No. ____________________

IN THE

SUPREME COURT OF THE UNITED STATES

JOSEPH EDGLEY WALSH, ProSe — PETITIONER
(Your Name)

vs.

State of OREGON — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE Court of APPEALS OF THE STATE OF OREGON
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

JOSEPH EDGLEY WALSH, SID# 7668131
(Your Name)
SNAKE RIVER CORRECTIONAL INSTITUTION
777 STANTON BLVD.
(Address)

ONTARIO, OREGON, 97914-0595
(City, State, Zip Code)

N/A
(Phone Number)

Question(s) Presented

1) Defendant's trial Counsel filed motion for Continuance, State objected to it, but waived all objections based on timing to any motions that Defense filed. Defense Counsel explained he was not ready to try this case because: (1) This was a "True Life" case; (2) There were multiple victims, some of whom resided in Canada; (3) The discovery in the case was voluminous; (4) The Case involved complex issues of venue, which he needed to Research further; (5) during hearing defense counsel told the Court he felt the defendant at that point will not be receiving Constitutionally adequate Counsel and a defense in this case. Did Trial court abuse its discretion when it denied Defense Counsel's motion for a Continuance?

2) Does a Trial Court abuse its discretion when it denies Defense Counsel's motion for mistrial, when on first day of trial, during its case in chief, the prosecution introduced and played a recorded interview disclosing Evidence that the Defendant had previously been Convicted of Child Sexual Abuse, despite the Parties' Pretrial agreement that all evidence of Defendant's prior Convictions would be excluded?

3) ORS 131.525 allows for a case to be tried in the County in which the Defendant resides. if the crime was committed in the state and it cannot reddily be determined within which County.

Question(s) Presented

the crime was committed. The state bears the burden of proving the factual predicates that the statute requires. Counts 7 through 10 were based on a single photograph, which could have been taken in two counties of Oregon or in another State, where defendant resided at the time. Did the State fail to meet its burden to prove the offenses were committed in the State, when it presented evidence that the conduct could have occurred outside the State of Oregon?

4) When Defendant's Trial Counsel files a written pretrial objection to venue and agrues both in that motion and at the Hearing that the conduct could have occured in either two counties of Oregon, or in another state, notes that Trial Court would not have jurisdiction over a crime that occurred in a different state, and Trial court, in its ruling, acknowledges that the conduct could have occurred out of the state, does the ~~state~~ Defendant adequately perserve a challenge that the state failed to prove that the conduct occurred in Oregon?

5) Is a sentence of life in prison without the possibility of parole for a third felony sexual offense disproportionate under the Eighth Amendment to the United States Constitution?

LIST OF PARTIES

[X] 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

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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 ______ 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.

[X] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix __A__ to the petition and is

[X] reported at STATE OF OREGON V. JOSEPH WALSH 288 Or App 278 P3d (2017); or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the ~~Or~~ ______________________________ 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.

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).

[X] For cases from **state courts**:

The date on which the highest state court decided my case was October 18, 2017. A copy of that decision appears at Appendix ~~A~~ A.

[X] A timely petition for rehearing was thereafter denied on the following date: DEC. 20, 2017, and a copy of the order denying rehearing appears at Appendix C.

[ ] 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 Statutary Provisions Involved

United States Constitution, Amendment VI

United States Constitution, Amendment VIII

United States Constitution, Amendment XIV

Oregon Constitution, Article I, Section 11

STATEMENT OF THE CASE

1) Five days before trial, defense trial counsel filed motion for a continuance, (Appendix D). In the Affidavit defense counsel explained that, (1) this was a "True Life" case; (2) there were multiple victims, some of whom resided in Canada; (3) the discovery in the case was voluminous; (4) the case involved complex issues of venue, which he needed to ~~reach~~ research further; and (5) defense counsel was not ready to try the case. The State filed a written objection to the defendant's motion.

The district attorney outlined her objection to the defendant's motion based on the difficulty with getting the victims to trial to testify. She also waived any objections based on timeliness to motions that defendant might file during trial so that the case could proceed and defense counsel could have the five days before jury selection to investigate the case, (TR 7-19). Defense Counsel reiterated his need for more time based on the seriousness of a "true life" sentence in comparison to the seriousness of any murder trial, (TR 20-21).

