No. 17-670

In the Supreme Court of the United States

JOEL HENRIK STONE,

Petitioner,

v.

MONTANA,

Respondent.

On Petition for Writ of Certiorari to the Supreme Court of Montana

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the Fifth Amendment's Double Jeopardy Clause prohibits the government from prosecuting charges it agreed to dismiss in exchange for an invalid guilty plea.

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INTRODUCTION

Petitioner Joel Henrik Stone argues that this Court should resolve whether jeopardy attaches when a court accepts a guilty plea. That is an interesting and perhaps important question that this Court may want to resolve someday. But it is not a question that Stone's case presents.

Stone was charged with and pled guilty to felony Partner Family Member Assault (PFMA). He admitted at his change of plea hearing that he had two prior PFMA convictions, which is what distinguishes a felony PFMA from a misdemeanor offense. In exchange for that plea, the State promised to dismiss an alternative charge of felony aggravated assault and a misdemeanor tampering charge, and to recommend a lenient sentence for the felony PFMA.

It turns out that all parties—Stone, the State, and the Court—were mistaken. Stone did not have two prior PFMA convictions. As a result, Stone argued that he could only be sentenced to a misdemeanor PFMA, and that double jeopardy barred the State from prosecuting him for the aggravated assault charge it had agreed to dismiss in exchange for his guilty plea to felony PFMA. In essence, even though he was charged with a felony, admitted all of the elements of a felony, and pled guilty to a felony, he wanted to transform his plea to a misdemeanor and block the State from prosecuting him for the alternative felony assault charge.

The Montana Supreme Court rejected his argument. It held that, as a matter of Montana law, a misdemeanor PFMA charge is distinct from a felony PFMA charge and, therefore, a guilty plea to one offense cannot be exchanged for a guilty plea to another. Pet. App. 9a. If jeopardy attached to anything, it was to his guilty plea for felony PFMA. And jeopardy does not attach when the parties agree that the crime did not actually occur. As the Montana Supreme Court put it, "Stone's prosecution of aggravated assault, after a vacated guilty plea to a non-existent crime, did not place Stone in jeopardy twice for the same conduct." *Id*. at 9a-10. Thus, when a court vacates an invalid guilty plea, it does not violate double jeopardy to return the parties to the same position they were in before the plea and to allow the government to prosecute charges that the State agreed to dismiss in exchange for the vitiated plea.

That view is consistent with every circuit court to address the issue—ten to date. And it only makes sense. A defendant cannot keep only the part of a vacated plea that he likes, discard the rest, and claim that the Double Jeopardy Clause bars the State from prosecuting an alternative charge dismissed in exchange for the vacated plea.

This Court should reject the petition.

STATEMENT OF THE CASE

1. In the early morning hours of April 14, 2013, Stone brutally attacked his former girlfriend, Tana, after she refused to allow him to spend the night at her home. Stone was charged by Amended Information in state district court with aggravated assault in violation of Mont. Code Ann. § 45-5-202 (2011), for purposely or knowingly causing reasonable apprehension of serious bodily injury or death in Tana by suffocating her by stuffing a sheet into her mouth and strangling her by placing his hand around her throat. In the alternative, he was charged with felony PFMA in violation of Mont. Code Ann. § 45-5-206(1)(a) for grabbing her by the neck and kneeling on her arms, causing her bodily injury, *i.e.*, physical pain. In addition, he was charged with criminal destruction or tampering with a communication device in violation of Mont. Code Ann. § 45-6-105(1)(b) for taking her cell phone away so that she could not call for help.

The Amended Information notified Stone that, if convicted of felony PFMA, he would serve a prison term of not less than 30 days and not more than 5 years. *See* Mont. Code Ann. § 45-5-206(3)(a)(iv). However, because Stone had previously been convicted of being a felon in possession of a firearm and was still serving his period of supervised release, the State gave notice of its intent to designate him a persistent felony offender for sentencing purposes under Mont. Code Ann. §§ 46-13-108, -501, *et seq*. (D.C. Doc. 17.) Thus, he faced a mandatory minimum prison term of 5 years and a statutory maximum sentence of 100 years if he was convicted of either of the felonies in the Amended Information. *See* Mont. Code Ann. § 46-18-502(1).

