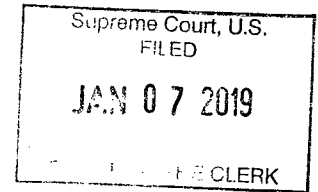


No. 18-7753 **ORIGINAL**

IN THE
SUPREME COURT OF THE UNITED STATES



Joel Marvin Munt --- PETITIONER
(Your Name)

vs.

State of Minnesota --- RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

Joel Marvin Munt
(Your Name)

5329 Osgood Ave N.
(Address)

Stillwater, MN 55082
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

1. Did MN Supreme Court violate Separation of Powers?
2. Did MN Supreme Court's interpretation of Minn.Stat. § 590 and Minn.R.Crim.P. 27.03 unconstitutionally permit violations of the Constitution to go unredressed and did it permit Plaintiff's sentence to go uncorrected despite facially being in violation of Double Jeopardy and State Statutes?
3. Did MN Supreme Court's violation of rules of statutory construction render their effort to save their judicially created exception unavailing?
4. Did MN Supreme Court draw an unreasoned distinction between Minn.Stat. § 609.035, 609.04 and 611.02.

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:

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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 _____ 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☐ is unpublished.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 _____ 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☐ is unpublished.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 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☐ is unpublished.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 _____ 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 _____.

☐ 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: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for 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 _____.

11/21/2018

A copy of that decision appears at Appendix A ____.

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for review was thereafter denied on the following date: _____, and a copy of the order denying review appears at Appendix B ____.

☐ An extension of time to file the petition for 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

Provision

U.S. Const. Art. 1 Sec. 9 Cl. 2

The privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

U.S. Const. Art. VI Cl. 2

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof ... shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby

U.S. Const. Art. VI Cl. 3

The senators and representatives, and the members of the several state legislatures; and all executive and judicial officers, both of the United States and the several states, shall be bound by Oath or Affirmation, to support this Constitution

U.S. Const. Amd. 1

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. Const. Amd. 14

... No State shall make or enforce any law which shall abridge the privileges or immunities of 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 its jurisdiction the equal protection of the laws.

MN.Const.Art.III, sec. 1

The powers of government shall be divided into three distinct departments: legislative, executive and judicial. No person or persons belonging to or constituting one of these departments shall exercise any of the powers properly belonging to either of the others except in the instances expressly provided in this constitution.

Provision

Minn.Stat. § 609.035

if a person's conduct constitutes more than one offense under the law of the state, the person may be punished for only one of the offenses and a conviction or acquittal of any one of them is a bar to prosecution for any other of them.

Minn.Stat. § 609.04

Upon prosecution for a crime, the actor may be convicted of either the crime charged or an included offense, but not both. An included offense may be any of the following:

- (1) A lesser degree of the same crime; or
- (2) An attempt to commit the crime charged; or
- (3) An attempt to commit a lesser degree of the same crime; or
- (4) A crime necessarily proved if the crime charged were proved; or
- (5) A petty misdemeanor necessarily proved if the misdemeanor charge were proved.

...

A conviction or acquittal of a crime is a bar to further prosecution of any included offense, or other degree of the same crime.

Minn.Stat. § 611.02

Every defendant in a criminal action is presumed innocent until the contrary is proved and, in case of a reasonable doubt, is entitled to acquittal; and when an offense has been proved against the defendant, and there exists a reasonable doubt as to which of two or more degrees the defendant is guilty, the defendant shall be convicted only of the lowest.

STATEMENT OF THE CASE

1. Did MN Supreme Court violate Separation of Powers?

Separation of powers protects the individual as well as the branches. *Bond v. United States*, 131 S.Ct. 2355, 2358-59, 180 L.Ed.2d 269 (2011)

"The powers of government shall be divided into three distinct departments: legislative, executive and judicial. No person or persons belonging to or constituting one of these departments shall exercise any of the powers properly belonging to either of the others except in the instances expressly provided in this constitution." MN.Const.Art.III, sec. 1

Nowhere in the Minnesota Constitution does it "expressly" provide that any Minnesota Court has the power to take on the role of legislator by modifying laws. A court has inherent judicial authority to engage in activities that are necessary to the performance of judicial functions, but "the judiciary is not to resort to inherent authority when doing so would not 'respect the equally unique authority of' another branch of government." *State v. M.D.T.*, 831 N.W.2d 276, 280, 282 (Minn. 2013) (quoting *State v. C.A.*, 304 N.W.2d 353, 359 (Minn. 1981)). The MN Supreme Court has never permitted one branch to exercise the power exclusively assigned to another, see *Quam v. State*, 391 N.W.2d 803, 809 (Minn. 1986). The creation of criminal laws and determining the lawful penalties for the violation of those laws is clearly a legislative function and the MN Constitution

contains no express provision that would permit the MN Supreme Court to exercise this power. Further, the MN Supreme Court lacks the authority to alter the plain, unambiguous meaning of the Separation of Powers provision of the MN Constitution. Any attempt to do so would be a violation itself.