Defense Counsel, district attorney, and the Court discussed defense counsel's upcoming trial dates after this case and the previous scheduling for the case (TR 21-24) The Court denied the motion, (TR 24-25, Appendix D-5).

On the first day of trial, defense Counsel renews his request for a continuance, asserting the "defendant would NOT receive constitutionally ~~adye~~ Adequate representation and a defense in the case" as he is not prepared to proceed at the time. Trial Court confirmed that this was the fourth setting for the trial, that defense counsel had been appointed to the case since inception in May, 2013 and denied the motion (TR 36-38).

This court ruled previously in Argersinger v. Hamlin, 407 US 25; 32 LEd2d 530; 92 SCt 2006 (1972);

"The assistance of Counsel is often a requisite to the very existance of a fair trial."

A Defendant, whom is indigent, and has a mental Health history, ~~and~~ with counsel that is improperly prepared or provided investigations to establish a defense, as in this case, presents a prejudice to the defendant in an unfair trial setting. AT 407 US 37-38 This court declared "... No person may be deprived of his Liberty who has been denied assistance of counsel as guaranteed by the Sixth Amendment."

In This case when Trial Court denied Defense counsel's motion for continuance to adequately prepare and investigate the basic necessities to build a defense, denies a defendent this basic element of jurisprudence, the right to adequate assistance of counsel.

Accordingly, This court has previously stated that an indigent defendant must be assured the opportunity to present his defense. In This case, the defendant did not have any participation in the unpreparedness of counsel and As in Ake v. Oklahoma, 470 US 68 at 76-77 provides:

"[H]as long recognized that when a state brings its judicial power to bear on an indigent defendant in a criminal proceeding, it must take steps to assure that the defendant has a fair opportunity to present his defense. xxx That an indigent defendant is entitled to the assistance of counsel at trial, xxx and that such assistance must be effective. [t]hat a criminal trial is fundamentally unfair if the state proceeds against an indigent defendant without making certain that he has access to the raw materials intregal to the building of an effective defense."

Due to not conducting investigations, and reviewing the discovery of this case, Defense counsel was not aware defendant ~~outside~~ resided out of state, and could have impeached witnesses, had he conducted verification of defendant's statement That alledged crimes at Washington County residence was impossible, in 2009, as The residence was habitated by other individuals.

Further, that Defendant has a long history of being mentally disabled, with a diagnosis as late as December 2000, of paranoid-Schizophrena in addition to severe Post-Tramatic Stress Disorder, and Attention Deficet Disorder, and would often acknowledge understanding when asked, and not fully Comprehend what's being said, until seeking further explaination from treasted support personnel or Therapist. (TR 723-729).

This court previously held the concerns of mental Health and Competency under Drope v. Missouri, 420 us 162; 43 LEd2d 103, 95 SCt 896 (1975); at 171-172:

"The mentally incompetent defendant, though physically present in the courtroom is in reality afforded no opportunity to defend himself. xxx [420 us 172] "[H]as sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and whether he has a rational as well as factual understanding of the preceedings against him." [420 us 179] "[F]ailure to give proper weight to the information suggesting incompetence which came to light during trial, [420 us 180] The import of our decision xxx is that evidence of a defendants irrational behavior, his demeanor, at trial, and any prior medical opinion on competence to stand trial are relevant in determining whether further inquiry is required, but that even one of these factors standing alone may, in some circumstances be sufficient."

In this case, the defendant's odd demeanor was pointed out during voir dire by perspective jurors, and when being questioned and not fully understanding was directed by counsel to say what the court wants to hear. Including during the heated exchange between the trial court and defendant when asked about waiving rights to testify on his own behalf. (TR-829-834). The courts continued denial of the rights of the defendant, and inadequate counsel, defendant is denied his Due process Right to a fair trial. As evidenced by the second error before this court, defense counsel did not have enough time to thoroughly review all the discovery or investigate this case as the error arose from the jury viewing a portion of a video introduced by the Prosecution during their case in chief, that should have been and was later redacted. Had defense counsel had adequate time to prepare, that error never would have occurred.