2. The parties entered into a verbal plea agreement. In exchange for Stone's guilty plea to the felony PFMA charge, the State agreed to dismiss the aggravated assault and tampering charges and to recommend an eight-year commitment to the custody of the Department of Corrections, with all but the first five years of that sentence suspended. (D.C. Doc. 34 at 2; *see also* D.C. Doc. 20; 9/30/13 Tr. at 10-11.) Stone signed an "Acknowledgment of Waiver of Rights by Plea of Guilty" form and indicated that he "had at least two prior" PFMAs. (D.C. Doc. 20.) The word "believe" had been written above this sentence, but was crossed out. (D.C. Doc. 20.)

During his plea colloquy, Stone again admitted having at least two prior PFMAs. Pet. App. 23a; 25a. When his attorney indicated Stone was pleading guilty to, and was guilty of, "misdemeanor conduct" only, the district court clarified with Stone that he had at least two prior PFMA convictions, and that he was pleading to felony PFMA, not a misdemeanor. Pet. App. 26a-27a ("well, the charge says partner or family member assault, felony. . . . What you're pleading to is partner or family member assault, felony, because it's the third one, or at least third—three or more."). The district court ultimately accepted Stone's guilty plea and ordered a presentence investigation report. Pet. App. 29a-30a. Stone agreed the aggravated assault and tampering charges "[w]ill be dismissed" at a later date. (9/30/13 Tr. at 2.)

The day before Stone's sentencing hearing, he filed a brief asking the court to sentence him as a misdemeanant and to prohibit the State from prosecuting him for aggravated assault because he had determined that he did not have two prior PFMA convictions. Despite his plea bargain to the contrary and his statements in open court during his plea colloquy, Stone argued that he had pled guilty to misdemeanor first offense PFMA only, and the maximum possible penalty was one year in jail. (D.C. Doc. 22 at 5.) He further argued that the Double Jeopardy Clauses of the United States and Montana Constitutions prohibited the State from continuing to prosecute him for aggravated assault because "by choosing to charge Count II in the alternative to Count I, the State in essence made Counts I and II the 'same offense' for Double Jeopardy purposes," and continuing to prosecute him for aggravated assault "could only result in Double Jeopardy." (D.C. Doc. 22 at 5.)

In response, the State conceded Stone did not have the requisite number of prior domestic abuse convictions to render his PFMA charge a felony. The State asked the court to void the plea agreement as the product of mutual mistake and return the parties to their original positions, *i.e.*, vacate Stone's guilty plea and allow the State to proceed on the alternative aggravated assault charge. The State argued further that prosecuting Stone for aggravated assault would not offend double jeopardy principles because Stone had not yet been convicted of or punished for felony PFMA. (*See* D.C. Doc. 29.)

The district court agreed with the State and permitted the State to file a Second Amended Information charging Stone with aggravated assault and tampering only. (D.C. Docs. 34, 36.) Stone ultimately pled guilty to aggravated assault pursuant to a plea agreement and was sentenced to serve five years in prison with one suspended.

3. On appeal, Stone argued, in part, that jeopardy had attached when he pled guilty to PFMA and that the State's subsequent prosecution for aggravated assault violated his state and federal double jeopardy rights. The State argued that jeopardy did not attach when Stone pled guilty, and, even if it did, the Double Jeopardy Clause did not bar the State from prosecuting Stone on the aggravated assault charge under the facts of this case.

The Montana Supreme Court affirmed Stone's conviction, concluding that jeopardy did not attach when the court accepted his guilty plea to felony PFMA. Pet. App. 10a. The Court held that, under state law, Stone's prosecution for aggravated assault, or, in the alternative, felony PFMA, did not end when he pled guilty because Stone had not been sentenced and a judgment of conviction had not been entered. *Id*. at 8a. As such, Stone was not subjected to a subsequent, additional prosecution for the same offense but only the continuation and completion of his first prosecution. *Id*.

In addition, the Court held that the "constitutional policies designed to protect a defendant by ensuring finality of prosecution and the protection against the State's attempts to relitigate facts underlying a prior acquittal and from attempts to secure additional

punishment after a prior conviction and sentence" were not implicated by Stone's guilty plea. *Id.* at 9a. The Court explained that to the extent Stone had any interest in the finality of a guilty plea, it was an interest in his guilty plea to felony PFMA.

