

23-6004

No. _____

FILED
OCT 11 2023
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SUPREME COURT U.S.

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Reginald C. Scott — PETITIONER
(Your Name)

vs.

Superintendent MAHANOY, SCI., et.al. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO
United States Court of Appeals
For The Third Circuit

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

PETITION FOR WRIT OF CERTIORARI

Reginald C. Scott

(Your Name)

AP9778 SCI-Mahanoy
301 Grey Line Drive

(Address)

Frackville, PA 17931

(City, State, Zip Code)

(570) 773-2158

(Phone Number)

STATEMENT OF CLAIMS

1). The principal question in this case is whether Robbery and Second Degree Murder, a greater and lesser include offense under Pennsylvania Law, constitute the "same offense" under the Double Jeopardy Clause. Pursuant to 18 Pa.C.S. § 2502 (b). Second Degree Murder "must consist" of an underlying felony requirement [Mandate], pursuant to the Act of October 5, 1980, P.L. 693, No. 142, "All Second Degree Murder Charges, indictments and convictions" must contain the underlying felony requirement. Petitioner having been convicted of Second Degree Murder and sentenced to (20) years plus a consecutive life sentence for Robbery imposed at a single criminal Trial violated the Fifth Amendment double jeopardy guarantee against multiple punishments for the same offense.

QUESTION(S) FOR THE COURT

2). The Double Jeopardy Clause of the Fifth Amendment, applicable to the States through the Fourteenth, provides that no person shall "be subject for the same offense to be twice put in jeopardy of life or limb". It has long been understood that separate statutory crimes need not be identical-either in constituent elements or in actual proof-in order to be the same within the meaning of the constitutional prohibition. 1 J. Bishop, New Criminal Law § 1051 (8th ed 1892); Comment, twice in Jeopardy, 75 Yale LJ 262, 268-269 (1965). The principal question in this case is whether Robbery and Second Degree Murder, a greater and lesser included offense under Pennsylvania law, constitute the "same offense" under the Double Jeopardy Clause ?

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:

Beradette Mason, Superintendent Mahanoy SCI, 301 Grey Line Drive, Frackville, PA 17931.

Ronald Eisenberg, Esq., Office of Attorney General of Pennsylvania, 1600 Arch Street, Suite 300, Philadelphia, PA 19103.

Ryan H. Lysaght, Esq., Dauphin County Office of District Attorney, 101 Market Street, Harrisburg, PA 17101.

RELATED CASES

Blockburger v. United States, 284 U.S. 299, 76 L. ed. 306, 52 S. Ct. 180 (1932). Relates with Double Jeopardy, and the Lesser Included Offense.

Act of October 5, 1980, P.L. 693, No. 142. Relates with the Lesser Included Offense. Must consist of the underlying felony.

Henry Montgomery v. Louisiana, Supreme Court of the United States, 577 U.S. 190; 136 S. Ct. 718; 193 L. Ed. 2d 599 (2016). Relates with Forbidding criminal punishment for certain Primary Conduct, Substantive, and Retroactive Rules of Constitutional Law.

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CASES	PAGE NUMBER
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Gideon v. Wainwright, 372 U.S. 335, 344, 9. L.Ed.2d. 799, 83 S.Ct. 792, 93 ALR2d. 733 (1963).....	(5).
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Missouri v. Hunter, 459 U.S. 359, 74 L.Ed.2d. 535, 103 S.Ct. 673 (1983).....	(7) & (11).
Missouri v. Hunter, (Citing <i>Albernaz v. United States</i> , 450 U.S. at 340, 67 L.Ed.2d. 275, 101 S.Ct. 1137 (1981).....	(8).
Peyton v. Rowe, 391 U.S. 54, 67 (1968).....	(12).
Powell v. Alabama, 287 U.S. 45, 47 L.Ed. 158, 53 S.Ct. 84 ALR. 527 (1932).....	(5).
Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d. 674 (1984).....	(9) & (11).
United States v. Ash, 413 U.S. 300, 307-08, 37 L.Ed.2d. 619, 93 S.Ct. 2568 (1973).....	(5).
Whalen v. United States, 445 U.S. 684, 63 L.Ed.2d. 715, 100 S.Ct. 1432 (1980).....	(6).
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Taylor v. Maddox, 366 F.3d. 992, 1008 (9th. Cir. 2004).....	(11).
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306, 52 S.Ct. 180 (1932).....(7).

