No.: 18-7795 ORIGINAL

In The
Supreme Court of the United States
_____ **Term, 2017**

MARKUS D. LANIEUX — Appellant

vs.

STATE OF LOUISIANA — Appellee(s)

On Petition for a Writ of Certiorari to

LOUISIANA SUPREME COURT

Markus D. Lanieux #350918
MPEY/Cypress-3
La. State Penitentiary
Angola, LA 70712

QUESTION(S) PRESENTED

1. **Reasonable jurists would determine that the sentencing scheme by the State of Louisiana's Habitual Offender Law, LSA-R.S. 15:529.1 A(3)(b) [formally enacted as LSA-R.S. 15:529.1 A(1)(b)(ii)], subject to the jury requirements of the Sixth Amendment to the United States Constitution.**

2. **Jurists of reason would argue that: (1) in accordance to an independent sentencing enhancement statute (LSA-R.S. 15:529.1, et seq.) proof of a fact is an essential element to enhancing a defendant's penalty after he has been convicted for violating any other criminal statute (that essential fact being the existence of a prior felony conviction); and, (2) through this enhancement provision, the penalty for the underlying offense may be completely altered unto a mandatory minimum sentence of life in prison, which ends up being a sentence that is well-above the statutory maximum penalty prescribed by the statute of which that the defendant had originally been convicted of violating; and, (3) does the Sixth Amendment require that such essential fact be subjected to the reasonable doubt standard?**

   Mr. Lanieux answers yes.

3. **Reasonable jurists would determine that the above cited Habitual Offender Law operates in contrast to the rules and policies promulgated by this Court pursuant to *U.S. v. Booker*, 125 S.Ct. 738, 543 U.S. 220 (2005); and *Blakely v. Washington*, 124 S.Ct. 2531, 542 U.S. 296.**

   Mr. Lanieux answers yes.

4. **Reasonable jurists would debate that the above cited Habitual Offender Law cause Mr. Lanieux to be denied his Sixth Amendment right to a jury trial.**

LIST OF PARTIES

[ ] All parties appear in the caption of the case on the cover page.

[X] 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

Appellant 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 "C" to the petition and is the Louisiana Supreme Court in Docket Number _____.

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[ ] is unpublished.

The opinion of the Fifth Circuit 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.

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. ____.

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 _____ _____.
A copy of that decision appears at Appendix "o".

[ ] 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. ____.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Sixth Amendment to the United States Constitution, which provides in pertinent part:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed ...

The Fourteenth Amendment to the United States Constitution, which provides in pertinent part:

> All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and 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 ...

Louisiana Revised Statute, Title 15, Section 15, Sections 529.1 A(1)(b)(ii), D(1)(b) and D(2)(b), set out here verbatimly to the way these Subsections were framed in the year of 2009 (i.e., the year in which Mr. Lanieux was convicted and sentenced), which provide:

> A(1) Any person, who, after having been convicted within this State of a felony or adjudicated a delinquent under Title VIII of the Louisiana Children's Code for the commission of a felony-grade violation of either the Louisiana Controlled Dangerous Substance Law involving the manufacture, distribution, or possession with intent to distribute a Controlled Dangerous Substance or a crime of violence as listed in Paragraph (a) of this Subsection, or who, after having been convicted under the laws of any other state or the United States, or any foreign government of a crime, which, if committed in this state would be a felony, thereafter commits any subsequent felony within this state, upon conviction of said felony, shall be punished as follows:
>
> (b) If the third felony is such that upon a first conviction, the offender would be punishable by imprisonment for any term less than his natural life then:
>
> (ii) If the third felony and two prior felonies are felonies defined as a crime of violence under R.S. 14:2(2)(13), a sex offense as defined in R.S. 15:540 et seq. when the victim is under the age of eighteen at the time of the commission of the offense, or a violation of the Uniform Controlled Dangerous Substance Law punishable by imprisonment for ten years or more, or any other crimes punishable by imprisonment for twelve years or more, or any combination of such crimes, the person shall be imprisoned for the remainder of his natural life, without the benefit of Probation, Parole, or Suspension of Sentence.
>
> D.(1)(b) Except as otherwise provided in this Subsection, the district attorney shall have the burden of proof beyond a reasonable doubt on any issue of fact. The presumption of regularity of judgment shall be sufficient to meet the original burden of proof. If the person claims that any conviction or adjudication of delinquency alleged is invalid, he shall file a written response to the information. A copy of the response shall be served upon the prosecutor. A person

claiming that a conviction or adjudication of delinquency alleged in the information was obtained in violation of the Constitutions of Louisiana or of the United States shall set forth his claims, and the factual basis thereof, with particularity in his response to the information. The person shall have the burden of proof, by a preponderance of the evidence, on any issue of fact raised by the response. Any challenge to a previous conviction or adjudication of delinquency which is not made before sentence is imposed my not thereafter be raised to attack the sentence.

(2) Following a contradictory hearing, the court shall find that the defendant is:

(b) A third felony offender, upon proof of two prior felony convictions or adjudications of delinquency as authorized in Subsection A, or any combination thereof.

Louisiana Revised Statute, Title 14, Sections 108.1(C) and (E), which provides:

(C) Aggravated Flight From an Officer is the intentional refusal of a driver to bring a vehicle to a stop, under circumstances wherein human life is endangered, knowing that he has been given visual and audible signal to stop by a police officer when the officer has reasonable grounds to believe that the driver has committed an offense. The signal shall be given by an emergency light and a siren on a vehicle marked as a police vehicle.

(E) Whoever commits Aggravated Flight From an Officer shall be imprisoned at hard labor for not more than two (2) years.

NOTICE OF PRO-SE FILING

Mr. Lanieux requests that this Honorable Court view these Claims in accordance with the rulings of *Haines v. Kerner*, 404 U.S. 519, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972); Mr. Lanieux is a layman of the law and untrained in the ways of filings and proceedings of formal pleadings in this Court. Therefore, he should not be held to the same stringent standards as those of a trained attorney.

REASONS FOR GRANTING THE PETITION

In accordance with this Court's *Rule X, § (b) and (c)*, Mr. Lanieux presents for his reasons for granting this writ application that:

Review on a Writ of Certiorari is not a matter of right, but of judicial discretion. A petition for a Writ of Certiorari will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers.

A state court of last resort (Louisiana Supreme Court) has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States Court of Appeals.

A state court or a United States Court of Appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

Since the year 2000, a majority of states and the Federal Government have been making adjustments to their sentence enhancement laws in order to conform with this Court's precedence, to wit:

> "Other than a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt."

This rule has been established throughout a long line of cases, the most prominent being *Apprendi v. New Jersey*, 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000). However, and yet again, the State of Louisiana has been reluctant to accept and/or act on this Court's supreme judicial authority.