The Court reasoned that under Montana law, a misdemeanor PFMA charge is distinct from a felony PFMA charge and, therefore, a guilty plea to one offense cannot be exchanged for a guilty plea to another. "Here, Stone had no interest in the finality of a guilty plea to misdemeanor PFMA because he was not charged with that offense, he did not plead guilty to that charge, and he did not agree to be, and could not have reasonably expected to be sentenced to a misdemeanor when he entered his guilty plea. 'It is elementary that a party cannot be charged with one offense and convicted of another independent offense.'" Pet. App. 9a. (quoting *State v. Sieff*, 168 P. 524 (1917)). However, no felony PFMA actually occurred, and thus, "Stone's prosecution for aggravated assault, after a vacated guilty plea to a non-existent crime, did not place Stone in jeopardy twice for the same conduct." *Id*. at 9a-10a.

REASONS FOR DENYING THE WRIT

I. This Court Has Already Given Lower Courts a Framework for Evaluating Double Jeopardy Claims in the Context of a Guilty Plea to One of Two Alternative Charges.

Stone argues for a bright line rule for when jeopardy attaches to guilty pleas, but this Court has carefully avoided a rigid approach to necessarily fact-driven double jeopardy questions. Double jeopardy questions "turn on the particular facts and thus escape meaningful categorization. . . ." *Illinois v. Somerville*, 410 U.S. 458, 464 (1973). Thus, the Court has outlined a "general approach" to these cases that eschews "rigid, mechanical rule[s]," that would overly restrict trial judges in a fact-bound inquiry in determining the Double Jeopardy Clause's application. *Id.* at 467.

The Court has already determined the framework for applying the Double Jeopardy Clause to guilty pleas in *Ohio v. Johnson*, 467 U.S. 493 (1984), which lower courts are not struggling to apply. In *Johnson*, this Court rejected the defendant's claim that he would be subject to multiple prosecutions if the government could continue to prosecute him for the greater offenses in the indictment after he pled guilty to the lesser included offenses over the government's objection. The Court refused to hold "that trial proceedings, like amoebae, are capable of being infinitely subdivided, so that a determination of guilt and punishment on one count of a multicount indictment immediately raises a double jeopardy bar to continued prosecution on any remaining counts that are greater or lesser included offenses of the charge just included." *Id.* at 501.

Instead, the Court held that a defendant cannot use the Double Jeopardy Clause as a "sword" to prevent the State from completing its first and only prosecution of the greater offenses that had been charged in the same charging document. *Id.* at 502. The Court reasoned that a guilty plea is legally different from a conviction of a lesser included offense based on a jury's verdict, as it "has none of the implications of an 'implied acquittal'" of the greater offense and is not likely to lead to governmental overreaching.

Rather, whether double jeopardy prevents the continued prosecution of a defendant who has entered a guilty plea to the same offense depends on whether doing so would thwart the Double Jeopardy Clause's twin aims of protecting the defendant's finality interests and preventing prosecutorial overreaching. *See id.* at 501. ("We do not believe, however, that principles of finality and prevention of prosecutorial overreaching . . . reach this case. No interest of respondent protected by the Double Jeopardy Clause is implicated by continuing prosecution on the remaining charges. . . .").

The Montana Supreme Court's analysis below followed the framework and principles set forth in *Johnson*. First, regarding finality, the court correctly reasoned that Stone could have no reasonable expectation of finality in a misdemeanor PFMA conviction because that is not what he was charged with nor pled guilty to. He pled guilty to felony PFMA. Pet. App. 26-27a ("the charge says partner or family member assault, felony. . . . What you're pleading to is partner or family member assault, felony."). Misdemeanor PFMA is a separate and independent

lesser included offense of felony PFMA. *See* Pet. App. 9a. By pleading to the greater offense, "Stone had no interest in the finality of a guilty plea to misdemeanor PFMA because he was not charged with that offense, he did not plead guilty to that charge, and he did not agree to be, and could not have reasonably expected to be sentenced to a misdemeanor when he entered his guilty plea." *Id*. In sum, Stone had no expectation in the finality of a felony plea that he later disavowed on the ground that it was based on untrue facts. Nor did he have any finality interest in the dismissal of the aggravated assault charge that was based on his agreement to plead guilty to felony PFMA.

