.S. 15:529.1** to serve a period of FIFTEEN (15) years at hard labor with DOC of the State of Louisiana. Said sentence is to be served without the benefit of probation or suspension of sentence.

As to Count 2, Distribution of a Schedule IV Controlled Dangerous Substance, the Court sentenced the Defendant to serve a period of TEN (10) years at hard labor with DOC of the State of Louisiana.

As to Count 3, Distribution of Marijuana, where the Court sentenced the Defendant to serve a period of FIFTEEN (15) years at hard labor with DOC of the State of Louisiana.

As to Count 4, Distribution of a Schedule IV Controlled Dangerous Substance, the Court sentenced the Defendant to serve a period of TEN (10) years at hard labor with DOC of the State of Louisiana.

As to Count 5, Possession of Marijuana Second Offense, the District Attorney of the 22nd Judicial District having informed the Court that this is a second offense, where the Court stated the Defendant had previously been convicted of Possession of Marijuana / or synthetic cannabinoids on September 27, 2007, in docket number 07-CF0-15820, in the 20th Circuit Court in Ft. Myers, Florida, the Court sentenced the Defendant to serve a period of FIVE (5) years at hard labor with DOC of the State of Louisiana.

REASONS FOR GRANTING THE PETITION

1.

The petitioner argues that his Constitutional rights have been violated and a claim of “actual innocence” is proven with the documents provided from Appendix E and Appendix F.

His claims have been fully exhausted (i.e. claims concerning his adjudication and sentencing as a habitual offender, the purported excessiveness of his sentence, and the alleged ineffective assistance of counsel in the habitual offender proceeding), which were presented to “each appropriate state court.” Petitioner Ward asks the Honorable Court to investigate if there has been a “fundamental miscarriage of justice” that results from allowing an illegal enhancement under the Habitual Offender Law **R.S. 15:529.1**.

2.

An indictment must set forth all legal elements of the offence charged. Hamling v. United States, 418 US 87, 94 S. Ct. 2887, 41 L. Ed 2d 590 (1974). The information must also comply and contain enough specificity to ensure that the charges are sufficient , that they are not invidiously charged, and suffice to meet the elements of the statutory provisions according to due process requirements. Johen v. United States, 381 US 214 (1965). The petitioner argues that the court failed to meet sentencing statute **R.S. 15:529.1(F)** to meet prima facie evidence of the petitioner for the Habitual Offender Law. The court enhanced petitioner’s sentence dramatically under this statute for count one, distribution of marijuana, from a five-year minimum to a 30-year maximum INTO a 15 year minimum, 60 year maximum set of guidelines for the judge to use his discretion. The “punishment” of the defendant’s minimum mandatory increased times three, from five years to 15 years and maximum sentence doubled. Therefore, there is a problem in that the **defendant’s record does not contain a charge for a crime of the “value” of the**

charge that was used to increase the discretion of the court to chose the enhancement under R.S. 15:529.1.

3.

In Apprendi v. New Jersey, 147 L. Ed 2d 435, 530 US, the United States Supreme Court established that a **“crime” includes every fact that is by law a basis for imposing or increasing punishment.** Thus, if the legislation defines some core crime and then provides for increasing the punishment of that crime upon the finding of some aggravating fact- of whatever sort including the fact of prior conviction- **the core crime and the aggravating fact together constitute an aggravated crime, whereupon that aggravating fact is an element of the aggravated crime.** The petitioner never committed the aggravated crime under R.S. 15:529.1. Furthermore, the state court erred in the enhancement of the possession of marijuana alleging the petitioner having a prior possession of marijuana from Ft. Myers, Florida, Docket #07-CF0-15820. These errors show lack of integrity in the 22nd District State Court, and an illegal use of the Habitual Offender Law.

4.

In Apprendi v. New Jersey, 159 NJ, at 23, 731 A2d, at 495 the United States Supreme Court rejected the suggestion by the State Supreme Court that “there is rarely any doubt” concerning the existence of the biased purpose that will support an enhanced sentence.