This Court has consistently upheld legal principles which promote the concept that "(1) constitutional limits exist to State's authority to define away facts necessary to constitute a criminal

offense (citations omitted); and, (2) that a State scheme that keeps from the jury facts that 'expose[es] [a defendant] to greater or additional punishment (citations omitted), may raise serious constitutional concerns." *Apprendi*, supra; (citing *McMillian v. Pennsylvania*, 477 U.S. 79, at 85-88). As it relates to the enhancement of a defendant's sentence, the Court, in *Apprendi* somewhat validated the notion (without addressing the situation) that it does not offend the Constitution when a judge sits alone and determines the fact of a prior conviction, through preponderance of the evidence, if such a determination [only] triggers an increase of the statutory prescribed maximum penalties to which a defendant is exposed. *Id.*, at 488-90.[1]

But, when closely examining the latter policy's objective within the content of the history supporting such reasoning, the Court was only validating the idea that after an increase of the statutory maximum penalty is triggered by a finding of the defendant having a prior felony conviction, a sentencing judge has the discretion to sentence – or not sentence – the defendant to serve that increased maximum penalty.

Thus, when *Apprendi* was decided, it seems the Court had presumed that a judge would always retain the discretion to determine if whether the aggravating circumstances of the case required that he/she upper depart from the maximum penalty prescribed by the statute of which the defendant had

1 In ***Apprendi***, supra, the Court rehashed an analysis that was made in the case of ***Almedarez-Torres v. U.S.***, 523 U.S. 224, 118 S.Ct. 1219 (1998). At that point it was discussed why the Court had rejected ***Almedarez-Torres***'s argument, claiming that sentencing him to a term higher than that attached to the offense alleged in the Indictment had violated the strictures pronounced in ***In Re: Winship***, 397 U.S. 358, 90 S.Ct. 1068 (1970). The ***Apprendi*** Court found found that, "Because ***Almedarez-Torres*** had admitted the three earlier convictions for aggravated felonies – all of which had been entered pursuant to proceedings with substantial procedural safeguards of their own – no question concerning the right to a jury trial or the standard of proof that would apply to a contested issue of fact was before the Court." ***Id.***, at 488, 530 U.S. 466. The ***Apprendi*** Court further noted that, "Both the certainty that procedural safeguards attached to any 'fact' of prior conviction, and the reality that ***Almedarez-Torres*** did not challenge the accuracy of that 'fact' in his case, mitigated the Due Process and Sixth Amendment concerns otherwise implicated in allowing a judge determining a 'fact' increasing punishment beyond maximum of the statutory range." ***Id.***, at 488. The ***Apprendi*** Court went on to conclude that, "Even though it is arguable that ***Almedarez-Torres*** was incorrectly decided, and that a logical application of our reasoning today should apply if the recidivist issue contested, ***Apprendi*** does not contest the decision today [...]" ***Id.***, at 489, 530 U.S. 466. The Petitioner in the case at bar, Markus D. Lanieux, however has contested his sentencing judge determining the "fact" of him having a prior felony conviction, and, the Petitioner submits that the evidence used to substantiate this "fact" was scant at best. Thus, the Petitioner asks that this Court perform a logical application of its reasoning in the ***Apprendi*** case, including all the extensions thereof, to the recidivist issue as it was suggested above.

originally been convicted of violating.

It wasn't until the Court reviewed the case of ***Blakely v. Washington***, 542 U.S. 296, 124 S.Ct. 2531 (2004), that it was faced with the issue of State Legislators enacting laws which, in essence, forced judges to issue sentences that exceeded the statutory maximum penalty authorized by the statute of which the jury had originally found the defendant guilty of violating.

Washington's Sentencing Reform Act binded judges to imposing a sentence which was above the standard range if any of those judges had found substantial and compelling reasons justifying an exceptional sentence. The Act furthermore listed specific aggravating factors which would justify such a departure.

According to the Act, if a judge, after reviewing a case, had identified any of the aggravating factors which were listed by the law, then identification of such and aggravating factor required the triggering of a determinate sentencing range within which a judge had to impose a punishment. This determinate sentencing range, where even the lower end of the range always exceeded the maximum penalty prescribed by the statute of which the jury had originally found the defendant guilty of violating, inevitably ended in an exceptional sentence.

Thus, Washington State Legislators had enacted a sentencing enhancement law that did not just increase the range in which a judge may or may not set a sentence; this law had also, at the same time, forced a judge to issue this enhanced sentence despite it being well-above the statutory maximum penalty authorized by the statute; and, the triggering of this [so-called] exceptional sentence was based on facts found by a judge, sitting alone, through preponderance of the evidence. This Court, in the wake of ***Blakely***'s case, struck down Washington's sentencing enhancement law because, inter alia, "The relevant sentencing rules [were] mandatory and impose[d] binding requirements on all sentencing judges (See also, e.g., ***U.S. v. Booker***, 543 U.S. 220, at 233, 125 S.Ct. 738, at 749-50)," in holding:

> The State trial court's sentencing of defendant to more than three years above the 53-month statutory maximum of the standard range for his offense, on basis of sentencing judge's finding that defendant acted with deliberate cruelty, violated defendant's Sixth Amendment right to trial by jury. ***Blakely v. Washington***, supra.

So, it seems as if the Court, in ***Apprendi***, had scarcely upheld the concept that a sentencing judge, who was sitting alone and in preponderance of the evidence, could be permitted to find the fact of a defendant having a prior felony conviction, but, only if the finding of this fact would do nothing more than extend the maximum penalty that an already convicted defendant is exposed unto. *Id.* In conjunction with these conditions, the Court also seems to be alluding to the ideal that a sentencing judge should always retain the discretion to impose – or not impose – that extended maximum penalty.

Holding to these principles, the Court found unconstitutional, in ***Blakely***, any sentencing enhancement laws which, on the surface, appear to [only] extend the maximum penalty that a defendant was exposed unto, but, in essence, actually forced a judge to issue a punishment within a determinate sentencing range – where that determinate sentencing range always exceeded the maximum penalty prescribed by the statute of which the jury had originally found the defendant guilty of violating.

And, these penalty enhancement laws were found to be unconstitutional irregardless of whether they labeled a sentencing factor as a prior felony conviction or anything otherwise.

The Court clarified the above policies in the case of ***US. v. Booker***, supra wherein sections of the Federal Sentencing Guidelines were held to be unconstitutional. In the latter case, 18 U.S.C. § 3553(b)(1) and 3742(e) were severed from the Federal Sentencing Guidelines because those sections required – not recommended – that a judge select a sentence of a certain kind in response to differing sets of facts. The decision in ***Booker*** expanded the rules and policies which were promulgated in ***Apprendi*** and ***Booker***, in so holding that:

"[S]ixth Amendment requirement that the jury find certain sentencing facts was incompatible

with Federal Sentencing Act, this requiring severance of Act's previsions making guidelines mandatory [...]" *U.S. v. Booker*, supra.

The ruling in *Booker*, although the Court was reviewing circumstances involving a federal prisoner and the construction of certain federal statutes, had established substantial [6th Amendment] rights for any person who had likewise been sentenced under a similar or same type of sentencing scheme as that which had been provided by the statutes under review in *Booker*'s case. So, therefore, the Petitioner believes he is justified in assuming that those rules and policies promulgated by this Court, after analyzing *Booker*'s case, are and were applicable to the states.