Second, as Stone seems to concede, there was no government overreaching. The State did not attempt to relitigate facts or secure additional punishment after a prior conviction and sentence. Pet. App. 9a. The State charged Stone with both felony aggravated assault and felony PFMA in the original information. By continuing its still-existing, first and only prosecution of the felony aggravated assault charge and dismissing the alternative felony PFMA charge, the State did not engage in any foul play, increase the risk that Stone would ultimately be convicted of aggravated assault, or even threaten to subject him to double punishment for the same offense. Nor did the State subject Stone to the "embarrassment, expense, and ordeal" that repeated trials entail. *United States v. DiFrancesco*, 449 U.S. 117, 127-28 (1980). In short, there was no overreach in prosecuting Stone for a charge the State agreed to dismiss in exchange for a guilty plea that was later found to be invalid.

The framework the Court has articulated in applying the Double Jeopardy Clause to guilty pleas needs no further clarification, and the Montana Supreme Court faithfully applied it in this case. The Court should deny the petition.

II. Ten Circuit Courts Agree With the Montana Supreme Court That Double Jeopardy Does Not Prohibit the Government From Prosecuting Charges It Agreed to Dismiss in Exchange for an Invalid Guilty Plea.

Lower courts are unanimous that the Double Jeopardy Clause does not prevent the government from reinstating charges dismissed pursuant to a plea agreement that resulted in an invalid plea. Although Stone pled guilty to felony PFMA, he was not actually guilty of that crime. By arguing that the district court could not sentence him as a felon, Stone, in essence, successfully challenged the validity of his guilty plea and repudiated the plea agreement on which it was based. The mutual mistake upon which the agreement was based rendered the plea invalid and the court's continued acceptance of it would have constituted obvious reversible error. Lower courts unanimously hold that, in such a case, a defendant may not use the Double Jeopardy Clause as a sword to prevent prosecution of charges the government agreed to dismiss in exchange for the defective plea. There is thus no reason for this Court to grant certiorari to resolve a question upon which every circuit to address the question agrees.

Indeed, the Montana Supreme Court's decision is in accord with ten circuit courts. The Fifth Circuit

accurately summarized the lower courts' rulings on whether the government may pursue additional or alternative charges after a plea bargain fails. "The cases hold with apparent unanimity that when defendant repudiates the plea bargain either by withdrawing the plea or by successfully challenging his conviction on appeal, there is no double jeopardy (or other) obstacle to restoring the relationship between the defendant and state as it existed prior to the defunct bargain." *Fransaw v. Lynaugh*, 810 F.2d 518, 524-25 (5th Cir. 1987) (citing *United States v. Gerard*, 491 F.2d 1300 (9th Cir. 1974); *United States v. Barker*, 681 F.2d 589 (9th Cir. 1982); *United States v. Johnson*, 537 F.2d 1170, 1174-75 (4th Cir. 1976); *Klobuchir v. Pennsylvania*, 639 F.2d 966 (3d Cir. 1981); *Hawk v. Berkemer*, 610 F.2d 445, 448 (6th Cir. 1979); *United States v. Anderson*, 514 F.2d 583 (7th Cir. 1975)); *see also United States v. Wampler*, 624 F.3d 1330, 1341 n.8 (10th Cir. 2010); *United States v. Podde*, 105 F.3d 815, 817 (2d Cir. 1997); *United States v. Baggett*, 901 F.2d 1546, 1550 (11th Cir. 1990); *United States v. Garcia-Rosa*, 876 F.2d 209, 235 n.21 (1st Cir. 1989) (noting with favor the rule from other circuits) *vacated and remanded on other grounds,* 498 U.S. 954 (1990). In each of these cases, double jeopardy did not bar the government from prosecuting a defendant on previously-dismissed charges after the defendant successfully argued that the plea was invalid.

The circuit courts' unanimity on this question follows from the *Ohio v. Johnson* framework, because a defendant cannot possibly have a finality interest in a conviction based on an invalid guilty plea, as in this case. *See* Pet. App. 9a ("Stone had no interest in the finality of a guilty plea for a crime that did not occur.").

It also follows from this Court's decision in *Ricketts v. Adamson*, 438 U.S. 1, 8 (1987), where the Court held that the Double Jeopardy Clause did not bar reprosecution for first-degree murder following defendant's breach of a plea agreement. *See also Illinois v. Somerville*, 410 U.S. 458, 463 (1973) (fatal defect in indictment may permit second indictment).

