

24-5861

No. _____

FILED

SEP 26 2024

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SUPREME COURT, U.S.

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

ROBERT SCHMITT — PETITIONER
(Your Name)

vs.

STATE OF TEXAS — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

TEXAS COURT OF CRIMINAL APPEALS
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

ROBERT JOSEPH SCHMITT
(Your Name)

1502 SOUTH FIRST STREET
(Address)

DIBOLL, TEXAS 75941
(City, State, Zip Code)

(936) 829-2616
(Phone Number)

QUESTION PRESENTED

Did the Texas Court of Criminal Appeals err in not exercising their inherent authority to correct the sentence imposed unlawfully due to the ineffective assistance of trial counsel in failing to object to the imposition of a consecutive sentence?

Can the Texas Court of Criminal Appeals refuse to grant relief when Legislative Enacted Statute states that pre-1997 offenses arising out of a single criminal episode are tried together, the court must order the sentences to run concurrently in accordance to Texas Penal Code, Section 3.03(b)?

Was Petitioner denied due process of law when the trial court cumulated Petitioner's two twenty year sentences when the law in effect enacted by the Texas Legislature states that offenses committed before September 1st, 1997 were to run concurrently.

Is Petitioner considered actually innocent of the sentence imposed in direct violation of his constitutional rights under due process of law when the trial court cumulated his sentences in which Petitioner was not legally eligible to receive as a matter of statutory law?

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

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TO COURT OF CRIMINAL APPEALS FILED BY TEXAS
ATTORNEY ALEX TANDY, WITH ATTACHED EXHIBIT
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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.

☐ 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

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☒ is unpublished.

The opinion of the _____ 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).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was 7/11/2024.
A copy of that decision appears at Appendix A.

☐ 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. ____ A ____.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

UNITED STATES CONSTITUTION AMENDMENT V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

STATUTORY TEXAS LAW

The general Rule is that multiple sentences for multiple convictions arising out of the same criminal episode and prosecuted in a single criminal action shall run concurrently. Texas Penal Code §3.03(a).

In 1997, the Legislature amended the Texas Penal Code §3.03, to add some sexual offenses committed against a victim younger than seventeen to the list of offenses subject to consecutive sentencing when there are multiple convictions in a single trial. These amendments went into effect September 1st, 1997, and applied to offenses committed on or after the effective date of the Act. See Acts 1997, 75th Leg., R.S. Ch 667, sections 2(b), 8, p. 2251, 2253, eff. September 1st, 1997 (currently codified in Texas Penal Code, §3.03(b)(2)(A)).

These 1997 amendments became effective September 1st, 1997, and provided that the change in law “applies only to an offense committed on or after the effective date of this Act,” and that an offense committed before the effective date of this Act is covered by the law in effect when the offense was committed and the former law in continued in force for that purpose.

(NOTE) Petitioner’s indictment alleged that Petitioner committed Count I on June 9th, 1997, and Count II on November 1st, 1996. The jury found Petitioner guilty as charged in the indictment.

STATEMENT OF THE CASE

Petitioner, Robert Schmitt, was charged by way of a two-count indictment that on or about June 9th, 1997 and on or about November 1st, 1996, Schmitt sexually assaulted a child.

Petitioner proceeded to trial to face these allegations in 2000 and was found guilty by a jury. The jury specifically found that in both Counts I and II, find the defendant guilty of sexual assault of a child as charged in the indictment.

Upon finding Petitioner guilty, the prosecutor requested the trial court to stack the sentences under Section 3.03 of the Texas Penal Code. Petitioner's trial counsel did not object and the trial court proceeded to stack petitioner's sentences.

However, and the crux of Petitioner's request for certiorari to be granted in this case is that petitioner was not legally illegible for the sentences he received by Legislatively enacted statute as follows:

Petitioner puts forth that statutory exception enacted on September 1st, 1997, allowing for imposition on consecutive sentence for crimes arising out of same criminal episode did not apply to allow imposition of consecutive sentences for offenses committed prior to effective date of statute, as in respondent's case.

Petitioner contends and will demonstrate with certainty that the trial court erred by ordering Petitioner's sentences to run consecutively rather than concurrently. If multiple offenses arising out of a single criminal episode are tried together, the court

must order the sentences to run concurrently in accordance to Texas Penal Code, Section 3.03. An exception was enacted by the Legislature, Section 3.03(b), effective September 1st, 1997, the exception provides that the trial court may direct sentences for certain crimes to run consecutively or concurrently. The exception, however, is not applicable to offenses committed in advance of September 1st, 1997.

Petitioner was granted parole on the first Count after serving 17 flat calendar years of the 20-year sentence. Petitioner has now served 6-years on the second Count and will not become eligible for parole until he has served 10 flat calendar years.

Due to the fact that there is no legal basis for Petitioner's sentences to be stacked, it follows inexorably that Petitioner has been denied due process of law and because of the constitutional error by the trial court clearly resulted in the imposition of an unauthorized and illegal sentence, it also follows that Petitioner is a victim of a miscarriage of justice entitled to immediate and unconditional release.

Failure of this Honorable Court to grant certiorari will result in Petitioner serving an additional 10-years in prison on a sentence he was not legally eligible to receive as a matter of law.

REASONS FOR GRANTING THE PETITION

The Texas Court of Criminal Appeals, against their own case law which is demonstrated in the brief filed by attorney, Alex Tandy, has so far departed from their accepted and usual course of judicial proceedings as to call for an exercise of this Court's supervisory power.

Petitioner filing pro se has exhausted all legal remedies. Petitioner's family members hired attorney, Alex Tandy, in hopes that the Texas Court of Criminal Appeals would review petitioner's case. Alex Tandy filed directly with the Court of Criminal Appeals "APPLICANT'S SUGGESTION PURSUANT TO RULE 79.2(d) OF THE TEXAS RULE OF APPELLATE PROCEDURE THAT THIS COURT RECONSIDER ON ITS OWN INITIATIVE ITS PREVIOUS DECISIONS DENYING THE APPLICATION FOR A WRIT OF HABEAS CORPUS AND FOR EN BANC REVIEW."

The Court of Criminal Appeals denied without written order.

Petitioner requests that this Court review the short brief attached as Appendix B prepared by attorney Alex Tandy with the attached Exhibit A, Petitioner's Application for a Writ of Habeas Corpus w/Memorandum Brief In Support which has everything needed for this Court to conclude that Petitioner is entitled to relief.

Petitioner requests that this Court order outright relief and immediate relief of restraint from prison. However, alternatively, Petitioner requests that this Court reverse and remand to the trial court for an evidentiary hearing with appointment of counsel and Petitioner bench warranted to be present at said hearing.

This case represents the truest form of a fundamental miscarriage of justice and Petitioner prays that this Honorable Court will not allow the continued incarceration in which the law absolutely forbids.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Robert Joseph Schmitt

Date: 9/26/2024