To be sure, Washington State's sentencing enhancement laws and parts of the Federal Sentencing Guidelines, have been found unconstitutional because those laws had imposed binding requirements on all judges to issue punishments which were well-above the sentencing limits of the statute that the jury had originally found the defendant guilty of violating.

Notwithstanding, this Court has consistently held that, "[A]ny fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt."

Allowing the State of Louisiana to continually ignore this Court's precedence will eventually provide for other sovereigning states to follow the same course. Louisiana's penalty enhancement laws have hitherto provided for a sentencing scheme which is no different than those that had been used in the State of Washington and in the Federal Courts ... though they were eventually prohibited. Would this Court ban the use of the afore described sentencing schemes by the State of Washington and the Federal Penal System, but then allow the State of Louisiana to exploit the same type of laws? Thus, the Petitioner asks this Honorable Court to grant Certiorari in this matter to determine if the State of Louisiana should be banned from using the same type of penalty enhancement schemes as did its predecessors.

The Petitioner believes that the gravamen, when determining if Louisiana's penalty enhancement law – particularly LSA-R.S. 15:529.1, Section A(3)(b) [formally enacted under Section A(1)(b)(ii)], in conjunction with Sections D(2)(b) and D(3) – should have been banned by this Court a long time ago, turns on answering the following questions of law:

STATEMENT OF THE PROCEEDINGS

On December 16, 2008, Markus D. Lanieux, was indicted in Jefferson Parish, Louisiana, on the charge of Aggravated Flight From an Officer, a felony in violation of LSA-R.S. 14:108.1(C), the next day, Mr. Lanieux appeared with court appointed counsel and entered a plea of not guilty.

A jury trial was held on April 5, 2009, and Mr. Lanieux was found guilty as charged, and the court imposed the maximum penalty prescribed for a violation of LSA-R.S. 14:108.1, which was two (2) years at hard labor. See: ***State v. Lanieux***, 42 So.3d 979 (La. App. 5th Cir. 2010).

At the time of sentencing, the State announced that it believed Mr. Lanieux was a Third Felony Offender, according to LSA-R.S. 15:529.1A(1)(b)(ii), and that it would be filing a Multiple Offender Bill of Information alleging that Mr. Lanieux had two prior felony convictions to wit: (1) a prior guilty plea from Orleans Parish, Louisiana, to Possession of Cocain w/Intent to Distribute, Docket No.: 387782; and, (2) a prior guilty plea conviction from Jefferson Parish, Louisiana, to Possession of Cocain w/Intent to Distribute, Docket No.: 97-4179.

Thus, Mr. Lanieux entered a "Not Guilty" plea to his Habitual Offender Bill of Information. Furthermore, a motion was granted which provided for Mr. Laniuex's Appeal of his underlying conviction. See: Docket No.: 09-KA-0675, Louisiana Fifth Circuit Court of Appeal. This motion for Appeal of conviction was granted on May 13, 2009.

After written objections to the Habitual Offender Bill of Information were filed in accordance with R.S. 15:529.1 D(1)(b), a Multiple Offender hearing was held for Mr. Lanieux on July 10, 2009. One

method, through which Louisiana Court have allowed State prosecutors to [so-called] adequately prove that a defendant has a constitutionally firm guilty plea conviction, whereby it is established that such a conviction is valid for purposes of a Habitual Offender adjudication, is by presenting whatever Indictment or Bill of Information that is connected to said guilty plea conviction being alleged in the Habitual Offender Bill of Information, along with its corresponding guilty plea form, certified trial court minutes, a fingerprint record and testimony from a fingerprint expert. See: e.g., *State v. Powell*, 746 So.2d 825, at 831 (La. App. 4th Cir. 1999)(citing *State v. Yarborough*, 596 So.2d 311 (La. App. 3rd Cir. 1992).

In this case, during the Habitual Offender hearing, Deputy Chad Pitfield was accepted as an expert in fingerprint analysis. Deputy Pitfield determined that the set of fingerprints which were associated with one of the prior convictions alleged in Mr. Laniuex's Habitual Offender Bill of Information, Docket No.: 387782, were unsuitable for fingerprint comparison (See: Appendix D, p.5, lines 20-32, transcripts of Mr. Lanieux's Habitual Offender hearing).

However, a certified arrest register from Orleans Parish Jail was also introduced and Deputy Pitfield testified that the prints on that register were Mr. Lanieux. Pitfield further examined the prints secured from Docket No.: 97-4179, Jefferson Parish, and stated that the prints from that court record were Mr. Laniuex's. Deputy Pitfield added that he was not present when Mr. Lanieux plead guilty to any of the above mentioned charges.

When the State introduced those records which were intended to be presented as proof of Mr. Laniuex's prior guilty plea convictions, defense counsel objected and stated that he would reserve his reasons for objection until arguments.

When both parties were given an opportunity to argue, the prosecution insisted that the prior convictions alleged in the Habitual Offender Bill of Information were validly connected to Mr.

Lanieux; particularly when the prints from his subsequent arrest in Jefferson Parish related back to the Orleans Parish conviction.

The prosecutor then proposed that the ***Boykin*** forms and Minute Entries which he had presented were also related to those guilty plea convictions being alleged in Mr. Laniuex's Habitual Offender Bill of Information; and, furthermore, conformed to the necessary requirements of R.S. 15:529.1. The prosecution finished with pointing out the fact that Aggravated Flight From an Officer was a crime of violence.

On the other hand, Mr. Laniuex's defense counsel argued that the records from Orleans Parish were illegible and should be discounted by the Court. Defense counsel also argued that the line between Jefferson Parish and Orleans Parish convictions, which the prosecution was attempting to draw, still did not prove that Mr. Lanieux was properly ***Boykin***ized during the taking of those pleas, and that he could be adjudicated a Habitual Offender, when based on those prior convictions.

Counsel additionally argued that there was no mention of the sentencing range before his plea was accepted; and, so therefore, the Orleans Parish conviction should have been disregarded. Counsel furthermore argued that the exhibits presented for the previous Jefferson Parish conviction only showed a general Minute Entry and, without a ***Boykin*** transcript, the State had not proven that Mr. Lanieux was fully advised of the consequences to his plea.

By the end of the Habitual Offender hearing, the sentencing judge felt as if the State had proven Mr. Lanieux was one and the same individual who had been arrested in Jefferson Parish on a warrant issued out of Orleans Parish and, so thereafter, who had plead guilty to committing Possession of Cocaine w/Intent to Distribute in Orleans Parish in Docket No.: 387782.

The Court established this fact beyond a reasonable doubt, by way of certified documents which had shown a circumstantial tie between a case number attached to Mr. Laniuex's guilty plea

proceedings and an Affidavit number on an arrest register. And, because Deputy Pitfield had said that the fingerprints attached to the arrest register to be superimposed into a guilty plea record so that the State could establish that, although illegible, Mr. Laniuex's had, in fact, been the prints that were on the back of the Bill of Information belonging to Docket No.: 387782, Orleans Parish.

Once it was established that Mr. Laniuex's fingerprints, although they weren't, had belonged on the back of the Bill of Information for Docket No.: 387782, the Court was thereafter able to assume that Mr. Lanieux was one and the same individual who had plead guilty in that case.