Applying these principles establishes that the State's prosecution for aggravated assault did not violate the Double Jeopardy Clause. Stone was charged with felony PFMA, agreed to plead guilty to felony PFMA, admitted all the elements of felony PFMA, and pled guilty to felony PFMA. Conversely, he was never charged with misdemeanor PFMA, he could not have been convicted of that lesser included offense based on his admissions at the change of plea, he did not obtain the State's promise to dismiss the alternative aggravated assault charge in exchange for a guilty plea to a misdemeanor, and he did not actually plead guilty to misdemeanor PFMA. Stone successfully challenged his felony PFMA plea when he argued that he could not have been convicted of a felony PFMA, he could not be sentenced in accordance with the parties' plea agreement, and the court should sentence him as though he had pled guilty to misdemeanor PFMA only. Through this challenge, he repudiated the plea bargain that resulted in the State's agreement to dismiss the alternative aggravated assault charge. Thus, as the Montana Supreme Court concluded, under well-settled law, "Stone's prosecution for aggravated assault, after a vacated guilty plea to a non-existent crime, did not place Stone in jeopardy twice for the same conduct." Pet. App. 9a-10, ¶ 24.

There is no division among lower courts that, under these circumstances, the Double Jeopardy Clause does not bar prosecution on the charges that the government agreed to dismiss in exchange for an invalid guilty plea. This Court should deny the petition for certiorari.

III. The Cases Stone Cites as Contrary to the Montana Supreme Court Are Inapposite Because They Do Not Involve Prosecution for Charges That the Government Agreed to Dismiss in Exchange for an Invalid Guilty Plea.

None of the cases that Stone cites as contrary to the Montana Supreme Court's decision involved facts even remotely similar to this case where a defendant had entered an invalid guilty plea. While lower courts have come to various decisions about when Double Jeopardy bars a second prosecution, those decisions are based, not on a talismanic rule, but on the particular facts of each case and in light of the purposes served by the Double Jeopardy Clause, as this Court has already outlined. As discussed above, the Montana Supreme Court, along with the federal circuit courts, have experienced no difficulty following this Court's guidance. In short, there is no significant confusion by lower courts that needs this Court's resolution.

Stone's claim that the Ninth and Eleventh Circuits held that jeopardy attaches to a guilty plea under "facts substantially identical to this case" is simply incorrect. Pet. 9. In both cases the defendant wanted to maintain a guilty plea to the original charge, not disavow his plea and the plea agreement, as in this case. For example, in *United States v. McIntosh*, 580 F.3d 1222, 1227-29 (11th Cir. 2009), the Eleventh Circuit held that jeopardy had

attached to a guilty plea where the indictment had alleged the incorrect date of the offense. At the plea hearing, however, the parties agreed the offense actually occurred several days before the date cited in the indictment. *Id.* at 1225. Incorrectly fearing that the error would invalidate the guilty plea, the government obtained a second indictment and dismissed the first indictment without prejudice. The Eleventh Circuit concluded that the error in the original indictment was "of form, not substance" and did not invalidate the original guilty plea, which, had never been vacated in any event. *Id.* at 1228. Thus, the court held, the subsequent prosecution for the same offense violated the Double Jeopardy Clause. *Id.* at 1229. That is nothing like this case, where the Montana Supreme Court held that Stone's guilty plea to a "non-existent" felony PFMA was invalid, and the State was merely allowed to continue its prosecution on the alternative charge that the State agreed to dismiss under the parties' plea agreement that resulted in that invalid plea.

Likewise, in *United States v. Patterson*, 381 F.3d 859, 861-62 (9th Cir. 2004), the government charged the defendant with illegally manufacturing marijuana plants and asserted that, based on the number of plants, a sentencing enhancement applied. Patterson pled guilty, admitting he manufactured an unspecified number of plants. *Id.* at 861-62. He made no admissions during his change of plea hearing regarding the number of plants he had manufactured and specifically contended the sentencing enhancement did not apply. *Id.* Before sentencing, this Court decided *Apprendi v. New Jersey*, 530 U.S. 466 (2000), holding that a jury must determine facts that increase the penalty for a crime beyond the statutory maximum. In

light of *Apprendi*, the trial court determined that a jury needed to determine the number of plants at issue and, thus, vacated the defendant's guilty plea and ordered a trial. *Id.* at 862. The Ninth Circuit concluded that the district court erred in finding that Patterson's guilty plea was invalid. *Id.* at 866. Rather, the appeals court held that Patterson entered a valid guilty plea to the lesser offense only and that the Double Jeopardy Clause barred trying the defendant on a charge to which there was a valid plea. *Id.* at 865.