Accordingly, the Trial Court abused its discretion when it denied defendant's motion for a continuance to adequately prepare and develope an effective defense. Further, the Appellate Court abused its discretion by not giving adequate weight to the protection to the Due process and observation of defendant's right to an impartial jury, confront and cross-examine all witnesses against him and the effective, adequate assistance of counsel, as guaranteed by the Sixth and Fourteenth Amendments of the United States Constitution and the Oregon Constitution's Article 1, section 11. Thus, reversal for new Trial in this case is required.

2) Prior to trial, the parties agreed that evidence of defendant's previous convictions or that he was on probation would not be admitted at trial, (TR 158-165, 168). The state also accepted defendant's Stipulation that he had been designated a predatory sex offender and agreed to "Sanitize" defendant's probation officer's testimony.

During jury selection Trial Court informed sworn jurors that DT was a witness for the case, and a probation officer for Washington

County, (TR-210).

Further, on the second day of trial, the prosecution introduced and played for the jury a video of one victim's interveiw with the Child Abuse Response Evaluation Services, (CARES), (TR-375). At one point in the interview, the victim stated that he thought that the defendant had gone to jail for being a pedophile:

> "xxx [A]nd everybody fell for his stuff when he said, 'oh, yeah, my kids died and everything, which I found out he lied about. And which I found out I'm pretty sure he went to jail for, xxx, for being a pedophile[.]"
> TR-375.

Defense Counsel objected as soon as the victim said that defendant had gone to jail, and the court sustained the objection, [TR-375]. Outside the presence of the jury, defendant's trial counsel asked for mistrial based on the admission of the statement, because it constituted prejudicial evidence of defendant's prior convictions.

The state argued that the court should deny the motion because any prejudice caused by the comment on the video could be cured by a limiting instruction, that instructed the jury to disregard the statement, (TR-383-385). Defendant's trial counsel reiterated that the prejudice from the comment could not be cured through a limiting instruction.

> "THE COURT: So the last statement that you heard on the video by [DB], if you heard it, is to be stricken from the record, and you're to disregard and ignore the statement.
> "And you are not to discuss the statement at all with any juror and you're not to consider the statement at all when you're deciding the case. So wipe it from your memory. It does not exist. That's the last statement that you heard from [DB]". TR-413.

This Court reviews a trial court's ruling on mistrial motion for abuse of discretion; McKinney v. Rees 993 F2d 1378 (1993). In opinion of Justice Orrick, II. A:

"The use of other acts as character evidence is not only impermissible under the theory of evidence. xxx But is contrary to firmly established principles of Anglo-American jurisprudence.

"The rule against using character evidence to show behavior in conformance there with, or propensity, is one such historically grounded rule of evidence. xxx The disputed evidence was "other Acts" evidence, probative only of character, and, thus, irrelevant, xxx must decide whether the erroneously admitted evidence was of such quality as necessarily prevents a fair trial. xxx

"It is part of our Community's sense of fair play that people are convicted because of what they had done, not who they are, xxx [a] trial so infused with irrelevant prejudicial evidence as to be fundamentaly unfair."

The Oregon Evidence Code (OEC) 40.025 rule 103: Rulings on evidence provides:

"(3): In jury cases, Proceeding shall be conducted to the extent practicable, so as to prevent inadmissible evidence from being suggested to the jury by any means, such as making statements or offers of proof or asking questions in the hearing of the jury."

Additionally the OEC 40.160 Rule 403: Exclusion of relevant evidence on grounds of prejudice, confusion or undue delay; provides:

> "Although ~~relevant~~ relevant, evidence may be excluded if it's probative value is substantially out weighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or considerations of undue delay or needless presentation of cumulative Evidence."

The admission of the agreed inadmissible evidence, and continued character evidence introduced by the State during the trial created an accumulative weight to the inadmissible evidence.

The trial court has wide discretion in the decision to grant or deny a motion for a mistrial, but that discretion is not limitless. whenever it appears that a defendant's ability to obtain a fair adjudication of the facts has been impaired, the Trial Court errs in denying a motion for a mistrial; Morgan v. Illinois, 504 US 719, at 726-727, the Due Process Clause of the Fourteenth Amendment (1) "demands" such a trial, and the Sixth Amendment to the United States Constitution provides:

> "In all criminal Prosecutions, the accused shall enjoy the right to a speedy, and public trial, by an impartial jury, xxx, [and] to be confronted with the witnesses against him."