And, where the State had presented a guilty plea form along with the certified Court Minutes which corresponded with the guilty plea proceedings had in that docket, the Court concluded that those documents proved Mr. Lanieux had been properly ***Boykin***ized when he plead guilty to committing Possession of Cocaine w/Intent to Distribute in an Orleans Parish court (See: Appendix D, pp. 15-6, transcripts of Mr. Lanieux Habitual Offender hearing).

After concluding that the Orleans conviction was valid for purposes of adjudicating Mr. Lanieux as a Habitual Offender, the Court proceeding in validating the conviction from Jefferson Parish, Docket No.: 97-4179. The Court found that all the documents had cumulatively shown that Mr. Lanieux was one and the same individual who had plead guilty in both cases alleged in the Habitual Offender Bill of Information.

As such, the Court held that the two (2) predicate guilty plea convictions which were alleged in the State's Habitual Offender Bill of Information were valid for purposes of adjudicating Mr. Lanieux as a Multiple Offender. Consequently, the Court ruled that Mr. Lanieux was a Third Felony Offender, and then vacated his underlying sentence of two (2) years at hard labor, which was the penalty he had initially received for committing ago.

The Court then resentenced Mr. Lanieux to serve the remainder of his natural life in prison without

the benefit of Probation, Parole, or Suspension of Sentence. Mr. Laniuex's [so-called] enhanced punishment for being a Third Felony Offender.

On June 1, 2018, Mr. Lanieux filed a Motion to Correct Illegal Sentence in the 24th Judicial District Court, in and for the Parish of Jefferson, State of Louisiana, wherein he claimed that his life sentence was illegal because R.S. 15:529.1A(1)(b)(ii), creating the sentencing scheme under which he was sentenced is unconstitutional.

However, on June 4, 2018, the district court denied his motion as it was found that Mr. Lanieux had not pointed to a claimed illegal term in his sentence. Mr. Lanieux then filed for Writs to the Louisiana Fifth Circuit Court of Appeal to review the district court's ruling on the above, which was denied by the Court of Appeal.

Mr. Lanieux thereafter petitioned the Louisiana Supreme Court, requesting Supervisory Writs from the lower courts' rulings. The Louisiana Supreme Court denied Mr. Lanieux's request.

Mr. Lanieux now petitions this Honorable Court, requesting that it review the following Claim; this being that his sentence of life imprisonment without the benefit of Probation, Parole, or Suspension of Sentence is illegal due to the fact that Louisiana's sentencing scheme provided by State statutory provisions under which he is sentenced has been held by this Court to be violative of the Sixth Amendment to the United States Constitution, and so therefore, such is unconstitutional.

ISSUES

QUESTION #1 - ARGUMENT

Is the sentencing scheme provided by the State of Louisiana's Habitual Offender Law, particularly LSA-R.S. 15:529.1, Subsections A(3)(b) [formally enacted under Section A(1)(b)(ii)], in conjunction with D(2)(b) and D(3), subject to the jury trial requirements of the Sixth Amendment?

In the year of 2009, when the Petitioner had his sentence enhanced by way of Louisiana's Habitual Offender Law (LSA-R.S. 15:529.1), Subsections D(2)(b) and D(3) had provided, in pertinent part:

D(2) Following a contradictory hearing, the court shall find that the defendant is:

(b) A third offender, upon proof of two prior felony convictions or adjudications of delinquency as authorized in Subsection A, or any combination thereof.

D(3) When the judge finds that he has been convicted of a prior felony or felonies or adjudicated a delinquent as authorized in Subsection A, or if he acknowledges or confesses in open court, after being duly cautioned as to his rights, that he has been convicted or adjudicated, the court shall sentence him to the punishment prescribed in this Subsection [...]

It cannot be denied that the above cited penalty enhancement scheme and/or law provides for a judge, sitting alone and through preponderance of the evidence, to find the fact of a prior felony conviction; and after finding the fact of a prior felony conviction, that judge is no less than commanded to issue an enhanced sentence which always exceeds the maximum penalty prescribed by the statute that the defendant was originally supposed to have been sentenced under.

Surely, a life sentence imposed through the sentencing enhancement scheme provide by R.S. 15:529.1 D(3), in conjunction with Subsection A(1)(b)(ii), will always end in a sentence that exceeds the maximum penalty prescribed by the statute of which the jury had originally sentenced the defendant of violating ... unless the crime that the defendant was convicted of violating requires a sentence of death.

In accordance with the above cited Habitual Offender Law, your Petitioner was subjected to a contradictory hearing, as specified in R.S. 15:529.1 (D)(2) and D(3), to determine if "[T]he court shall sentence him to the punishment prescribed in Subsection A(1)(b)(ii) of this law." LSA-R.S. 15:529.1 D(3).

And during this contradictory hearing, it was a judge, sitting alone and through preponderance of the evidence, who had determined the fact of the Petitioner having two (2) prior felony convictions (See: Appendix "D," et seq.: transcripts of Petitioner's Habitual Offender hearing).

Consequently, the two (2) year [maximum] penalty that the Petitioner had initially received for

committing the crime of Aggravated Flight From an Officer was completely converted up to a mandatory [minimum] sentence of imprisonment for life.

The Petitioner's life sentence is the epitome of a penalty which was based solely on facts not found by the jury who had convicted him and is well-above the statutory maximum penalty prescribed for the crime of Aggravated Flight From an Officer. Not to mention the fact that, in accordance to LSA-R.S. 15:529.1 A(1)(b)(ii), the imposition of such a life sentence was mandated and this statute left no room for the Petitioner's sentencing judge to depart from its perimeters.

In *Apprendi*, the Court answered the question of if whether a State prisoner had a constitutional right to have a jury find beyond a reasonable doubt those facts which are relevant to sentencing as follows:

> Our answer to that question was foreshadowed by our opinion in *Jones v. United States*, 526 U.S. 227, 119 S.Ct. 1215, 143 So.2d 311 (1999), construing a federal statute. We there noted that, "under the Due Process Clause of the Fifth Amendment, any fact (other than prior conviction) that increases the maximum penalty for a crime must be charged in an Indictment, submitted to a jury, and proven beyond a reasonable doubt (citations omitted). The Fourteenth Amendment commands the same answer in this case involving a state statute." *Id.*, 120 S.Ct., at 2355.

It can be argued that the rule which was applied in *Apprendi* is not applicable in the Petitioner's case because the United States Supreme Court has in the past allowed the states to label prior felony convictions as sentencing factors instead of essential elements of the crime.

The Petitioner contends to the contrary. The State may argue that Louisiana's Habitual Offender Law simply allows a judge, sitting alone and through a preponderance of the evidence, to conclude the fact of a prior felony conviction, and, after establishing this fact in such a way, that fact is used [only] as an aggravating factor in determining a justifiable punishment.

However, in Habitual Offender proceedings, when a judge finds [by a preponderance of the evidence] that a defendant is a Third-Felony Offender, LSA-R.S. 15:529.1 A(1)(b)(ii) does not allow

that judge *to consider* imposing a punishment within *some sort of expanded sentencing range* – where that sentencing range reflects only a permissive and/or advisory increase of the maximum penalty prescribed by the statute of which the defendant's underlying conviction is rested upon.