At issue is the Judicially created multiple victim exception to Minn. Stat. 609.035.

"The general rule is that if a person's conduct constitutes more than one offense, the person may be punished for only one of the offenses. Minn. Stat. § 609.035 (1994). **This court has carved out an exception to this multiple punishment bar** when multiple victims are involved, and has upheld multiple sentences for multiple crimes arising from the same behavioral incident. See *State v. Bookwalter*, 541 N.W.2d 290, 294 (Minn. 1995); *State v. Marquardt*, 294 N.W.2d 849, 850 (Minn. 1980). In *Marquardt*, this court stated the rule that one sentence may be imposed per victim in multiple-victim cases as long as the multiple sentences "do not unfairly exaggerate the criminality of the defendant's conduct." 294 N.W.2d at 851." *State v. Whittaker*, 568 N.W.2d 440, 453 (1997) (emphasis added)

Seeming to have realized that facially they violated the constitution, the MN Supreme Court tried to say what they were really doing was just interpreting their statute, but creating such an exception goes beyond that.

The statute is explicit about the exceptions to this restriction, none of which apply to Defendant and none include an exception for multiple victims. "When statute lists specific exemptions, other exemptions are not to be judicially implied."

Klinger v. Dept. of Corr., 107 F.3d 609 (8th Cir. 1997). See also *Jones v. Bock*, 549 US 199, 127 S.Ct. 910 (2007) ("[T]he judge's job is to construe the statute - not to make it better". The judge "must no read in by way of creation" but instead abide by the "duty of restraint, th[e] humility of function as merely the translator of another's command." "No mere omission...which may seem wise to have specifically provided for, justif[ies] any judicial addition to the language of the statute" at 921 (quoting *United States v. Goldenberg*, 168 US 95 (1897)).

"If [the legislature] enacted into law something different from what it intended, then it should amend the statute to conform to its intent. 'It is beyond our province to rescue [the legislature] from its drafting errors, and to provide what we might think...is the preferred result.' *United States v. Granderson*, 511 US 39, 68, 127 L.Ed.2d 611, 114 S.Ct. 1259 (1994) (concurring opinion). This allows both of our branches to adhere to our respected, and respective, constitutional roles." *Lamie v. United States Trustee*, 540 US 526, 157 L.Ed.2d 1024, 124 S.Ct. 1023 (2004) at 1038-9.

If a "statute requires expansion, that is the job of [the legislature]." *Food and Drug Administration v. Brown & Williamson Tobacco Corporation*, 529 US 120 (2000). "It is not for us to speculate, much less act, on whether [the legislature] would have altered its stance had the specific events of this case been anticipated" *Id* at 147 (citation omitted).

When the meaning of statutory language is clear, that meaning governs application of the statute. Minn.Stat. § 645.16. Then "further construction is neither necessary nor

permitted." *Carrillo v. Fabian*, 701 N.W.2d 763, 777 (Minn. 2005) (en banc), and the "court must enforce it according to its terms." *Earl v. Fabian*, 556 F.3d 717, 719 (8th Cir. 2009). See *Jimenez v. Quarterman*, 129 S.Ct. 681 (2009); *Bank v. Germain*, 112 S.Ct. 1146, 1149 (1992).

Words and phrases should be construed according to the rules of grammar and according to their common meanings. Minn.Stat. § 645.08, subd. 1.

"Shall", "will", and "must" are all words "of an unmistakably mandatory character, requiring that certain procedures shall, will, or must be employed" (internal quotes omitted). *Hewitt v. Helms*, 459 US 460, 471-2 (1983). The mandatory "shall" normally creates "an obligation impervious to judicial discretion". *Lexicon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 140 L.Ed.2d 62, 64 (1998) (see *Anderson v. Yungkau*, 329 US 482, 485 (1947)); *State v. Humes*, 581 N.W.2d 317, 319 (Minn. 1998). The Court must give effect to the plain command of the Statute. *Estate of Cowart v. Nicklos Drilling Co.*, 505 US 469, 476 (1992). "All officers of the government, from the highest to the lowest, are creatures of the law, and are bound to obey it." *Butz v. Economou*, 57 L.Ed.2d 895, 897 (1978).