STATUTES AND RULES

18 Pa.C.S. § 2502 (b), Second Degree Murder must consist of an
underlying felony requirement.....(13).

Act of October 5, 1980, P.L. 693, No. 142, all Second Degree
Murder Charge, Indictments and Conviction must contain the
underlying felony requirement,.....(13).

OTHER

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 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 United States district court appears at Appendix B 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 _____ 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 May 30, 2023.

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: July 27, 2023, and a copy of the order denying rehearing appears at Appendix C.

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

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

The Fifth Amendment to the United States Constitution provides in relevant part; "Nor shall any person be subject to the same offense to be twice put in jeopardy of life or limb; Nor shall be deprived of life or liberty without due process of law.

The Sixth Amendment to The United States Constitution provides 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, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation against him; to be confronted with witnesses against him; to have compulsory process of obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

The Eighth Amendment to The United States Constitution provides in relevant part; Nor shall cruel and unusual punishment be inflicted.

The Fourteenth Amendment to The United States Constitution provides in relevant part; No State shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States; nor shall any state deprive any person of life, liberty or property without due process of law; nor deny to any person within it's jurisdiction the equal protection of the law."

~~CONSTITUTIONAL~~ AND STATUTORY PROVISIONS INVOLVED

(Continued)

Statutes and Law

18 Pa.C.S. § 2502 (b), Second Degree Murder must consist of an underlying felony requirement.

Act of October 5, 1980, P.L. 693, No. 142, all Second Degree Murder Charges, Indictments and Conviction must contain the underlying felony requirement.

STATEMENT OF THE CASE

Petitioner's right to the effective assistance of counsel is a fundamental ~~component~~ of the criminal justice system. Counsel in criminal ~~matters~~ are necessities, not luxuries.¹ Their presence is essential because they are the means through which other rights of the person on trial are secured. Without counsel, the right to trial itself would be of little avail², which this court has repeatedly recognized³.

The Sixth Amendment purpose of effective assistance of counsel at trial equally includes effective assistance at sentencing, which assures that the sentence imposed upon convicted persons are within the confines of the law.

The Sixth Amendment right to effective assistance of counsel transcends to the Fifth Amendment purposes of offering to the petitioner the right to be protected against double jeopardy in the context of multiple/cumulative punishments based upon the same conduct or same underlying elements of the offense.

The facts underlying petitioner's Fifth Amendment claim are; his conviction and sentence in a single criminal trial for both Robbery and Murder of The Second Degree, pursuant to the "Felony Murder Rule" as established in Pennsylvania.

Petitioner is well aware that this court will only exercise it's discretionary powers surrounding a Sixth Amendment claim of ineffective assistance of counsel if counsel's deficient performance contains more than a casual nexus to a deprivation of a constitutional right.

1. Gideon v. Wainwright, 372 U.S. 335, 344, 9 L.Ed.2d. 799, 83 S.Ct. 792, 93 ALR2d. 733 (1963)

2. Powell v. Alabama, 287 U.S. 45, 77 L.Ed. 158, 53 S.Ct. 84 ALR 527 (1932)

3. United States v. Ash, 413 U.S. 300, 307-08, 37 L.Ed.2d. 619, 93 S.Ct. 2568 (1973)

The function of the Fifth Amendment double jeopardy clause is applicable in ~~cases~~ challenging multiple punishment serves to prevent the prosecution from bringing more charges and the sentencing court ~~from~~ imposing harsher punishment than the branch of legislature or felony murder rule intends or provides.

Petitioner submits for this court's consideration whether the charge of robbery is in law and fact; an underlying element of second degree murder, which prevents the court from imposing multiple punishment for conduct only to the extent authorized by law and similar to this court's determination as captured in *Whalen v. United States* ⁴.

During petitioner's trial the jury presented the court with a question ⁵, which reads;

"If we agree on the charges of robbery are we obligated to bring in a second degree murder charge, Please clarify third degree."

The court's response;

If you agree on the charges of robbery, you have obviously then made the fact finding that the defendant was an accomplice with the men who went in and committed the robbery.

If he was, he is guilty of murder, if you so find.

He is guilty of murder if he is guilty of robbery. He cannot be guilty of the robbery and not guilty of the murder, no question about it.