To the contrary, R.S. 15:529.1 A(1)(b)(ii) creates only one sentence for someone who is found [by preponderance of the evidence] to be a Third-Felony Offender ... that sentence is life without the benefit of Probation, Parole, or Suspension of Sentence. And a sentencing judge, after determining the fact that a defendant has two (2) prior convictions, has no other choice but to issue a life sentence, where such a sentence will: (1) be imposed irregardless of whatever statute the jury had initially found the defendant guilty of violating; and, (2) always exceeds the maximum penalty prescribed by the statute that the jury had initially found the defendant guilty of violating.

Thus, after a judge, who is sitting alone, and through the preponderance of the evidence, finds the fact of a defendant having two (2) prior felony convictions, it is then that the finding of such a fact [as provided by R.S. 15:529.1 A(1)(b)(ii)] creates a sentencing scheme which has the force and effect of substantial law.

Therefore, in this case, and any other case, where a defendant has been sentenced in accordance with the above cited Habitual Offender Law, the fact of two (2) prior felony convictions was not used as a sentencing factor but, instead, was no doubtingly used to create an entirely separate offense with its very own consequences ... in other words, the State of Louisiana's Habitual Offender Law is tailored to permit a two (2) prior-felony-conviction finding (the *McMillan* Court would have said), "[T]o be a tail which wags the dog of a substantive offense." See e.g.: *McMillan v. Pennsylvania*, 477 U.S. 79, at 87-9, 106 S.Ct. 2411, at 2417 (1986).

In the past, the United States Supreme Court has applied those rules and policies which were promulgated though *Apprendi*, *Blakely*, and *Booker*, across judicial lines. Accordingly, the Petitioner

assumes he is justified in assuming the rule, to wit, "Any fact that increases the penalty for a crime beyond the prescribed statutory maximum penalty must be submitted to a jury, and proved beyond a reasonable doubt," is meant to set forth a right that is to be provided to any person who has been deprived of life, liberty, or property.

The Petitioner furthermore believes that the factual predicates, needed to activate the United States Supreme Court's intervention and application of those rules and policies which were instituted because of the above cases, do also exist in the case sub judice.

THEREFORE, in light of the foregoing, your Petitioner contends that the sentencing scheme provided by the State of Louisiana's Habitual Offender Law, particularly LSA-R.S. 15:529.1, Sections A(3)(b) [formally enacted under Section A(1)(b)(ii)], in conjunction with Sections D(2)(b) and D(3), is subject to the jury trial requirement of the Sixth Amendment.

QUESTION #2 – ARGUMENT

When, (1) in accordance to an independent, sentencing enhancement statute (i.e., LSA-R.S. 15:529.1, et seq.), proof of a fact is an essential element to enhancing defendant's penalty after he has been convicted of violating any other underlying criminal statute (that essential fact being the existence of a prior felony conviction); and, (2) through this enhancement provision, the penalty for that instant offense may be completely altered unto a mandatory minimum sentence of life in prison – which ends up being a sentence that is well-above the statutory minimum penalty prescribed by the statute of which the defendant had originally been convicted of violating; then, (3) does the Sixth Amendment require that such an essential fact (the prior felony conviction) be found (by a jury) beyond a reasonable doubt?

"[T]he Due Process Clause protects accused against conviction except on proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is convicted." *In re: Winship*, 397 U.S. 358, 90 S.Ct. 1068 (1970).

Of course, before a defendant can be found guilty beyond a reasonable doubt of committing a crime, he must be sufficiently informed of the specific crime he has been accused of committing (See: e.g., *Cole v. Arkansas*, 333 U.S. 196, 68 S.Ct. 514 (1948); *Russell v. U.S.*, 369 U.S. 749, 82 S.Ct. 1038

(1962).

In this case, the Petitioner had been charged with committing the crime of Aggravated Flight From an Officer, and a jury found beyond a reasonable doubt that he had committed such a crime. The statutory maximum penalty for the commission of Aggravated Flight From an Officer (a violation of LSA-R.S. 14:108.1 C), is two (2) years at hard labor. Yet, by the time the Petitioner's conviction and sentence were finalized, it was determined that he would spend the rest of his natural life in prison. Surely, the Petitioner is not currently serving a life sentence because R.S. 14:108.1 mandates that anyone who is charged and found guilty of committing the crime of Aggravated Flight From an Officer shall be sentenced to serve a mandatory [minimum] penalty of life in prison. No, the Petitioner is serving life in prison because he was charged with being a Third-Felony Offender, and then found guilty by a judge, who was sitting alone in preponderance of the evidence, of committing such a crime.

In this case, the Petitioner had been charged and prosecuted before a twelve-person jury for committing the crime of Aggravated Flight From an Officer. Still, almost three months after a jury had found him guilty and he had been sentenced to serve two years at hard labor for committing the above mentioned offense, the Petitioner was furthermore prosecuted for being a Third-Felony Offender.

This prosecution, a [so-called] sentencing enhancement proceeding, was instituted by the District Attorney via the provisions set forth in R.S. 15:529.1, et seq. Obviously, the Petitioner had not initially and/or originally been charged with being a Third-Felony Offender when he was prosecuted before the twelve-person jury that found him guilty [beyond a reasonable doubt] of committing the crime of Aggravated Flight From an Officer. Therefore, it can not be disputed that the Petitioner has not been found guilty beyond a reasonable doubt of being a Third-Felony Offender ... i.e. a twelve-person jury has not found him guilty [beyond a reasonable doubt] of being a Third-Felony Offender.[2]

2 LSA-R.S. 15:529.1 D(1)(b), in pertinent part, provides that "Except as otherwise provided in this Subsection, the District Attorney shall have the **burden of proof beyond a reasonable doubt.**" Nevertheless, by providing for a District Attorney to prove [beyond a reasonable doubt] to a judge that a defendant is a habitual offender, this law allows a State

To the contrary, a judge found the Petitioner guilty [supposedly beyond a reasonable doubt] of being a Third-Felony Offender, and so, therefore, in accordance with R.S. 15:529.1 A(1)(b)(ii), that judge was no less than mandated to sentence the Petitioner to serve life in prison. The Petitioner asks this Court to determine if whether the Bill of Information which charged him with committing Aggravated Flight From an Officer should have also charged him with being a Third-Felony Offender? Your Petitioner believes the answer to this question is "Yes." Whereas this Court has said:

> An indictment must set forth each element of the crime that is charged (citations omitted). But it need not set forth factors relevant only to the sentencing of an offender found guilty of the charged crime. Within limits (citations omitted), the question of which factors are which is normally a matter for Congress. We therefore look to the statute before us and ask what Congress intended. Did it intend the factor that the statute mentions, ***the prior aggravated felony conviction***, to help define a separate crime? Or did it intend the presence of an earlier conviction as a sentencing factor, a factor that a sentencing court ***might*** use to increase punishment? (***emphasis added***). Almendarez-Torres v. U.S., 523 U.S. 224, 118 S.Ct. 1219 (1998).

