

CC-90-3715.61

IN THE TENTH JUDICIAL CIRCUIT, JEFFERSON COUNTY, ALABAMA,
BIRMINGHAM DIVISION

FILED IN OFFICE
CRIMINAL DIVISION

JOE C. DAVIS,)
)
Petitioner,)
)
vs.)
)
STATE OF ALABAMA,)
)
)
Respondent.)

JUL 06 2021

Case No. CC-90-3715 JACQUELINE ANDERSON SMITH
CLERK

PETITION FOR RELIEF FROM JUDGMENT
PURSUANT TO RULE 32 OF THE
ALABAMA RULES OF CRIMINAL PROCEDURE

Petitioner, JOE C. DAVIS, through counsel, respectfully petitions this Court pursuant to Rule 32 of the Alabama Rules of Criminal Procedure for relief from his sentence of life imprisonment without parole for one count of first-degree robbery that occurred on May 25, 1990. Mr. Davis was sentenced to a mandatory term of life imprisonment without parole under the habitual felony offender act, Alabama Code § 13A-5-40(c)(3) in 1990 and, including a prior conviction, has now been incarcerated almost forty (40) years.

Although Mr. Davis has previously filed petitions pursuant to Rule 32, Petitioner files this Rule 32 to raise for the first time the violation of his Eight Amendment and due process rights. This petition argues that Mr. Davis's sentence of life imprisonment without parole is excessive under the Eighth Amendment.¹ His previous efforts never

¹ "Whether a sentence is excessive . . . is a jurisdictional issue' that is not precluded by the limitations period of Rule 32, by the rule against successive petitions, or by Rule 32.2(a)(3)." *Ex Parte Trickett*, 972 So. 2d 782, 783 (Ala. 2007) (quoting *Ex Parte Sanders*, 792 So. 2d 1087, 1091 (Ala. 2001)).

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reached or considered that issue, one of constitutional dimensions, and this should be considered as a continuation of his previous efforts undertaken pro se, as he was indigent and without means to secure competent counsel. Mr. Davis' most recent *Pro Se* Rule 32 Petition was denied on February 5, 2020 based on failure to pay the required court filing fee. Equitable estoppel is proper under these circumstances, as his rights under the Kirby standards and legislative amended sentencing laws remain to be determined.

Mr. Davis will be able to show herein that "good cause exists why the new ground or grounds were not known or could not have been ascertained through reasonable diligence when the first petition[s were] heard, and that failure to entertain the petition will result in a miscarriage of justice." Ala. R. Crim. P. 32.2(b)(2).

GROUND FOR RELIEF AND LEGAL ARGUMENT

Three Class C felony convictions, with no physical injuries, were used to enhance Mr. Davis's sentence under the Habitual Felony Offender Act. Likewise, no physical injuries were caused in the instant case.

Petitioner was incarcerated in 1980 for a conviction and was released for a brief period before the instant case was lodged against him. Following his conviction in 1990, he has remained in State custody for almost 40 years, serving Life Without the Possibility Parole in the instant case.

In the instant case he was tried jointly with a co-defendant, Lawrence R. Posey. Though both were found guilty, Posey has been released from prison, while petitioner remains incarcerated until his death in prison.

Due to changes in the mandatory sentencing laws since his conviction, it is doubtful Mr. Davis would be sentenced to life without parole sentence under any sentencing scheme currently in place.

Additionally, Mr. Davis, at age 74, has been an exemplary prisoner, being in the honor dorm for years and remains classified as medium custody, though he has such a severe sentence.

Petitioner is seriously ill, to the extent that the Department of Corrections officials are recommending medical furlough or compassionate release. Counsel is informed that the paperwork is to be prepared and furnished for filing in court. At age 74, Petitioner has been hospitalized several times during the past several years, most recently for several months and remains in need of better care which can be provided in a hospital or nursing facility.

Mr. Davis is permitted to file this successive petition because, as he will show in this brief *infra*, the Alabama Legislature's passage of new laws subsequent to his conviction and filing of former petitions amounts to "good cause" as to "why the new ground or grounds were not known or could not have been ascertained through reasonable diligence when the first petition[s were] heard, and that failure to entertain the petition will result in a miscarriage of justice." Ala. R. Crim. P. 32.2(b)(2).

As jurisdiction is satisfied, Mr. Davis brings this petition on the grounds that newly discovered material facts exist revealing that his sentence is unconstitutionally excessive and warrants a sentencing review pursuant to Alabama law and the Eighth

Amendment of the U.S. Constitution. Ala. R. Crim. P. 32.1 (a), (c), and (e). Also, his age of 74 and serious medical condition warrants post-conviction relief as sought herein.