"This conclusion is consistent with the general policy of statutory construction followed by this court of

harmonizing statutes dealing with the same subject matter. *Lenz v. Coon Creek Watershed District*, 278 Minn. 1, 11, 153 N.W.2d 209, 217 (1967); *State ex rel. Carlton v. Weed*, 208 Minn. 342, 344, 294 N.W. 370, 371 (1940). We also presume that, in enacting a statute, the legislature acted with full knowledge of prior legislation on the same subject. *Erickson v. Sunset Memorial Park Assn.*, 259 Minn. 532, 543, 108 N.W.2d 434, 441 (1961); *Minneapolis Eastern Railway Co. v. City of Minneapolis*, 247 Minn. 413, 418, 77 N.W.2d 425, 428 (1956)."
People for Environmental Enlightenment and Responsibility (PEER), Inc. v. Minn. Environmental Quality Council, 266 N.W.2d 858, 866 (Minn. 1978)

Nothing in the plain text of the law could lead anyone to believe that it contains an exception for multiple victims.

The MN Supreme Court clearly violated separation of powers.

2. Did MN Supreme Court's interpretation of Minn.Stat. § 590 and Minn.R.Crim.P. 27.03 unconstitutionally permit violations of the Constitution to go unredressed and did it permit Plaintiff's sentence to go uncorrected despite facially being in violation of Double Jeopardy and State Statutes?

"The Constitution is the supreme law of the land ordained and established by the people. All legislation must conform to the principles it lays down. When an act or Congress is appropriately challenged in the courts as not conforming to the constitutional mandate, the judicial branch of the government has only one duty; to lay the article of the Constitution which is invoked beside the statute which is challenged and to decide whether the latter squares with the former." *U.S. v. Butler*, 297 US 1, 56 S.Ct. 312, 318, 80 L.Ed. 477 (1936).

The Courts have ruled that Double Jeopardy is only violated in a single proceeding when multiple punishments are imposed for the same crime contrary to the legislature's intent. *U.S. v. Sandstrom*, 594 F.3d 634 (8th Cir. 2010). "The legislature is vested with the power to prescribe punishment for criminal acts

and limits prescribed by the legislature." *State v. Pflepsen*, 590 N.W.2d 759, 764 (Minn. 1999). The Minnesota legislature's intent is stated clearly 609.035, 609.04 and 611.02.

"we need not rely on our case law when a controlling statute resolves the issue before us" *State v. Fleming*, 883 N.W.2d 790, 798 n. 6 (Minn. 2016).

Petitioner was convicted on four counts of 1st degree murder, and the included charges of 2nd degree intentional murder, kidnapping, and drive by shooting. Minn.Stat. 609.04 prohibits a Defendant from being convicted of both an offense and an included offense. It further goes on to define what constitutes an included offense. Minn.Stat. 611.02 prohibits being convicted of an offense and a lesser degree, and if you are convicted of both then only the lesser can stand.

It is for the jury, not the Court to make a finding of guilt. If they convict of multiple degrees in violation of the law then clearly there was doubt in their minds about which the defendant was guilty of.

In *State v. Hernandez*, 2001 Minn.App. LEXIS 638 (Minn.Ct.App. June 12, 2001) a defendant who was **convicted** of 2nd and 4th degree controlled substance charges had his 2nd degree conviction reversed and the case was remanded to the district court for sentencing on the 4th degree charge, pursuant to Minn.Stat. § 611.02.

In *State v. Leinweber*, 228 N.W.2d 120 (1975) the Court clearly construed Minn.Stat. § 611.02 to extend to all lesser included offenses. Thus any violation of 609.04 must be resolved (per 611.02) by vacating all but the lowest conviction.

At minimum this would mean second degree murder rather than 1st degree, which would give Petitioner an out date. Statutory construction says even more relief is due.

It does not seem disputed that Minn.Stat. 609.04 and 611.02 were violated in Plaintiff's case, thus violating Double Jeopardy. The MN Supreme Court's argument is that because Plaintiff did not know to raise this on direct appeal and because the DOC prevented him from doing so post-conviction that the law is unenforceable. Can then the Constitution still be said to be the supreme law? Is it justice to allow a Defendant to serve a life sentence when the state's law clearly says the conviction and thus the sentence is illegal?

The Constitution is the Supreme Law. As a method of enforcing the Supreme Law the Constitution provides the privilege of habeas corpus and right to petition. The US Supreme Court's favorable termination doctrine means that constitutional violations that would invalidate a conviction

must be resolved in habeas proceedings before you can exercise your right to petition. The Federal Government has suspended the right to habeas corpus after the 1st provision (despite that the Constitution explicitly says it can only be suspended for invasion or insurrection), thus leaving many violations of the Constitution without any federal review.