In Almendarez-Torres, supra, the United States Supreme Court set forth a guideline by which to determine if a statute defines "[f]actors relevant only to sentencing of an offender found guilty of the charged crime," or if lawmakers "[I]ntended the factor that the statute mentions, the prior aggravated felony conviction, to help define a separate offense." *Id.*, at 123, 118 S.Ct. 1219. There the Supreme Court said that when a so-called "sentencing factor," which may be determined by a judge through preponderance of the evidence is used: (1) to increase the maximum penalty of an underlying offense up to imprisonment for life; (2) to make the imposition of a sentence mandatory; (3) to alter the

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prosecutor to totally circumvent the Sixth Amendment's jury trial requirement. Under the guise that R.S. 15:529.1, et seq., simply provides for a proceeding in which a judge may identify sentencing factors pertinent to imposing a just punishment, State prosecutors have been able to secure punishments for crimes which juries have never found defendants guilty of committing. On the surface, Louisiana's Habitual Offender Law seems to be in compliance with this court's jurisprudence concerning those sentencing factors that may be proved to a judge through a preponderance of the evidence, and, those facts which are relevant to the sentencing and need to be proven to a jury beyond a reasonable doubt. But, when examining this law in actual operation, this Court will find that the fact of a prior felony conviction is not being used as a sentencing factor at all; and instead is being used to hold a defendant culpable for an entirely separate offense. Notably, when examining the language of R.S. 15:529.1 D(1)(b), it seems that La. State Legislators are aware of this Court's jurisprudence, holding that any fact which increases the penalty for a crime beyond a prescribed statutory maximum penalty must be submitted to a jury and "***proven beyond a reasonable doubt***" ... Still, and yet again, La. State Legislators have found a way to side-step this Court's efforts to promote fundamental fairness.

maximum penalty for a crime; (4) to create a separate offense that calls for a separate penalty; and, (5) does not operate solely to limit the sentencing Court's discretion in selecting a penalty within the range already available to it; then, (6) determining such a sentencing factor by way of a judge's preponderance of the evidence [in lieu of a jury finding such a factor beyond a reasonable doubt] offends the Due Process Clause of the United States Constitution. *Id.*, at 1230, 118 S.Ct. 1219 (citing *McMillan v. Penn*, supra.; and *Mullaney v. Wilbur*, 421 U.S. 684, at 700 95 S.Ct. 1881).

Thus, this Court makes it clear that when a sentencing scheme provides for a sentencing factor to be determined by a judge and not a jury, but finding such a sentencing factor in this way does not operate solely to limit that sentencing *judge's discretion* in selecting a penalty within range already available to her/him by way of the jury's guilty verdict, then such a sentencing scheme violates a defendant's Sixth Amendment right to a jury trial.

In this case, R.S. 15:529.1 D(2)(b) and D(3), in conjunction with A(1)(b)(ii), were used: (1) to create an entirely separate offense – which called for the elimination and/or vacating of the initial two (2) year [maximum] penalty that the Petitioner had initially received for committing the crime of Aggravated Flight From an Officer – requiring the judge to superimpose an entirely separate penalty upon the statute that the jury had beforehand found the Petitioner guilty of violating (R.S. 14:108.1 C); (2) to alter and/or increase the maximum penalty for an underlying crime up to a mandatory [minimum] sentence of imprisonment for life; and (3) to make the judge the imposition of this mandatory [minimum] sentence, binding on the judge.

Had R.S. 15:529.1 D(2)(b) and D(3), in conjunction with A(1)(b)(ii), operated solely to provide the Petitioner's sentencing judge with discretion and a sentencing range between two years (i.e., the maximum penalty prescribed for a violation of R.S. 14:108.1 C, Aggravated Flight From an Officer), and imprisonment for the life (i.e., the penalty prescribed for a violation of R.S. 15:529.1 A(b)(1),

Third Felony Offender), then a judge operating with the discretion to issue a sentence within the range of two year to life could have certainly tailored a penalty to fit the Petitioner's specific circumstances.

However, the above cited sentencing enhancement statute does not provide a judge with the discretion to issue a penalty within some sort of sentencing range. To the contrary, this statute provides for a judge to be converted into a fact-finder, insofar as it allows that judge (sitting alone and through preponderance of the evidence), to determine the fact of a defendant's prior felony convictions beyond a reasonable doubt.

And, after this fact-finder/sentencing judge establishes the fact that a defendant has two prior felony convictions, this same fact finder/sentencing judge is statutorily mandated to issue a sentence of imprisonment for life ... irrespective of the sentence that was mandated by the statute that the actual jury had found the defendant guilty of violating [beyond a reasonable doubt].

Your Petitioner contends that Louisiana's Habitual Offender Statute (R.S. 15:5291., et seq.), is not a sentencing enhancement provision at all; but, it is a statute that defines a criminal offense, where the essential elements of the crime are a defendant's prior felony convictions. And, this Court has said that every fact necessary to constitute the commission of a crime must be proven to a jury – not a judge – beyond a reasonable doubt.

QUESTION #3 - ARGUMENT

Did the above cited Habitual Offender Law cause the Petitioner to be denied his Sixth Amendment right to a jury trial?

"Essential elements of a crime" are those constituent parts of a crime which must be proved by the prosecution in order to sustain a conviction. **Black's Law Dictionary.** Elements of a crime must be charged in an Indictment [or Information] and proved to a jury beyond a reasonable doubt. *Hanling v. U.S.*, 418 U.S. 87, 94 S.Ct. 2887 (1974).

"Sentencing factors may guide or confine a judge's discretion in sentencing an offender within

range prescribed by a statute (quoting *Apprendi v. New Jersey*, 530 U.S. 466, at 481, 120 S.Ct. 2348, at 2358), judge found sentencing factors cannot increase the maximum sentence a defendant might receive based solely on the facts found by a jury." *U.S. v. O'Brien*, 560 U.S. 218, 130 S.Ct. 2169, at 2174-5 (2010).

"Sentencing factors, on the other hand, can be proved to a judge at sentencing by a preponderance of the evidence (citations omitted). Though one exception has been established)See: *Almendarez-Torres v. U.S.*, supra., at 228), "[i]t is unconstitutional for a Legislature to remove from the jury the assessment of facts that increase the prescribed range of penalties to which a criminal defendant is exposed." *O'Brien*, supra., at 2174.

This statement by the Court seems to permit a judge found sentencing factor (the prior felony conviction) to do nothing more than increase the prescribed range of penalties "[T]o which a defendant is exposed;" but, this Court has not said that State Legislators may enact laws which force a judge to issue a mandatory [minimum] sentence of imprisonment for life. Yet, the State of Louisiana has enacted such a law, where a defendant's sentence is purely justified on a judge found sentencing factor (the prior felony conviction), and the finding of this [so-called] "Sentencing Factor" does not just increase the prescribed range of penalties to which a defendant is "[E]xposed" but it ensures that a person will spend the rest of their life incarcerated.