Additionally, Mr. Davis is entitled to the remedy afforded by equitable tolling because (1) Mr. Davis has diligently pursued his rights *pro se* to the best of his ability, but even so, (2) extraordinary circumstances exist “beyond the petitioner’s control” allowing for relief. *Weaver v. Firestone*, 155 So. 3d 952, 957-58 (Ala. 2013) (citing *Pace v. DiGuglielmo*, 544 U.S. 408, 418 (2005)); *Ex parte Ward*, 46 So. 3d 888, 897 (Ala. 2007).

Among the stated purposes of the Sentencing Commission is to “[e]stablish an effective, fair, and efficient sentencing system for Alabama adult and juvenile criminal offenders, which **provides certainty in sentencing, maintains judicial discretion and sufficient flexibility to permit individualized sentencing as warranted by mitigating or aggravating factors, and avoids unwarranted sentencing disparities among defendants with *like* criminal records who have been found guilty of similar criminal conduct.**” Ala. Code § 12-25-2(a)(2). This statement echoes the long-held sentiment of the United States Supreme Court that mandatory sentences without any margin for a trial court to exercise discretion creates an increased likelihood that a sentence is unfair, excessive, and disproportionate. *Woodson v. North Carolina*, 428 U.S. 280, 296-97 (1976).²

² “The belief no longer prevails that every offense in a like legal category calls for an identical punishment without regard to the past life and habits of a particular offender.” (quoting *Williams v. New York*, 337 U.S. 241, 247 (1949)); see also *Almendarez-Torrez v. United States*, 523 U.S. 224, 224-45 (1988) (noting mandatory minimum sentences are more severe than permissive maximum sentences because they eliminate judicial discretion entirely and increase likelihood of unfair imposition).

The Constitution of the United States requires relief for Mr. Davis from his sentence to die in prison according to the U.S. Supreme Court's interpretation of the Eighth Amendment in *Solem v. Helm*, 463 U.S. 277 (1983), Ala. Crim. P. 32.1(a).

“The Eighth Amendment’s proscription of cruel and unusual punishments prohibits not only barbaric punishments, but also sentences that are disproportionate to the crime committed.” *Solem v. Helm*, 463 U.S. 277, 284-290 (1983). Though the Eighth Amendment does not require strict proportionately between crime and sentence, sentences that are “grossly disproportionate” are prohibited. *See e.g., Rummel v. Estelle*, 445 U.S. 263, 271 (1980), *Weems v. U.S.*, 217 U.S. 349, 367 (1910). More recently, the Court has emphasized that, “the concept of proportionality is central to the Eighth Amendment.” *Graham v. Florida*, 560 U.S. 48 at 59 (2010).

Additionally, the constitutional understanding of which penalties are proportionate to the crime may evolve over time as society matures and progresses. *Ex parte Henderson*, 144 So. 3d 1262, 1266 (Ala. 2013) (quoting *Graham*, 560 U.S. at 59). The words of the Eighth Amendment are not precise, and whether particular punishment is cruel and unusual is not a static concept but instead adapts in recognition of the “evolving standards of decency that mark the progress of a mature society.” *Trop v. Dulles*, 356 U.S. 86, 101 (1958). Due to the evolution of Alabama laws since Mr. Davis was sentenced, the offenses that mandated life without parole for Mr. Davis in 1990 no longer do so. *Solem* also explains that punishment could be considered excessive if more serious crimes are subject to the same penalty. 468 U.S. at 291.

CONCLUSION AND PRAYER FOR RELIEF

Petitioner Davis's life without parole sentence – a prison death sentence, the second worst sentence that could be given, is grossly disproportionate to the nature of the crimes committed.

In view of Mr. Davis's nearly 40 years of incarceration, his profound rehabilitation, the changes in Alabama law, and his current serious health condition, at age 74 Mr. Davis's sentence of life without parole should be vacated.

The petitioner prays this court will grant relief under Rule 32 of the Alabama Rules of Criminal Procedure by resentencing him to time served or, if necessary, conduct an evidentiary hearing and upon taking evidence and testimony, grant relief.

WHEREFORE, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding.

Name and address of attorney representing
petitioner in this proceeding:

COUNSEL FOR PETITIONER



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ATTORNEY'S VERIFICATION UNDER OATH SUBJECT TO
PENALTY FOR PERJURY

I swear (or affirm) under penalty of perjury that, upon information and belief, the foregoing is true and correct. Executed on this 6th day of July, 2021

[Signature]
Attorney for Petitioner

SWORN TO AND SUBSCRIBED before me this the 6th day of July, 2021

JANET B. IVES
NOTARY PUBLIC, ALABAMA STATE AT LARGE
MY COMMISSION EXPIRES JUL. 15, 2023

[Signature]
Notary Public

CERTIFICATE OF SERVICE

This is to certify that the above and foregoing has been served upon all counsel of record by Hand Delivery ~~or mailing a copy of same by First Class Mail, postage prepaid~~, on this the 6th day of July, 2021, as follows: (B)

Hon. Danny Carr
District Attorney
Criminal Justice Center
801 Richard Arrington Jr. Blvd, N.
Birmingham, AL 33203

[Signature]
Of Counsel