However, and in that connection, the law provides as follows:

a criminal homicide constitutes murder of the second degree when the death of the victim occurred while the defendant was

4. *Whalen v. United States*, 445 U.S. 684, 63 L.Ed.2d. 715, 100 S.Ct. 1432 (1980)

5. Pet. App. D, Two pages of transcripts.

engaged as a principal or an accomplice in the perpetration of a felony. The law also provides for a third degree murder, and I must tell you that while the law states that if a criminal homicide occurs during the perpetration of a robbery, it is murder of the second degree, you do have the right as a jury to find a lesser degree of murder; namely, murder in the third degree which is killing with malice but other than a killing in the perpetration of a felony.

So the law is that murder occurring in the perpetration of a felony is second degree murder; all other murders are third degree, but you would have the right, as a jury, in my opinion to find if you wished a lesser degree than second degree; to wit, third degree, although the law is as I stated. Murder in the perpetration of a felony is second degree murder.

Petitioner contends that his consecutive sentences violate the purposes of the Fifth Amendment double jeopardy clause under the decision of this court as captured in *Missouri v. Hunter* ⁶; that the test announced in *Blockburger v. United States* ⁷ is that petitioner's underlying offense of robbery and offense of murder are the "same offense" under the double jeopardy clause, and the underlying robbery is an underlying element of murder, which in law and fact cannot be separated to the point of imposition of multiple/cumulative punishments.

The court in *Whalen*, turning on a determination of Congress' [Legislature's in this case], intent does not require the same result automatically to be reached in a state where legislature enacts criminal sanctions which authorize cumulative sentences for defendants convicted on charges of felony murder and the underlying predicate felony. Pennsylvania's Felony Murder Rule indicates that multiple punishments cannot be imposed for two

6. *Missouri v. Hunter*, 459 U.S. 359, 74 L.Ed.2d. 535, 103 S.Ct. 673 (1983)

7. *Blockburger v. United States*, 284 U.S. 299, 76 L.Ed. 306, 52 S.Ct. 180 (1932)

offenses arising out of the ~~same~~ criminal transaction unless each offense 'requires proof of fact which the other does not'. Here, the case with respect to felony murder committed in the course of robbery clearly dictates that felony murder cannot be had without proving all the elements of the offense of robbery.

The Missouri court held that the Blockburger test is a rule of statutory construction, and because it serves as a means of discerning congressional (Legislative) purpose the rule should not be controlling where, for example, there is a clear indication of contrary legislative intent ⁸. The Double Jeopardy Clause forbids either multiple prosecutions or multiple punishment for the same offense ⁹. Here, petitioner was convicted of both felony murder and underlying predicate offense of robbery and was sentenced for both crimes. "Had" petitioner been tried for these two crimes in separate trials, he could have plainly been subjected to multiple prosecutions for the same offense in violation of double jeopardy, but such is not at issues in this case.

Petitioner's case is a matter of first impression and is in both law and fact "distinguishable" from Whalen and Missouri, because petitioner's sentence of 10-20 years for predicate offense of robbery had reached the point of termination before commencement of the life-sentence imposed consecutively ¹⁰

On record in this case is the fact that petitioner's 10-20 year sentence for predicate robbery offense, which provided parole release on minimum date of November 11, 1986 and granted maximum release on November 11, 1996 (point of termination). Hence, the consecutive term of imprisonment for life, served to violate the purposes of Fifth Amendment protection from double

8. Missouri v. Hunter (citing Albermaz v. United States, 450 U.S. at 340, 67 L.Ed.2d. 275, 101 S.Ct. 1137 (1981))

9. Ex parte Lange, 18 Wall 163, 169, 173-175, 21 L.Ed. 872 (1874)

10. Pet. App., D, Pg. 3

jeopardy. Felony murder ~~and predicate~~ offense of robbery constitute the same offense ~~under~~ the test of both **Blockburger** and **Pennsylvania's Felony Murder Rule**. To punish petitioner for felony murder, the state was not required to prove a single fact other than the predicate offense of robbery. Thus, the punishment for felony murder is based upon the underlying element of robbery as proof of act, state of mind, or result different from that required to establish felony murder. Hence, petitioner was punished twice for the elements of felony murder; once he was convicted and sentenced for robbery, and again sentenced separately (consecutively) for felony murder, he received two punishments for the same offense. Neither the Felony Murder Rule or The United States Constitution permits a state to punish as two crimes conduct that constitutes only one offense within the meaning of the double jeopardy clause ¹¹.