Patterson is much different than this case. Stone, unlike Patterson, did not enter a guilty plea to the uncharged lesser included offense of misdemeanor PFMA only. Rather, he negotiated an agreement whereby he would plead guilty to felony PFMA in exchange for the State's dismissal of the alternative felony assault charge, admitted the elements of the greater offense of felony PFMA during the change of plea hearing, and entered a guilty plea to the greater offense. Moreover, unlike in *Patterson*, it was Stone—not the government—who later successfully argued, essentially, that his guilty plea was invalid and should be recast as a guilty plea to an offense that was not charged and that was not the basis of the parties' plea agreement. Neither *McIntosh* nor *Patterson* are relevant to the issue in this case.

Stone also cites cases from the Second, Fifth, and Sixth Circuits as being contrary to the Montana Supreme Court's decision, but they are not. Although those cases provide that double jeopardy *generally* attaches upon the court's acceptance of a guilty plea, none of those courts held it inexorably does so, as Stone argues here. In fact, several of those courts found that

the so-called "general" rule did not apply under the facts of those cases.

For example, in *United States v. Sanchez*, 609 F.2d 761, 762-63 (5th Cir. 1980), the Fifth Circuit reviewed a decision in which the district court initially accepted the guilty plea, but later vacated it over the defendant's objection when the district court rejected the plea agreement upon which it was based. The Fifth Circuit, while recognizing that jeopardy generally attached to the acceptance of the guilty plea, found that it did not attach in that case because the "constitutional policy of finality" under the Fifth Amendment had not been offended. *Id.* at 763. The court of appeals reasoned that, like here, the district court had merely conditionally accepted the plea, no judgment had been entered, and the defendant had not been subject to successive prosecutions, multiple trials, or multiple punishments. *Id.* at 763.

Similarly, in *Fransaw*, 810 F.2d at 523, the Fifth Circuit found that double jeopardy generally attaches upon acceptance of a guilty plea. But the court recognized that question as distinct from whether the state "infringed on Fransaw's double jeopardy protection when it reinstated and tried him on a count it had dismissed after commencement of trial as part of a subsequently vitiated plea bargain." *Id.* at 524. As discussed, *infra* Section II, "[o]n numerous occasions, courts have held that the defendant may be prosecuted on counts dismissed as part of a vitiated plea bargain." *Id.* The Fifth Circuit is fully consistent with the Montana Supreme Court.

In *United States v. Cambindo Valencio*, 609 F.2d 603, 637 (2d Cir. 1979), the Second Circuit simply

recognized that jeopardy attaches to convictions based on guilty pleas, not just convictions based on jury verdicts, after the government made the "remarkable argument that, because a jury was not impaneled" jeopardy would never attach in the case of a plea. Of course Montana has never argued, nor did the Montana Supreme Court hold, that jeopardy could never attach to a conviction based on a guilty plea.

The Sixth Circuit's decision in *United States v. Usery*, 59 F.3d 568 (6th Cir. 1995), did not even involve a guilty plea. Rather, the question was whether a civil forfeiture proceeding settled by consent judgment erected a double jeopardy bar to a later criminal prosecution. *Id.* at 571. The court held that it did, analogizing the case to acceptance of a plea agreement. *Id.* But that was only a passing reference, did not involve any specific facts, and was clearly dicta. *Id.* at 571-72. And, in any event, this Court reversed the decision. 518 U.S. 267 (1996).

Finally, Stone cites decisions from the South Dakota and Missouri Supreme Courts, but those cases do not conflict with the decision below either. Neither of those decisions involved a defendant who pled guilty to a greater charge, but later tried to convert his plea to a guilty plea to a lesser included offense that was never charged and that did not form the basis for the underlying plea agreement. *See Peiffer v. Missouri*, 88 S.W.3d 439 (Mo. 2002) (defendant sought to prohibit successive prosecutions by both city and county for same offense); *South Dakota v. McAlear*, 519 N.W.2d 596 (S.D. 1994) (defendant sought to reinstate original plea after district court vacated it upon hearing from victim at sentencing).

In sum, while there are varying descriptions of when the Double Jeopardy Clause may attach to guilty pleas, the differences in those cases invariably turn on the facts of the particular case. There is no significant conflict between the Montana Supreme Court's decision below and the circuit courts and other state courts of last resort that have decided how and when the Double Jeopardy Clause applies to defective guilty pleas.

CONCLUSION

This Court should deny the petition for a writ of certiorari.

Respectfully submitted,

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