

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

ROBERT FITZGERALD RODGERS

Petitioner,

VS.

STATE OF ALABAMA

Respondents.

On Petition for Writ of Certiorari to the
Supreme Court of Alabama
Case No. 1170456

PETITION FOR WRIT OF CERTIORARI

ROBERT FITZGERALD RODGERS
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QUESTIONS PRESENTED

WHETHER THE STATE OF ALABAMA CAN
CONSISTENTLY WITH THE DUE PROCESS
CLAUSE OF THE FEDERAL CONSTITUTION
OBTAIN A VALID CONVICTION BY ENTER-
ING INTO A PLEA AGREEMENT THAT CALLED
FOR AN ILLEGAL SENTENCE ?

WHETHER THE CONSISTENTLY WITH THE
DUE PROCESS CLAUSE OF THE FEDERAL
CONSTITUTION DOES A TRIAL COURT HAS
JURISDICTION TO ACCEPT A PLEA
AGREEMENT THAT CALLED FOR THE TRIAL
COURT TO IMPOSE A SENTENCE THAT IS
ILLEGAL ?

LIST OF PARTIES

All Parties to this proceedings appear in the caption of the case on the cover page.

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IN THE SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner, Robert Fitzgerald Rodgers, respectfully prays that a writ of Certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the Alabama Supreme Court, the highest Court state court to review the merits appears as Appendix A, to this petition and it is unpublished.

The opinion of the Alabama Court of Criminal Appeals memorandum opinion appears as Appendix B, to the petition and it is unpublished.

JURISDICTION

The Alabama Supreme Court denied Petitioner's petition for writ of certiorari on March 18, 2018, a Copy of that decision appears as Appendix A.

This Court jurisdiction is invoked under 28 U.S.C. §1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Statutory and Constitutional provisions involved in this case is the Fourteenth Amendment to the United States Constitution, Specifically the Due Process Clause which provides in pertinent parts:

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 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....

Rodgers is currently serving a custodial sentence of Life Imprisonment Without the Possibility of Parole under Alabama Habitual Felony Offender Act, for his current conviction for Murder, the underlying convictions under attack herein, were the prior felony convictions that the State of Alabama used to impose the enhanced sentence of Life Without Parole under ~~A~~Alabama Habitual Felony Offender Act. See Section 13A-5-9(c) Ala. Code 1975. Under Alabama law at the time that Rodgers entered into the plea agreement, the minimum sentence that Rodgers could receive for his three (3) convictions for first degree Attempted Assault and Robbery Third Degree, wherein a firearm was used was ten (10) years. See Section 13A-5-6(a)(6) Ala.Code 1975.

The Alabama Supreme Court denial of Rodgers relief under the facts of records conflicts with this Court's clearly established precedents, and should be Reversed.

REASONS FOR GRANTING THE WRIT

Petitioner, Robert Fitzgerald Rodgers, respectfully ask this Court to grant his petition for writ of certiorari to review the decisions of the Alabama Supreme Court on important questions of Federal Constitutional Law. The Alabama Supreme Court decided that concurrent plea agreements entered into by the Rodgers and the State that called for illegal sentences, did not divest the trial judge of jurisdiction to accept the plea agreements. The Alabama Supreme Court agrees that the sentences are illegal, but yet decided the challenge could be waived, contrary to its own precedents and that the issue is moot, eventhough the evidence of record shows that the convictions under challenge herein, were used to enhance Rodgers current conviction for Murder under Alabama's Habitual Felony Offender Act.

Rodgers argues that the above decision of the Alabama Supreme Court is in direct conflict with prior precedents of this Court; The United States Courts of Appeals and the Alabama Supreme Court own prior precedents on the same or similar point of law, and requires this Court intervention. In Bartone V. United States, 375 U.S. 52 (1963), this Court held that when a sentence is clearly illegal or is clearly not authorized by

by statute, the defendant need not object at the trial level in order to preserve that issue for appellate review. See Also Ex Parte Brannon, 547 So.2d 68 (Ala.1988).

THis Court has firmly sttod for decades on the body of law regarding the voluntariness of a guilty plea and plea agreements. See Boykin V. Alabama, 365 U.S. 238 (1969); Santobello V. New York, 404 U.S. 257 (1971); See Also Ex Parte Johnson, 669 So.2d 205 (Ala.1995).

In this case, this Court is called upon to decide the questions, whether the State of Alabama consistently with the due process clause of the Federal Constitution Fourteenth Amendment, enter into plea agreements with the petitioner, and the agreement called for a patently illegal sentence pursuant to Alabama's mandatory enhancement statutes, did not divest the State trial judge of its jurisdiction to accept the guilty plea, and that such mandatory enhancement could be waived, this court also should decide whether the issue is moot when the convictions under challenge were used to enhance petitioner's current sentence of Life Without Parole.

Petitioner avers that the State of Alabama has decided these important federal questions in a way that conflicts with prior precedents of this Court and the State's own precedents, and this Court should exercise its supervisory power to resolved the questions.