For the purpose of a Sixth Amendment claim of ineffective assistance of counsel, petitioner must demonstrate a showing of the requirements as captured in *Strickland v. Washington* ¹²;

which requires a showing that counsel's representation fell below an objective standard of reasonableness and the defendant suffered prejudice, in that there is a reasonable probability that but for counsel's errors, the result of the proceeding would have been different.

Here, under the watchful eyes of defense counsel, the state obtained two convictions and two sentences where, double jeopardy and felony murder rule permits only a single conviction and sentence to encompass severity. Defense counsel's failure to challenge or object to the separation of the underlying element or predicate offense of robbery constitutes a standard of actual performance that falls below objective reasonableness, that permitted the creation of multiple crimes and multiple punishment

11. *Missouri*, 450 U.S. at 370

12. *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d. 674 (1984)

that, but for counsel's error ~~would~~ have resulted in a single punishment which would not have invalidated the states interest that could not be achieved just as easily without bringing the multiple charges against the petitioner. Prejudice is blatantly shown where his 10-20 years sentence terminated and he remains unlawfully incarcerated in violation of his right against the protections of double jeopardy, for a period of approx. 28-years past point of termination, finality and what the United States Constitution prohibits.

Petitioner has been denied due process and equal protection of law for purposes of the Fifth and Fourteenth Amendment and the underlying facts establishing such a claim are;
(1) there exists no statutory authorization for the sentences imposed.

In accordance with the decision captured in *Hill v. United States ex rel Wamper*, prejudice is shown where the court's instructions are lacking formal safeguards to protect against mistake, and most certainly against the type of oppression as previously set forth under double jeopardy, which in itself gives rise to a claim for purposes of Eighth Amendment cruel and unusual punishment by unlawful incarceration past point of termination.

Petitioner contends that the intermediate appellate courts should have conducted an evidentiary hearing upon a demonstration of prejudice to the verdict for purposes of Fifth and Fourteenth Amendment due process and equal protection of law.

Prejudice is defined as; Damage or detriment to one's legal rights or claims ¹³.

13. Black's Law Dictionary, Deluxe Eighth Ed. (2008), Pg. No. 1218

Petitioner has demonstrated ~~prejudice~~ prejudice to the verdict by and through both defects in the fact finding process and the imposition of multiple punishment for the same offense wherein, neither the state-appellate court system, nor the intermediate federal courts are entitled to a presumption of correctness in dismissing petitioner's federal questions of law¹⁴, as captured by the United States Court of Appeals for the Ninth Circuit;

"presumption of correctness overcome by clear and convincing evidence of defects in fact finding process".

The on record evidence as applied to the facts of this case, should have resulted in a evidentiary hearing for purposes of Fifth and Fourteenth Amendment due process and equal protection of law and purpose of First Amendment right to petition the government for redress of grievances in accordance with *Miller v. Fenton*¹⁵;

Any principle that can be given meaning only through its application to the facts of the case is generally regarded as a legal question and will not be accorded a presumption of correctness. Furthermore, [a]n issue does not lose its factual character merely because its resolution is dispositive of the ultimate constitutional question.

The ultimate question here, in accordance with *Peyton v. Rowe*¹⁶ is; "Can petitioner serving consecutive sentences attack the conviction and sentence yet to be served" ?

Although the presumption of correctness does apply to state court findings of fact made in the course of resolving claims of ineffective assistance of counsel, the holdings of the *Strickland* court in regards to ineffective assistance of counsel claims on issues of counsel's performance and defendant's prejudice are mixed questions of law and fact; and are not entitled to the presumption of correctness¹⁷.

14. *Taylor v. Maddox*, 366 F.3d. 992, 1008 (9th Cir. 2004)

15. *Miller v. Fenton*, 474 U.S. 104, 114 (1985)

16. *Peyton v. Rowe*, 391 U.S. 54, 67 (1968)

17. *Strickland v. Washington*, 466 U.S. 668, 698 (1984)

On record is the fact that ~~petitioner~~ has not failed to develop the factual basis of his claims in state-court proceedings, but the record clearly displays a lack of adequate remedy of any form in all of the ~~lower~~ appellate courts, and especially where, the lower appellate courts were not barred from conducting an evidentiary hearing pursuant to the standard set forth by the United States Court of Appeals for the First Circuit as captured in *Pike v. Guarino*¹⁸;

Petitioner entitled to evidentiary hearing because presented extensive evidence in state court.