5.

In State v. Corzo, (La. App. 5 Cir. 2005), 896 So. 2d. 1101, 04-791 La. App. 5 Cir. 2/15/05, the Court determined that a trial judge did not have jurisdiction to accept a plea when the Bill of Information and the charge to which the defendant entered a guilty plea did not conform, and the bill had to be amended or a new bill filed, unless the defendant pled guilty to a

lesser-included offense of the **same generic class** that did **not require proof of any element not found in the major crime**. In the petitioner's case, the prior conviction contained on the Bill of Information was a higher-class drug offense of a much more severe punishment than the defendant has ever been charged with or committed during his entire lifetime.

6.

In an unpublished opinion of the court, **State v. Preston**, 03-540 (La. App. 5 Cir. 10/28/03), 857 So. 2d 42 NDP, this court stated a defendant **cannot plead guilty** to a crime which he has not been charged and that the **trial court is without authority to accept such plea**. In **Preston**, the court vacated the sentence due to the defendant being charged with *intent to distribute 200 to 400 grams of cocaine* on the Bill of Information, when the defendant was actually supposed to be charged with *possession of 200 to 400 grams of cocaine*. The court noted the **Bill of Information was never amended and the defendants plea** [04-791 La. App. 5 Cir. 5] **was not a responsive verdict or a lesser-included offense to the charged offense**. This court recognized this defect as an error patent, and Petitioner Ward has the same circumstances in his own claims pertaining to the invalid predicate offense used in the Habitual Offender Enhancement. Petitioner argues the Bill of Information was never amended, and his plea was not a responsive verdict or a lesser-included offense to the alleged aggravated crime for which he was charged as a second felony Habitual Offender under **R.S. 15:529.1**. The facts are uncomplicated, and the petitioner's case should not be treated any differently than **Preston**, and he should only be subjected to the common-law statute and punishment.

7.

In **State v. Cook**, 372 So. 2d 1202 (La. 1979) the LA Supreme Court explained that a defendant is not prohibited from entering a guilty plea to a nonresponsive crime when such a

plea is acceptable to the district attorney, but stated that **the district attorney must amend the indictment to charge the nonresponsive crime.** In Cook, the defendant was charged with *aggravated burglary and simple burglary*. Pursuant to a plea bargain, the defendant pled guilty to *aggravated burglary and simple burglary “of an inhabited dwelling.”* A “**defect of substance**” in an indictment as such would entitle the defendant to amendment of the indictment or mistrial after trial begins, and is **a defect that prejudices the defendant.** See also State v. Offord, App. 3 Cir. 1995, 663 So. 2d 296, 1995-290 (La. App. 3 Cir. 10/4/95) *Indictment and Information 159(1)*.

8.

The United States Supreme Court concluded that **crime includes every fact that is by law a basis for imposing or increasing punishment, which comes from early cases addressing recidivism statutes.** In Apprendi v. New Jersey, [147 L. Ed. 2d 435] 530 US, 147 L. Ed. 2d, 120 S Ct. [No. 99-478], Justice Scalia explains that there was a tradition of treating recidivism as an element. He states that what is noteworthy is not so much the fact of that tradition as the reason for it: **Courts treated the fact of prior conviction just as any other fact that increased the punishment by law.** In the petitioner’s case by the same reasoning that the courts employed above, the *incorrect prior conviction was an element*, together with the facts constituting the core crime of which the defendant was charged, of a new, aggravated crime under **R.S. 15:529.1.**

9.

The United States Supreme Court holds the rule that: “When the statute imposes a higher penalty upon a second and third conviction, respectively, it makes the **prior conviction of a similar offence a part of the description and character of the offence intended to be**

punished; and therefore the fact of such a prior conviction must be charged, as well as proved. It is essential to an indictment, that the facts constituting the offence intended to be punished should be averred.” *Id.*, at 506, in **Apprendi v. New Jersey**. The court rested this rule on common law and the Massachusetts equivalent of the Sixth Amendment’s Notice Clause. *Ibid.* See also *Commonwealth v. Haynes*, 107 Mass 194, 198 (1871) (reversing sentence, upon confession of error by attorney general, in case similar to *Tuttle*.)