Rogers contends that the Court of Criminal Appeals in its memorandum opinion of December 8, 2017, citing Hall Vs. State, (CR-15-0273 July 8, 2016), stated:

Here, as set out above, Rogers argued that his sentences are illegal because the circuit court failed to impose on him the mandatory firearm enhancement. This arguments, however, does not entitle Rogers to post conviction relief for two reasons, First, the claims more than 20 years after Rogers guilty plea (and after he has completed his sentence on that plea -- that t he circuit court needs to impose a harsher sentence on Rodgers -- is not relief contemplated by Rule 32. Second, the record indicates that, in a previous Rule 32 petition wherein Rodgers challenged the legality of his sentence, the circuit court, in denying Rodgers' claim, held as follows:

In Case 00-94-198 Rodgers, plead guilty to 3 counts of Attempted Assault in the first degree and in Case 00-95-67, Rodgers plead guilty to Robbery in the third degree, all of which are Class C felonies. A sentence of 4 years for each offense to run concurrently, is a legal sentence to be imposed by the trial court upon plea of guilty to these charges.

Petitioner contends that the Court of Criminal Appeals in its memorandum opinion of December 8, 2017, overlooked the facts of record and/or misapprehended Rodgers contentions, which resulted in the court rendering a decision in direct

conflict with prior precedents on the same or similar points of law. First Rodgers, adopts Judge Kellum's dissenting opinion, in which Judge Welch join in Hall Vs. State 2016 (Ala.Crim. App.) Lexis 43, petitioner request that that this Honorable Court take judicial notice of the Judges dissent in the above cited case. Second, Rodgers contends that the Court of Criminal Appeals erred in finding that Rodgers is not entitled to relief because more than 20 years has passed since his guilty plea and Rodgers has completed the sentences, rendering his arguments moot. As Rodgers has argued and presented evidence that such sentences were used to enhance his current life without parole sentences, therefore, their collateral consequences actually materialized and prevent mootness. See Mattern Vs. Sec'y for the Dept. of Corr, 494 F.3d 1282 (11th. Cir. 2007); Minor Vs. Dugger, 864 F.2d 124, 125-27 (11th. Cir. 1989); United State Vs. Kassar, 47 F.3d 562 (2nd. Cir. 1995).

Therefore, the Court of Criminal Appeals findings that this claim is moot, conflicts with the record evidence and above cited precedents. Third, the Court of Criminal Appeals findings that Rodgers claim is successive, conflicts with prior precedents. Rodgers contends and the record reflects that the thrid degree robbery conviction has never been previously challenged by Rodgers in any previous petition, therefore, the Court of Criminal Appeals clearly abused its discretion with respect to that findings. The Three Attempted Assault convictions, though previously raised, the claim was never

adjudicated on the merits. In order for a claim to be successful, the claim must be adjudicated on the merits. See Ex Parte Trawick, 972 So.2d 1969 (Ala. 2009). Fourth, the Court of Criminal Appeals erred in citing Hall Vs. State, for the proposition that the mandatory minimum firearm enhancement, of §13A-5-6 et al., Ala. Code 1975 can somehow be waived, there is two flaws in this findings, first, Hall dealt with fines and resitutions and not a sentence of imprisonment, second, the court in Hall did not overruled any of the previous cases that held the enhancement provision of §13A-5-6 et seq., to be mandatory. See McNair Vs. State, 164 So.2d 1179 (Ala.Crim.App. 2014); Love Vs. State, 681 So.2d 1108 (Ala.Crim.App.1995).

In this case, because the record evidence clearly alleges in the indictment in each of the cases that Rodgers was armed with a deadly weapon or dangerous instrument, and because Rodgers was convicted of a Class B or C felonies, the mandatory minimum sentence that can be imposed was 10 yeas. See 13A-5-6(a)(6) Ala. Code 1975. Therefore, the Court of Criminal Appeals finding to the contrary, conflicts with the above cited precedents.

Fourth, the Court of Criminal Appeals findings that Rodgers claims are precluded, is erroneous, as it is well settled law that an illegal sentence may be challenged at anytime, and not subject to the preclusion of Rule 32.2. See Steele Vs. State, 911 So.2d 21 (Ala.Crim.App. 2004); Calloway Vs. State, 860 So.2d 900 (Al.Crim.App. 2003)(The court is without authority, to accept a guilty plea that call for an illegal sentence); Freguson Vs. State, 565 So.2d 1172, 1173 (Ala.Crim.

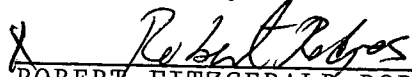
App.1990). Therefore, the Court of Criminal Appeals findings conflicts with the above cited cases.

Petitioner contends that the Alabama Supreme Court denial of relief to Petitioner on his claim that the State trial court did not have jurisdiction to accept Rodgers pleas that called for an illegal sentence and its holding that Rodgers ~~pleas~~ were voluntary, because the mandatory provisions of section 13A-5-6 et al., can be waived is in direct conflict with clearly established precedents, and the State of Alabama failure to grant relief violates Rodgers' Constitutional Rights to Due Process of Law.

CONCLUSION

Wherefore, Premises Considered, Petitioner prays that after a preliminary examination, this Court will proceed under its rules and Grant the Petition for Writ of Certiorari and such other and further relief as the law, justice and this court deem appropriate..

Respectfully Submitted,


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