

IN THE UNITED
STATES SUPREME COURT

No: 24-5861

ROBERT JOSEPH SCHMITT

MOTION FOR REHEARING

Applicant Robert Joseph Schmitt, hereby requests that this Court reconsider on its own initiative its previous decision denying his Writ of Certiorari. Applicant states as follows:

STATEMENT OF CASE

Applicant, Robert Joseph Schmitt, seeks the exercise of this Court's Supervisory authority to correct and rectify an improperly imposed sentence ordered to be run consecutively in clear violation of Texas Penal Code, Sec. 3.03 and Applicant's State and U.S. Constitutional Rights. Applicant has been deprived of that Due Process Law guaranteed him by the U.S. Constitution.

Due to misstatements of the law by the prosecutor with respect to consecutive sentences allowed by Texas Law and to trial counsel's ineffective assistance in acquiescing in these misstatements, Applicant was unlawfully sentenced to two consecutive 20-year sentences for two counts of sexual assault on a child younger than 17, due to the fact that the law in effect at the time the offenses occurred did not allow for consecutive sentences.

ISSUE PRESENTED

Applicant asks this Court to exercise its Supervisory Authority to correct

an erroneously-imposed consecutive sentence and reform the sentence from a cumulative one to a concurrent sentence as Texas State law mandates. At the time that the offenses were committed, Rule 3.03 of the Texas Penal code mandated that all sentences for offenses arising out of a single criminal episode were to run concurrently. If the multiple offenses of a single episode are tried together, the Court must run and order the sentences to run concurrently.

Nonetheless, at sentencing neither defense counsel nor the Court, nor the prosecution picked up on the fact that consecutive sentencing provision of Section 3-03(b)(2)(A) did not apply and defense counsel did not object to this fact because he was not knowledgeable of the law.

Applicant was further denied effective counsel on Appeal. Appellate Counsel failed to investigate the legality of the consecutive sentences. Had Appellate Counsel properly investigated Applicant's case and argued the cumulation order on Appeal the sentences would have been ordered to run concurrently. See *Kebo v. State*, 87 Sw.3d 193 (Tex.App. Texaslandia 2002).

SUMMARY

—This Court has the authority to correct and reform this sentence. Therefore, this Court should act to prevent the continuous of a grave injustice, the continued service of a prohibited consecutive sentence of 20 years each, imposed due to the trial court's ineffective assistance. This Court should exercise its authority to change Applicant's consecutive sentence to a concurrent one.

CONCLUSION

Under the present circumstances, this Court allowing the consecutive sentence to stand shocks the conscience. The record in this case plainly shows that

trial counsel was ineffective in failing to object to the imposition of a consecutive sentence. A consecutive sentence is indisputably inappropriate for offenses committed prior to September 1, 1997. Nothing in the record supports the prosecutor's misstatement of the law. As a consequence of this error, Applicant is serving two twenty-year sentences instead of one. Applicant is currently serving year 7 on the second 20 year sentence that by law, he was ineligible to receive.

Applicant is not asking this Court for anything other than enforcing and sentencing Applicant under the correct law. Matter of fact, the only research this Court needs to do is read the 1995 Penal Code, sec 3.03 and the 1997 Penal Code, sec. 3.03 and determine which law he is to be sentenced under. It is not unduly excessive to ask this Court to engage in and ultimately reform the sentence by simply deleting the unlawful cumulation order.

PRAYER

For the foregoing reasons Applicant prays this Court will reconsider its decision denying his Mot of Certiorari; denying his request for a proper ruling and now, upon reconsideration, reform the improper cumulation order and order Applicant's sentence to run concurrent.

Sincerely,



Robert Joseph Schmitt

INMATE DECLARATION

I Robert J. Schmitt declare the facts presented in this Motion for reconsideration are true under penalty of perjury at law.



Robert J. Schmitt

March 1, 2025

Supreme Court
Washington, D.C.

Robert Joseph Schmitt #106867
Duncan Unit
1502 S. First St.
Diboll, Tx 75941

RE: Motion for Rehearing
NO: 24-5861

Dear Mr. Harris:

Could you please file this motion for Rehearing and bring it
to the attention of the court.

Thank you

Sincerely,



Robert Schmitt