"Subject to this constitutional constraint, whether a given fact is an element of the crime itself or a sentencing factor is a question for [sovereigning lawmakers]. When [lawmakers are] not explicit, as often the case because it seldom directly addresses the distinction between sentencing factors and elements, Courts look to the provision and the framework of the statute to determine whether a fact is an element or a sentencing factor." *O'Brien*, supra (quoting *Almendarez-Torres v. U.S.*, supra., at 1223).

In the case sub judice, the Petitioner had been found guilty – by way of jury – of violating R.S. 14:108.1 (Aggravated Flight From an Officer), and was sentenced to serve the maximum penalty prescribed by that statute (i.e., two years at hard labor). Subsequent to being sentenced, State prosecutors initiated proceedings through the State's Habitual Offender Law (R.S. 15:529.1). During such proceedings, it was found – by a judge – that the Petitioner had previously plead guilty to committing two felony crimes.

This same judge furthermore found that the proceedings which were held for accepting the Petitioner's plea of guilty to committing these two felony crimes were conducted in accordance with *Boykin v. Alabama*, 395 U.S. 238, 89 S.Ct. 1709 (1969). These two prior convictions are defined as "sentencing factors" - per Louisiana State Courts[3] - which are [only] to be considered by a judge when tailoring a justifiable sentence.

Yet, after a sentencing judge had found [by nothing more that preponderance of the evidence] that the Petitioner had previously plead guilty to committing two felony crimes, and that these two previous guilty plea convictions had been accepted in accordance with constitutional standards, then that judge was "***required***," in accordance with R.S. 15:529.1 A(1)(b)(ii), to sentence the Petitioner to serve one sentence [and one sentence only] ... that was a mandatory minimum sentence of life in prison without the benefit of Probation, Parole, or Suspension of Sentence.

Surely, if two prior felony convictions are said to operate as "sentencing factors," which merely allows a judge to consider imposing a penalty within an increased maximum sentencing range outside that prescribed by an underlying statute, then, the Petitioner's sentencing judge would have had the option of tailoring a punishment within the range of zero (0) years up to a sentence of imprisonment for

3 La. State Courts have well-established jurisprudence which holds that: "[A] District Attorney has great discretionary power to file a Habitual Offender Bill under R.S. 15:529.1 D, just as he has the initial unlimited power to prosecute whom, when, and how he chooses (citations omitted). His use of the Habitual Offender Laws simply provides an ancillary '***sentencing factor***' designed to serve important and legitimate societal purpose." See: ***State v. Orange***, 845 So.2d 570, at 578 (La. App. 1st Cir. 2003); ***State v. Dauzart***, 960 So.2d 1079, 1085 (La. App. 5th Cir. 2007).

life; but, the Petitioner's sentencing judge had no such option.

This Court has said that the above type of sentencing scheme has the force and effect of law; whereas the statute (R.S. 15:529.1 A(1)(b)(ii)), as written, is not advisory but "binding on all judges." See: *U.S. v. Booker*, supra., at 750, 125 S.Ct. 738.

Thus, where a so-called sentencing factor (the prior felony conviction) binds a judge to issuing a sentence that is well-above the maximum penalty prescribed by the statute of which the jury had originally found the defendant guilty of violating, then, such a sentencing factor is not at all a sentencing factor to [only] be considered, but, it is in fact an essential element to a totally separate crime which has its very own consequences.

In this case, the Petitioner had been convicted – by a judge – for committing the crime of "Being a Third-Felony Offender While Engaging in the Crime of Aggravated Flight From an Officer," a crime which carries a mandatory [minimum] sentence of imprisonment for life. Surely, the Petitioner should have been charged and prosecuted in front of a twelve-person jury before being convicted of committing such a crime.

The Petitioner offers the following example to show how R.S. 15:529.1 D(2)(b) and D(3), in conjunction with Section A(1)(b)(ii), creates a totally separate offense, instead of providing a judge with [supposedly] sentencing factors to consider. Say, for instance, if the Petitioner had been found guilty of committing Second Degree Murder, a violation of R.S. 14:30.1. A jury would have to had found that the Petitioner had killed a human being: (1)when he had the specific intent to kill or inflict great bodily harm; or (2) when he had engaged in some other perpetration of an offense enumerated within R.S. 14:30.1, et seq..

And, where a jury had found beyond a reasonable doubt that the Petitioner had committed every essential element necessary to constitute the crime of Second Degree Murder, only then would a judge

be "*constrained*," mandated, and/or required (in other words, the judge would have no other choice) to impose a mandatory [minimum] sentence of imprisonment for life.

Notably, a life sentence is the [only] penalty a judge could have imposed because such a punishment would have been based purely on the underlying statute and the facts found by the jury.

But, in regards to the actual circumstances sub judice, the Petitioner has been found guilty of "Being a Third-Felony Offender While Engaging in the Crime of Aggravated Flight From an Officer," a violation of R.S. 14:108 C, and R.S. 15:529.1 A(1)(b)(ii). In this case, (1) a jury had found beyond a reasonable doubt that the Petitioner had committed every essential element necessary to constitute the crime of Aggravated Flight From an Officer. Thereafter, (2) a judge sitting alone and through preponderance of the evidence had found that the Petitioner had also committed the crime of being a Third-Felony Offender.

Thus, a jury and judge found the Petitioner guilty of committing the crime of "Being a Third-Felony Offender While Engaging in the Crime of Aggravated Flight From an Officer," Consequently, after judge and jury had found the Petitioner guilty of committing such a crime, Louisiana's Habitual Offender Law is plainly firm wherein it is mandated that the Petitioner "[S]hall be imprisoned for the remainder of his natural life, without the benefit of Probation, Parole, or Suspension of Sentence. R.S. 15:529.1 A(1)(b)(ii).

In other words, the judge had no other choice – as if, e.g., a jury had found beyond a reasonable doubt that the Petitioner committed Second Degree Murder – but to impose upon the Petitioner a mandatory [minimum] sentence of imprisonment for life. Such a sentence reflects the only sentence the Petitioner was able to receive – i.e., not a sentence to be considered – despite such a penalty being based on an underlying statute (R.S. 14:108.1 C), a Habitual Offender statute (R.S. 15:529.1), and facts found by both judge and jury.

In light of the above, the Petitioner asserts that if a judge may be constrained and/or required [by law], to impose upon a defendant one of the harshest punishments available to the criminal justice system because that defendant has been found guilty of violating a statute which mandates such a penalty, then, such a violation must be found beyond a reasonable doubt through the suffrage of a twelve-person jury.

Your Petitioner believes that where his sentence was prescribed through a statute that was wholly different from the statute that the jury had found him guilty of violating, and, issuing such a sentence resulted in him being exposed to an increased punishment that was well-above the penalty prescribed by that statute, then a jury – not a judge – should have found him guilty of committing every essential element (even a prior felony conviction) of the crime for which that sentence is statutorily mandated ... irregardless if whether these essential elements are set forth within a criminal statute or a Habitual Offender statute which is said to operate in the capacity of only providing a judge with [so-called] "sentencing factors" to consider.

