

07/31/2020 "See News Release 028 for any Concurrences and/or Dissents."

SUPREME COURT OF LOUISIANA

No. 2020-KO-00077

STATE OF LOUISIANA

VS.

FAIR WAYNE BRYANT

On Writ of Certiorari to the Court of Appeal, Second Circuit, Parish of Caddo
Johnson, C.J., Would grant and assigns reasons:

The sentence imposed is excessive and disproportionate to the offense the defendant committed. Mr. Bryant was sentenced, as a habitual offender, to life in prison for unsuccessfully attempting to make off with somebody else's hedge clippers. Since his conviction in 1997, Mr. Bryant's incarceration has cost Louisiana taxpayers approximately \$518,667.¹ Arrested at 38, Mr. Bryant has already spent nearly 23 years in prison and is now over 60 years old. If he lives another 20 years, Louisiana taxpayers will have paid almost one million dollars to punish Mr. Bryant for his failed effort to steal a set of hedge clippers.

Mr. Bryant's sentence is sanctioned under the habitual offender law because of his four prior convictions. His first conviction was attempted armed robbery in 1979, for which he was sentenced to ten years at hard labor. He has had no more violent convictions. He was subsequently convicted of possession of stolen things in 1987; attempted forgery of a check worth \$150 in 1989; and simple burglary of an inhabited dwelling on March 19, 1992. *State v. Bryant*, 775 So.2d 596, 600 (La. App. 2 Cir. 12/6/00). Each of these crimes was an effort to steal something. Such petty theft is frequently driven by the ravages of poverty or addiction, and often both. It is

¹ Louisiana Department of Corrections data for FY2019-20 shows the average per day cost of incarcerating one prisoner is \$62.49.

cruel and unusual to impose a sentence of life in prison at hard labor for the criminal behavior which is most often caused by poverty or addiction.

A permissible sentence under Louisiana's habitual offender sentencing scheme may still violate a defendant's constitutional right not to be subjected to excessive punishment. *State v. Sepulvado*, 367 So.2d 762 (La 1979). A sentence is unconstitutionally excessive under Article 1, § 20 of the Louisiana Constitution if it makes no measurable contribution to acceptable goals of punishment or amounts to nothing more than the purposeful imposition of pain and suffering and is grossly out of proportion to the severity of the crime. *State v. Dorthey*, 623 So.2d 1276 (La.1993); *State v. Johnson*, 709 So.2d 672 (La 1998).

In the years following Reconstruction, southern states criminalized recently-emancipated African American citizens by introducing extreme sentences for petty theft associated with poverty. These measures enabled southern states to continue using forced-labor (as punishment for a crime) by African Americans even after the passage of the Thirteenth Amendment. Known in some places as "Pig Laws", they replaced the Black Codes that were prevalent after the Civil War ended. *See generally*, Douglas A. Blackmon, *SLAVERY BY ANOTHER NAME: THE RE-ENSLAVEMENT OF BLACK AMERICANS FROM THE CIVIL WAR TO WORLD WAR II* (2008).

Pig Laws were largely designed to re-enslave African Americans. They targeted actions such as stealing cattle and swine—considered stereotypical "negro" behavior—by lowering the threshold for what constituted a crime and increasing the severity of its punishment. *Id.*

Pig Laws undoubtedly contributed to the expansion of the Black prison population that began in the 1870's. These laws remained on the books of most southern states for decades. And this case demonstrates their modern manifestation: harsh habitual offender laws that permit a life sentence for a Black man convicted of property crimes. This man's life sentence for a failed attempt to steal a set of

hedge clippers is grossly out of proportion to the crime and serves no legitimate penal purpose. For the reasons cited, I would grant the defendant's writ application.