10.

In **Larney**, 34 Ohio St., at 600-601, the Supreme Court of Ohio, in an opinion citing only *Bishop*, reversed a conviction under a recidivism statute where the indictment had not alleged any prior conviction. And in **State v. Adams**, 64, NH 440, 13 A 785 (1888), the court, relying on *Bishop*, explained that “the former conviction being part of the description and character of the offense intended to be punished, because of the higher penalty imposed, it must be alleged.” *Id.*, at 442, 13 A, at 786. The defendant had been “charged with an offense aggravated by its repetitious character.” *Ibid.* See also *Evans v. State*, 150 Ind 651, 653, 50 NE 820 (1898)(similar); *Shiflett v. Commonwealth* 114 Va 876, 877, 77 SE 606, 607 (1913)(similar).

Therefore, **“it is impossible to say that the erroneous predicate felony of Distribution of Marijuana may not have held some weight in leading the court”** to impose the sentence that it did (15 to 60 year range for Habitual Law statute for approximately an ounce and a half of marijuana combined with Count 1 and Count 3), as in *Hobbs*, *supra*, 44 Tex, at 355, where the Texas Supreme Court agrees with the quoted statement.

11.

In US v. Reese, 92 U.S. 217, 232-233, 23 L.Ed. 563 (1875), Justice Clifford stated that:
“The indictment must contain an allegation of every fact which is legally essential to the punishment to be inflicted.”

12.

The United States Supreme Court, in Apprendi, cited their decision in *Mullaney v. Wilbur*, 421 US 684, 44 L.Ed. 2d 508, 95 S. Ct. 1881 (1975), to demonstrate the “lesson” that due process and jury protections extend beyond those factual determinations that affect a defendant’s guilt or innocence to a crime. Ante, at 147, L.Ed. 2d, at 451. The Court explains *Mullaney* as having held that the due process-proof-beyond-a-reasonable-doubt requirement applies to those factual determinations that, under a State’s criminal law, make a difference in the degree of punishment the defendant receives. Ante, at 147, L.Ed. 2d, at 452. The petitioner objects to the district attorney’s indictment containing the false information, as he has been immediately after receiving the documents that contain the false information in The Reason for Judgement documents, **Appendix E and F**. The State’s strategy of using loopholes and wordplay is an example of the injustice and abuse of power in Louisiana today. The petitioner **has shown his “actual innocence”** in the “*aggravated*” crime of Count 1 Distribution of Marijuana as a second offender under the Habitual Offender Law **R.S. 15:529.1** from predicate felony Distribution of Marijuana from said “Florida in 2007.”

INEFFECTIVE ASSISTANCE OF COUNSEL

Whether a defendant has been subjected to ineffective assistance of counsel proceeds down a path and is adjudicated under the standards in Strickland v. Washington, 466 US 668 (1984). Accordingly, the analysis is two pronged. A criminal defendant must show that his counsel's performance fell below the objective standards of reasonableness, and that the unreasonable performance was prejudice to the defendant. Strickland shows the two prong analysis:

1) The defendant must show that counsel's performance was deficient. This requires showing that counsels were not functioning as "counsel" guaranteed by the Sixth Amendment.

2) The defendant must show that the deficient performance precluded his defense. This requires showing that counsel's errors were so serious to deprive the defendant a fair trial.

The petitioner meets these prongs by:

1) The defense attorney at no point and time objected to the allegations in the Multiple Offender Hearing pertaining to the invalid and incorrect predicate charge from Florida in 2007 of Distribution of Marijuana, nor did he correct the error in enhancing Possession of Marijuana to a second offense felony of Possessions of Marijuana from docket # 07-cf-015820. See **Appendix E and F.**

2) The petitioner's sentence was extremely enhanced due to the fact the defense attorney failed to investigate the oral Bill of Information given by the state, and see if the crimes in which the state presented could be sufficient to prove the petitioner one and the same under the provisions of **LA R.S. 15:529.1** Sadly, the petitioner's attorney sent his associate James Burke to the sentencing date and Multiple Offender Hearing, who had very elementary knowledge if any at all of the situation at hand, let alone the petitioner's criminal background.