The Petitioner contends that the sentencing scheme provided by R.S. 15:529.1 D(2)(b) and D(3), in conjunction with Section A(1)(b)(ii), is unconstitutional because this Habitual Offender Law has caused him to be denied his Sixth Amendment right to a trial by jury.

It can most certainly be said that the latter statutory provision is used to furnish a judge with "sentencing factors" *to consider*, before *forcing* him/her to impose one of the harshest sentences available – aside from death by execution – to a judiciary system.

QUESTION #4 – ARGUMENT

Does the above cited Habitual Offender Law operate in contrast to the rules and policies promulgated by this Court in the case of *U.S. v. Booker*, 543 U.S. 220, 125 S.Ct. 738 (2005)?

In the year of 2005, the United States Supreme Court scrutinized those parts of the Federal Statute

which made it mandatory that a judge impose whatever penalties were provided for by the Federal Sentencing Guidelines. And, after a review, this Court found 18 U.S.C. § 3553 (b)(1) and § 3742 (e), the provisions which made the Federal Sentencing Guidelines "binding on all judges," to be unconstitutional. In ***U.S. v. Booker***, 543 U.S. 220, 125 S.Ct. 738 (2005), the Court held:

> (1) federal sentencing guidelines are subject to jury trial requirements of the Sixth Amendment; and,
> (2) ... Sixth Amendment requirement was incompatible with Federal Sentencing Acts, thus requiring severance of Act's provision making guidelines mandatory and setting forth standard of review on appeal; [...]

The Petitioner believes that if the United States Supreme Court had found 18 U.S.C. § 3553 (b)(1) and § 3742 (e) to be unconstitutional because those laws made the Federal Sentencing Guidelines binding on all judges, then this Court would also find R.S. 15:529.1 D(2) and D(3), in conjunction with Section A(1)(b)(ii), to be unconstitutional because these laws as well are binding on all judges. In ***Booker***, the Court said that "The Constitution gives a criminal defendant the right to demand that a jury find him guilty of all the elements of the crime with which he is charged." *Id.*, at 746, 125 S.Ct. 738.

The Court cross-referenced its decision in ***Booker*** with the decision it had previously made in ***Jones***, supra. In ***Jones***, the Court questioned the constitutionality of a federal, criminal statute which actually disguised the substantial elements of an offense as sentencing factors; and, while using the policies pronounced in ***Jones*** as a guide, the ***Booker*** Court found that:

> In spite of the fact that the statute "at first glance has a look to it suggesting [that the provision relating to the extent of harm to the victim] are only sentencing provisions." 526 U.S., at 232, 119 S.Ct. 1215, we conclude that the harm to the victim was an element of the crime. That conclusion was supported by the statutory text and structure, and was influenced by our desire to avoid the constitutional issues implicated by a contrary holding, which would have reduced the jury's role "to the relative importance of low-level gate-keeping." *Id.*, at 244, 119 S.Ct. 1215. Foreshadowing the result we reach today, we noted that our holding was consistent with "rule requiring jury determination of facts that raise a sentencing ceiling in state and federal guidelines." ***Booker***, supra, *Id.*, at 747.

In ***Booker***, the United States Supreme Court found a correlation between the State of Washington's

Sentencing Reform Act [which was struck down in ***Blakely v. Washington***, supra] and the Federal Sentencing Reform Act, finding that the conclusion in ***Booker*** "[R]ests on the premise, common to both systems, that relevant sentencing rules are mandatory and impose binding requirements on all judges;" and:

> If the Guidelines as currently written could be read as merely advisory provisions that recommended, rather than required, the selection of particular sentences in response to differing sets of facts, their use would not implicate the Sixth Amendment. We never doubted the authority of a judge to exercise broad discretion in imposing a sentence within a statutory range (citations omitted). Indeed, everyone agrees that the constitutional issues presented by these cases would have been avoided entirely if Congress had omitted from SRA *the provisions that make the Guidelines binding to district judges*; it is that circumstance that makes the Court's answer to the second question presented possible [...]
>
> The Guidelines as written, however, are not advisory; they are mandatory and binding on all judges. While Subsection (a) of § 3553 of sentencing statute lists Sentencing Guidelines as one factor to be considered in imposing a sentence, Subsection (b) directs that the court "*shall*" impose a sentence of the kind, and within range established by the Guidelines, subject to departures in specific limited cases (*emphasis added*). Because they are binding on judges, we have consistently held that Guidelines have the force and effect of law. *Id.*, at 750.
>
> As it relates to the case at bar, R.S. 15:529.1 A(1)(b)(ii), provided:
>
> (ii) If the third felony and two prior felonies defined as a crime of violence under R.S. 14:2 (13), a sex offense as defined in R.S. 15:540 et seq., when the victim is under the age of eighteen at the time of the commission of the offense, or a violation of the Uniform Controlled Dangerous Substance punishable by imprisonment for ten years or more, or any other crimes punishable by imprisonment for twelve years or more, or any combination of such crimes, *the person "shall" be imprisoned for the remainder of his natural life*, without the benefit of Probation, Parole, or Suspension of Sentence. (*emphasis added*).

The Petitioner contends that Louisiana's above cited Habitual Offender Law is no difference than those laws that were previously enacted by the State of Washington and the U.S. Congress but were furthermore found to be unconstitutional by the United States Supreme Court.

Because R.S. 15:529.1 A(1)(b)(ii) had commanded any judge to sentence the Petitioner to serve life in prison if that judge had found [by a preponderance of the evidence] that the Petitioner's was a Third-Felony Offender, then the finding of this so-called "sentencing factor" had no doubtingly triggered the

force and effect of primary law.

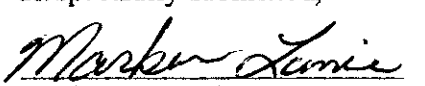
Thus, the Petitioner was prosecuted by an Assistant District Attorney, found guilty by a judge who was sitting, and then sentenced to serve life in prison for the committing the crime of "Being a Third-Felony Offender While Engaging in the Crime of Aggravated Flight From an Officer."

Surely, the sentencing scheme provided by R.S. 15:529.1 D(2)(b) and D(3), in conjunction with Section A(1)(b)(ii), has caused the Petitioner to be denied his Sixth Amendment right to a jury trial, as established by, inter alia, the case of *U.S. v. Booker*, supra. The Petitioner believes that this Court will strike down the above cited Sections of Louisiana's Habitual Offender Law because they are in direct conflict with the United States Constitution and long standing precedence of the United States Supreme Court.

CONCLUSION

WHEREFORE, for the foregoing reasons, the Petitioner Prays this Honorable Court would find Louisiana's Habitual Offender Law, particularly LSA-R.S. 15:529.1, Subsections D(2)(b) and D(3), in conjunction with Section A(3)(b) [formally enacted under Section A(1)(b)(ii)], to be an unconstitutional statute which provides for a fundamentally unfair sentencing scheme that deprives a defendant of his Sixth Amendment right to a trial by jury; whereas such a finding would, in turn, cause the Louisiana Court to adjust the Petitioner's life sentence unto a penalty that is tailored to fit the circumstances in his case.

Respectfully submitted,



Markus D. Lanieux

Date: January 10, 2017