When considering whether a mistrial motion should be granted, the Trial Court must first determine if the remarks presented to the jury would have a likelihood of prejudicing the rights of the defendant, to have a fair and impartial trial, xxx, the overriding inquiry is whether the defendant can receive a fair trial if it were continue," State v. Flores, 31 OR App 187, 190, 570 P2d 94 (1977).

Prejudice, within the context of a motion for a mistrial, "means a reasonable possibility that the judge or jury will be influenced in the performance of the factfinding function by the irregular event", State v. Stanley 30 Or App 33, 36; 566 P2d 193, rev den, 280 Or 1, (1977).

The trial court may cure the effect of improper conduct or testimony by giving the jury a curative or limiting instruction as an alternative to granting a motion for a mistrial, However, in some cases, the prejudice to an accused caused by inappropriate comments can be so great that a curative or limiting instruction is insufficient and a mistrial must be declared.

In this case, there was a reasonable possibility that the jury was influenced in its factfinding function by DB's comment in the CARES interview. The parties agreed pretrial to omit any reference to defendant's prior convictions, apparently recognizing the highly prejudicial nature of such evidence. All of the charges in this case were based on defendant's inappropriate, sexual contact with young boys. The State's case was based on the jury's credibility assessment of the witnesses, because most of the evidence in support of the charges came from victims' testimony. The fact that the jury heard that statement eviscerated all effort to ensure that the jury would not make the inference that defendant was guilty because he had previously engaged in similar conduct.

Once the jury heard that defendant had been imprisoned before, and that it was for sexual offenses against children, it was likely the jury inferred that defendant had penchant for sexually abusing young boys. Thus, the prejudice from the statement was so great that once heard the jury could no longer provide defendant a trial that was impartial and fair. Moreover, the Court's instruction to the jury to disregard the statement was not sufficent to cure the prejudice, because of the likelihood that the statement improperly influenced the jury in its factfinding function.

In a case involving many charges of sexual offenses committed against multiple young victims, an inadmissible statement that the defendant is a convicted pedophile is likely to influence the jury's decision. Consequently, the failure to grant defendant's mistrial motion violated his right to a trial by an impartial jury under Article I, Section 11, of the Oregon Constitution, and defendant's right to a fair and impartial jury under the Sixth Amendment and the Due process Clause of the Fourteenth Amendment of the United States Constitution.

The trial court abuses its discretion in denying a motion for mistrial. Thus, reversal for a new trial in this case is required.

3) Prior to trial, defendant's trial counsel filed a written objection to the State's assertion that venue was proper in Washington, County for several counts, including counts 7-10. In that motion, defendant argued that venue was not proper in Washington County based on the alternative venue statute, ORS 131.325, that provides:

> "If an offense is committed within the state and it cannot readily be determined within which county that commission took place, or a statute that governs conduct outside the state is violated, Trial may be held in the county in which the defendant resides at the time of the commission of the offense."

At a pretrial hearing, the state argued that because venue could not be determined for counts 7 through 10, under ORS 131.325 venue was proper in the county in which defendant resided, (TR 141-43). Defendant responded that because the photograph could have been taken in either Crook County, Washington County, or Vancouver, Washington, venue was not proper in Washington County, (TR-143-46).

The court ruled that venue could not be ~~sed~~ readily determined, and was, therefore, proper in Washington County.

Artical 1, section 11, of the Oregon Constitution provides:

"In all Criminal prosecution, the accused shall have the right to public trial by an impartial jury in the county in which the offense shall have been committed."

That provision guarantees individuals the personal right to be tried in the county where the offense was committed, State v. Mills, 354 Or 350, 371, 312 P3d 515 (2013); see also ORS 131.325.

ORS 131.325's alternative means of establishing venue applies if, and only if, the State first establishes the factual predicates that, (1) the crime occurred in Oregon, and (2) the location of the crime "cannot be readily determined".

Counts 7 through 10 were based upon a single photograph of DJ's penis that was found on a thumb drive. Because DJ did not remember when or where the picture was taken, the State Asserted that venue could not be readily determined, and was thus proper in the defendant's current county of residence, Washington County. However, at the pretrial venue hearing, the evidence established that the photograph could have been taken in one of three places: Crook County, Washington County, or Vancouver, Washington, where defendant resided at the time, and where thumb drive was discovered. Based on that evidence, the Trial Court found that venue could not be readily determined because the picture could have been taken in any one of those locations.