In short, petitioner's claims raise serious questions regarding prejudice to the verdict, this is especially so where, his conviction and sentence were obtained through a judicial process that did not follow the law.

There exists no statutory authorization for the sentence imposed. If the constitution establishes a rule and requires that the rule have retroactive application, then a state court's refusal to give the rule retroactive effect is reviewable by the U.S. Supreme Court. States may not disregard a controlling, constitutional command in their own courts. (Kennedy, J., joined by Roberts, Ch. J., and Ginsburg, Breyer, Sotomayor, and Kagan, JJ.) < 193 L. Ed.2d 601 >

Related with Petitioner's case as seen in *Montgomery v. Louisiana*¹⁹ "forbidding criminal punishment of certain primary conduct that is substantive, an retroactive rules of Constitutional Law.

18. *Pike v. Guarino*, 492 F.3d 61, 69 (1st. Cir. 2007)

19. *Montgomery v. Louisiana*, supreme Court of the United States, 577 U.S. 190; 136 S. Ct. 718; 193 L. Ed. 2d 599 (2016).

The constitution requires substantive rules to have Retroactive effect regardless of when a conviction became final. (Kennedy, J., joined by Roberts, Ch. J., and Ginsburg, Breyer, Sotomayor, and Kagan, JJ.)

Substantive Rules set forth categorical constitutional guarantees that place certain criminal laws and punishments altogether beyond a state's power to impose. It follows that when a state enforces a proscription or penalty barred by the constitution, the resulting conviction or sentence is, by definition unlawful. (Kennedy, J., joined by Roberts, Ch. J., and Ginsburg, Breyer, Sotomayor, and Kagan, JJ.)

Protection against disproportionate punishment is the central Substantive guarantee of the Eight Amendment and goes far beyond the manner of determining a defendant's sentence. (Kennedy, J., joined by Roberts, Ch. J., and Ginsburg, Breyer, Sotomayor, and Kagan, JJ.)

Pursuant to 18 Pa.C.S. § 2502 (b). Second Degree Murder "Must Consist" of an underlying felony requirement [Mandate], Pursuant to the act of October 5, 1980, P.L. 693, No. 142, " All Second Degree Murder Charges, Indictments and Convictions" Must contain the underlying felony requirements.

REASONS FOR GRANTING THE PETITION

Should this court choose to deny the writ of Certiorari and continue to permit the Commonwealth of Pennsylvania to fail to render an adjudication upon petitioner, Reginald C. Scott's federal questions of law, Mr. Scott will most likely die in prison for a life-sentence imposed in violation of the Fifth Amendment protection against double jeopardy, and a sentence not authorized by law.

Should this court choose not to exercise its discretionary powers over this matter, petitioner Scott as forced to serve an erroneous sentence will continue to suffer a prolonged and unlawful term of imprisonment that the Constitution renders both cruel and unusual under purposes of the Eighth Amendment.

The United States set forth a Constitution that provides certain rights that remain inviolate under due process and equal protection of law with a legal system tasked to uphold the interests of justice, cannot mandate or justify petitioner Scott's continued imprisonment under the circumstances set forth.

If this court fails to grant the writ, under the circumstances presented, the interests of justice have not been served, and demonstrates to the public at large that; any conviction can and will be deemed lawful, so long as the lower appellate courts can refuse to adjudicate the merits of the federal law claims or can choose not to because of a procedural bar, which in all essence permits justice to be turned into an intricate game of catch me if you can.

Petitioner submits that, the writ will be in aid of this court's appellate jurisdiction wherein, the history of this case does not show a total lack of diligence, but demonstrates that petitioner Scott has no other available remedy or relief of any form in any other court.

This court should grant the writ for the purposes of public

~~importance~~ to show the public at large ~~that~~; ~~neither~~ the United States Constitution, nor the law will be made a mockery of, ~~and~~ to assure that other individuals like petitioner Scott who ~~may~~ be serving unlawful sentences may have justice, in addition, ~~to~~ those individuals who may be facing prosecution to serve as a reminder to the courts, that the laws must be followed.

If this court grants the writ and exercises it's discretionary powers, it both re-enforces confidence in the public of faith that justice will be served and no matter what, the accused is still entitled to the benefit of the effective assistance of counsel.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Reginald C. Scott

Date: OCTOBER 8, 2023