

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Din Deveaux — PETITIONER
(Your Name)

vs.

Antoine Caldwell, warden — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

11th Circuit Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Din Deveaux, 918933
(Your Name)

Johnson State Prison, D4-230-B
P.O. Box 344
(Address)

Wrightsville, GA 31096-0344
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

Does it violate the U.S. Constitution's ban on excessive sentences and/or cruel and unusual punishment when someone is given a sentence that conforms to state sentencing guidelines but violates another state law that specifically limits the sentence to the minimum term of incarceration?

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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TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

Chase v. State 285 Ga. 693 @ 695-696
681 SE2d 116@118 (2009)

STATUTES AND RULES

O.C.G.A § 17-10-6.2 (b)
O.C.G.A § 17-10-6.2 (c)(1)

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☐ is unpublished.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 B 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☐ is unpublished.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 G to the petition and is

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☐ is unpublished.

unknown

The opinion of the Johnson Co. Superior Ct (Habeas) court appears at Appendix I 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☐ is unpublished.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 4-26-17.

☒ 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: 9-14-17, and a copy of the order denying rehearing appears at Appendix E.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including 11-13-17 (date) on 8-24-17 (date) in Application No. 17A 192.

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 2-1-16.
A copy of that decision appears at Appendix G.

☐ A timely petition for rehearing was thereafter denied on the following date: 3-07-17, and a copy of the order denying rehearing appears at Appendix H.

☐ 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

US constitutional amendment #8 places a ban on excessive sentences and cruel and unusual punishment. to sentence someone to a prison sentence that greatly exceeds the dictates of even one state law makes that sentence both excessive and cruel and unusual. when 2 or more laws on sentencing conflict then the only way to prevent a sentence from being excessive is to sentence a convicted defendant to a sentence that fits within the guidelines of the law that provides the shortest sentence.

It should be noted that the petitioner and another inmate who was helping him spent several law library sessions trying to find any federal appeals court or U.S. supreme court rulings that state how to handle it when 2 state laws having to do with sentencing conflict, but could not find anything. Thus, it is quite possible that this is a case of first impression and therefor should be heard to prevent others from wasting this honorable courts valuable time.

STATEMENT OF THE CASE

Petitioner was sentenced to 30 years with 20 to serve. Although this is well within the sentencing guidelines for his charges, there is a conflicting state law that limits the amount of time that he can receive to much less than that. O.C.G.A. § 17-10-6.2(b) states "Except as provided in Subsection (c) of this code section, and notwithstanding any other provisions of law to the contrary, any person convicted of a sexual offense shall be sentenced to a split sentence which shall include the mandatory minimum term of imprisonment specified in the code section applicable to the offense. No portion of the mandatory minimum sentence imposed shall be suspended, stayed, probated, deferred, or withheld by the sentencing court and such sentence shall include, in addition to the mandatory minimum, an additional probated sentence of at least one year." O.C.G.A. § 17-10-6.2(c)(1) says the court can deviate, but it must issue a written order stating why. Since this was not done, the Judge was required to follow O.C.G.A. § 17-10-6.2(b), which she did not do. The Habeas Court, Johnson County Superior Court, Judge Gillis presiding, ruled that this meant at least the minimum sentence, but that is not what it says. It does say at least 1 year of probation, so the legislature knew that it could be worded that way, but chose not to.

Statement of case (continued)

The law does say "... shall receive the minimum term of imprisonment..." shall is a word of command and must be obeyed. It is not optional. Since O.C.G.A. § 17-10-6.2 (b) conflicts with the sentencing guidelines of each of Petitioner's charges, then, in all fairness, the only proper sentence is one that fits in with both laws - The minimum term of imprisonment. Anything else would violate the U.S. Constitution's ban on cruel and unusual sentences and excessive sentences. The Ga Supreme Court issued a ruling in 2009 that pretty much backs-up Petitioner's argument "... Ga Law provides that the express mention of one thing in a statute implies the exclusion of all other things..." *Chase v. State* 285 Ga. 693@695-696, 681 SE 2d 116@118 (2009)

Since O.C.G.A. § 17-10-6.2 (b) says he should have received the mandatory minimum term of incarceration then that is what he was required to be given as anything else is excluded.

REASONS FOR GRANTING THE PETITION

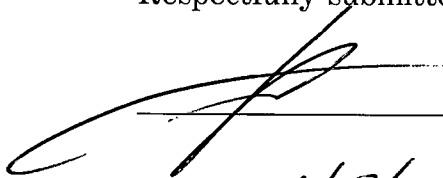
To Give the minimum term of incarceration within the guidelines of each individual charge and within the dictates of O.C.G.A. § 17-10-6.2 (b), to give even 1 day more than the minimum falls within the sentencing guidelines, but violates O.C.G.A. § 17-10-6.2 (b), thus making the sentence both excessive and cruel and unusual.

It should also be noted that this is an issue that will keep coming up, so it needs to be resolved so that others will not waste this Honorable court's valuable time.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 11/8/17