The State failed to establish the factual predicate that ~~the~~ the crimes alledged in Counts 7 through 10 occurred in Oregon.

one of the places that the State establisted that the photograph could have been taken was Vancouver, Washington, which is outside of the State of Oregon, thus, the State failed to establish the first factual predicate necessary for ORS 131.325 to apply that the crimes occurred in Oregon.

Further, during the course of the trial, the State introduced repeated testimony evidence that defendant was residing in Vancouver, Washington during the comission of the alledged crimes. State witnesses DJ, LC, CB and Detective KD, (TR 526, 536, 539, 566-67, 574, 590-91). Further, it was presented the case was originally turned over to the F.B.I as the proper jurisdiction to proceed with the case, that Federal Attorney General denied to prosecute the case.

Thus, the State failed to establish the crimes occurred in Oregon alledged in Counts 7 through 10, and that the defendant resided in Oregon, or Washington County during the comission of the offenses. Accordingly the trial court erred when it concluded otherwise and denied defense counsel's objection to venue and motion for Judgment of Acquittal for the counts, 7 through 10.

4) As stated in the Third Question's Statement of Case, in regards to ORS 131.325, prior to Trial defendant's Trial Counsel filed a written objection, (Appendix E), to the State's assertion that venue was proper in Washington, County, for counts 7 through 10.

because the state had not satisfied the requirements of the Alternative Venue Statute. At the venue hearing, defense counsel argued that the state had not satisfied the requirements of the alternative venue statute because the evidence showed that the ~~earlier~~ earlier charged conduct likely occurred in crook county, and that following additional investigation, later charged conduct occurred in either Crook County or Vancouver, Washington, (TR 143-46). Defense Counsel specifically pointed out that if the conduct occurred in Vancouver, Washington, jurisdiction would not be proper in Washington County, (TR-146). When defendant's argument is viewed in context, it is clear that he argued that (1) it was not ascertainable where the conduct occured and it could have occurred in Crook County or Vancouver, Washington, and (2) if the conduct occurred in oregon it was readily ascertainable that the conduct occurred in crook County. Either way jurisdiction was not proper in Washington County.

In ruling that venue was proper in Washington County, the court, specifically acknowledged that it was not possible to determine whether the conduct occurred in Oregon:

THE Court: "And xxx you could make all sorts of guesses and determinations why it may have occurred in Vancouver or why it may have occurred in Crook County, and why it may have occurred in Tigard, Washington County.

"xxx I'm not going to go down that road and try and start guessing that it might have happened here or might have happened there. It just can't be determined", (TR-146-47).

Despite acknowledging that the Conduct could have occurred out of the state, the trial court concluded that venue was proper in Washington County because the location of the offenses could not be readily ascertained, (TR 147). That ruling was an error that the Oregon Court of Appeals should have addressed.

The state bears the burden of proving the Prerequisite that the charged conduct occurred in Oregon before it can rely on the alternative Venue Statute. Defendant's Trial counsel Presented an argument that the conduct could have occurred outside of Oregon and the Court AGREED with that argument. Thus, because the trial court was given a chance to consider and rule on whether Venue was proper under the alternative venue Statute and the State was given the opportunity to respond to the Defendant's argument that it failed to satisfy its burden of proving the alternative venue statute requirements, defendant adequately preserved his appellate Challenge, see Peeples v. Lampert, 345 Or 209, 220, 191 P3d 637 (2008) (outlining purposes of Preservation). The Oregon Court of Appeals' conclusion to the Contrary misconstrued defendant's arguement to the trial court, sliced the Preservation onion too thinly, and relieved the State of its burden of satisfying the alternative venue Statutes requirements, see

State v. Amaya 336 Or 616, 629, 89 P3d 1163 (2004) (noting the problems arise "if the perservation onion is sliced too thinly").