In Hill v. Lockhart, 474 US 52 (1985), the Supreme Court determined that *Strickland* standards would also be applicable to guilty pleas. The analysis somewhat differs in that the defendant must show, as part of the second prong, that he would have not pled guilty but insisted on trial, in absence of the deficient performance. The defendant would have definitely insisted on trial, due to the errors in the Multiple Offender Hearing and enhancement of the Possession of Marijuana 2nd offence both from Florida docket # 07-cf-015820. Whereas the defendant's counsel should have filed a motion to quash the Bill of Information involved, or at least object to them and have them amended by the district attorney prior to plea acceptance. Moreover, the counsel should have advised the defendant to examine the incorrect Bill of Information, whether or not it was correct or incorrect. The defendant's counsel clearly fell below protecting the defendant and his best interests under the Sixth Amendment of the Constitution. The petitioner was sentenced to an aggravated crime that prohibits "good time" and radically enhanced how long he would be eligible for parole. **R.S. 40:966** states that anyone sentenced under Distribution of Marijuana after 15 years may be eligible for parole even with a life sentence. The petitioner wouldn't have taken this plea and rather take his chances due to the fact he would still spend only 15 years in prison before being eligible for parole even with a harsher sentence.

CONCLUSION

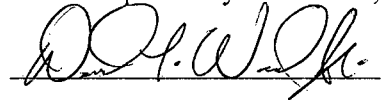
The petitioner's constitutional rights and due process clauses have been violated in the District Court. The District Attorney failed to amend the incorrect information on the Bill of Information, with such jurisdictional defects, that rendered the Court **without Authority** to have proceeded to start with. The District Attorney failed in meeting not only **LA R.S. 15:529.1** enhancement, but also the Possession of Marijuana enhancement. Both contained incorrect information. Nevertheless, the District Court proceeded illegally with false information using the ignorance of the defendant and apathy of his attorney which didn't investigate the information, which allowed the Court to abuse their Authority. Moreover, the defense showing this ineffective assistance of counsel subjected the petitioner to such an extreme punishment based on false information which was not in the best interest of the petitioner. Not only did the petitioner not commit the predicate offence, **but never in his lifetime has he committed an offence with the "value" of punishment that was used to enhance his sentence under LA R.S. 15:529.1.** Moreover, the defendant never seen any Bill of Information containing these false allegations and believes the Court had no documents that proved any prior convictions during the Multiple Offender Hearing, as the documents from Florida (**Appendix F**) the petitioner had to pay for himself and order from Florida. The defects in this case also cause prejudice to the defendant. Louisiana's malicious sentencing schemes are just another example of why this state leads the country, if not the world, in 'conviction rate', and 'over-turn of conviction' rate. This is just another needless imposition of pain and punishment, inflicted on someone who needed substance abuse treatment that sold a total of one and a half ounces of marijuana and 30 tablets of xanax to support his own habit (as shown to petitioner in his *Discovery documents* prior to court). The defendant understands that distributing drugs is not a

victimless crime, and understands the severity of his actions. He is not minimizing his actions, only wishes to state that he has never sold drugs except to support his own habit, lost in his cycle of addiction, not to make a living off of the misery of others. The defendant believes he should have been put into treatment to address his addiction, not 15 years in prison. .

The petitioner prays the Honorable Court will accept this Writ of Certiorari and begs that they might remand him to court to at least vacate or reverse the enhancement of **LA R.S.**

15:529.1. May God bless you all, and thank you for your time and consideration in this matter.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "D. F. W. J. K.", written over a horizontal line.

Date: 2-4-18