5) The Eighth Amendment to the United States Constitution forbids "cruel and unusual punishment." It contains a "narrow porportionality principle" that "applies to noncapital sentences", Harmelin v. Michigan, 501 US 957, ~~996~~ 996-997, 111 S Ct 2680, 115 L Ed 2d 836 (1991); Ewing v. California, 538 ~~US~~ US 10 at 20-24, (reaffirming the applicability of federal proportionality law); see also Robinson v. California, 370 US 660, 667, 82 S Ct 1417, 8 LEd 2d 758 (1962) (applying the Eighth to the states via the Fourteenth Amendment). Whether a sentence is so disportionate that it violates the Eighth Amendment depends on three factors: "(1) the gravity of the offense and the harshness of the penalty; (2) the sentences imposed for commission of the same crime in other jurisdictions;" and (3) the sentences imposed on other criminals in the same jurisdiction." Solem v. Helm, 463 US 277, 292, 103 S Ct 3001, 77 L Ed 2d 637 (1983) (holding that "a life sentence without possibility of parole, "for a seventh nonviolent felony" was unconstitutional); but see Hutto v. Davis, 454 US 370, 102 S Ct 703, 70 L Ed 2d 556 (1982) (per curiam) (ruling that two consecutive terms of 20 years in prison for possession with intent to distribute nine ounces of marijuana and distribution of marijuana did not violate the proportionality principle).

The penalty mandated by ORS 137.719 is disproportionate to the offenses contained in counts 1, 2, 4, 5, 7-9, 11-15, and 19.

All of the offenses at issue in those counts are sexual offenses involving children. The penalty mandated for intentional, non-aggravated murder is a determinate prison sentence of 300 months, ORS 137.700(2)(a)(A). The presumptive punishment for attempted aggravated and solicitation of or conspiracy to commit the crime of aggravated murder is a determinate prison sentence of 120 months, ORS 137.700(2)(a)(C). If the offender has an extensive criminal history, a court may impose a determinate of 130 months under the sentencing guidelines, OAR 213-004-0001. If the offender has an extensive criminal history and the crime was aggravated, a court may impose a durational departure up to 240 months, OAR 213-008-0001; OAR 213-008-0003(2).

Thus, the penalty for intentionally taking the life of another human being is 300 months in prison. And, the maximum presumptive sentence for a first-time offender who commits First-Degree Manslaughter or who solicits the commission of, or attempts to commit or conspires to commit aggravated murder is a determinate sentence of 120 months, (10 years). Those are much less severe penalties than that imposed pursuant to ORS 137.719, which applies to offenses that are not murder. That fact demonstrates that the penalty pursuant to ORS 137.719 is disproportionate.

A sentence of life in prison without the possibility of parole is a more severe penalty than those imposed for crimes involving homicide. Because it is disproportionate, application of the penalty to the defendant, violates the Eighth Amendment to the United States Constitution.

FootNotes

1 The Sixth Amendment is applicable to the states through the due process clause of the Fourteenth Amendment to The United States Constitution. Pointer v. texas, 380 US 400, 403-06, 85 S ct 1065, 13 L Ed 2d 923 (1965).

Reasons for Granting the Petition

This Court Should grant Certiorari in this case for Several reasons. First, it presents several significant issues of law involving the jurisdiction of the trial court, preservation and interpretation of several constitutional Provisions. (2) The observance of motion for mistrial and continuances, and the prejudice caused by introduction of inadmissible evidence to a jury. (3) Indigent defendant's right to adequate Counsel and present an effective defense. (4) Trial courts abuse of a defendant's Liberties in the name of Court efficency.

Because of the number of significant issues in this case the issues are likely to arise often and many people would be affected by the decision in this case.

In reference to the legal issues presented are properly preserved and the case is free from factual disputes or obstacles that would prevent this Court from reaching the issues.

Finally, the Oregon Court of Appeals published a written opinion that appears to be wrong and the results in distortion and misapplication of legal principles.

In conclusion, I humbly ask this court to grant this case Certiorari, because on a personal level, trying to understand all this process has been overwhelming and Though I sought assistance, being indigent I got little or zero responses, including from the Federal public defender's office, referred to me by the OCDLA. It's very disturbing that people learn your past, and no matter what you try to do right, a court can thrust you through the system and sentence you to die away from family, and loved ones on the questable word of witnesses with statements in conflict of physical evidence. It's for these reasons I beg this court to shed it's light upon those without millions of dollars to protect their rights and liberty.

Thank you for the time and consideration in this matter.

Conclusion.

The Petition for a writ of certiorari should be granted.

Respectfully Submitted,

Date: May 24 2018