The MN Supreme Court interprets 27.03 Motions and 590 Petitions in such a way as to permit violation of the Constitution and law and to do grave injustices to those unfortunate enough to not be legal wizes on their direct appeals. If allowed to stand a Defendant whose convictions facially violate these statutes and double jeopardy has no remedy in state or federal court! It further permits the State to ensure that you are unable to file them on direct appeal or post-conviction petition, as the State did to Plaintiff.

Basically, can I be condemned to life without the possibility of parole in violation of the law solely because I did not know to raise these arguments earlier? These are not things where any facts can be disputed. They are purely matters of law.

3. Did MN Supreme Court's violation of rules of statutory construction render their effort to save their judicially created exception unavailing?

I'm not sure what to do here. The complete argument for this question is by necessity included in #1. The MN Supreme Court argued that rather than violating separation of powers (as they themselves implicitly said they were doing) they were only doing construction. In #1 I demonstrated that they violated the rules of statutory construction, thus their judicially created exception cannot be justified as merely a product of construction. It ignores the plain meaning of the words, has no basis in the words of the law, and ignores the principle that if the legislature added explicit exceptions it is not for the court to create its own.

4. Did MN Supreme Court draw an unreasoned distinction between Minn.Stat. § 609.035, 609.04 and 611.02.

Unreasoned distinctions between statutes are immaterial. See *Mayer v. City of Chicago*, 404 US 189 (1971); *Williams v. Oklahoma City*, 395 US 458 (1969).

In this case the MN Supreme Court said that it could hear the argument based on Minn.Stat. 609.035 because it only affected sentence, but could not hear arguments based on 609.04 or 611.02 because they affect convictions. There is nothing in the text of these laws to support drawing this distinction. All three are bars to multiple **convictions**. Further, nothing in 27.03 even says it cannot

grant relief if a conviction would be vacated, only that it is to correct a sentence unauthorized by law, which clearly applies to Plaintiff's sentence (at minimum under 611.02). What then justifies the difference in treatment? And since 609.035 prohibits multiple convictions, yet can be resolved in a 27.03 motion, why can't 609.04 and 611.02 violations?

REASONS FOR GRANTING THE PETITION

S.Ct.R. 10 states a non-exhaustive list of reasons for which review may be granted. This list includes:

- (a) has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court,
- (b) state court of last resort decided a federal issue contrary to another state court of last resort or a US Circuit Court,
- (c) state court decided a federal question [1] that has not been, but should be settled by this Court, or [2] in a way that conflicts with relevant decisions of this court.

It further states the list is "neither controlling nor fully measur[es] the Court's discretion". I would argue that any time the Federal Constitution has been violated this Court has a duty to see that violation is redressed and in fact that upholding the Constitution is the primary duty of this Court.

1. Did MN Supreme Court violate Separation of Powers?

The prisons of this Minnesota contain thousands of inmates. These three statutes have been violated for the majority of them and they are denied correction to their sentences to make them comply with the law solely because they are not experts at criminal law.

The MN Supreme Court was accurate when it described its action as a judicially created exception. That when called on for the violation they try to lamely justify it as statutory construction fails on its face.

I have no idea what actually draws the justices of this court to a question. A great many violations of the Constitution seem to be allowed to go uncorrected solely due to procedural issues with no thought to if the Constitution was violated. Here the too court in the state violated the constitution and inmates are paying the price of it.

Important question upon which Supreme Court should rule. See *S.Ct.R. 10(a)+(b)+(c)*.

2. Did MN Supreme Court's interpretation of Minn.Stat. § 590 and Minn.R.Crim.P. 27.03 unconstitutionally permit violations of the Constitution to go unredressed and did it permit Plaintiff's sentence to go uncorrected despite facially being in violation of Double Jeopardy and State Statutes?

The prisons of this Minnesota contain thousands of inmates. Many of these inmates are denied relief from their convictions and sentences not due to the lack of merits in their arguments but due to the time and procedural bars the State imposes, punishing them for not being attorneys. This places violations of these rules above violations of the Constitution. The Constitution is meant to protect the people from the government. Is it so easy for the government to insulate itself from the Constitution?

These three statutes have been violated for the majority of MN inmates, including the Petitioner, and they are denied correction to their sentences to make them comply with the law solely because they are not experts at criminal law. This means the difference between an outdate and life in prison for Plaintiff. Had he known to raise this on direct appeal and known how to raise it he would not now be serving.

a life sentence (as you can see, this is a simple matter of law, without disputed facts).

The MN Supreme Court was accurate when it described its action as a judicially created exception. That when called on for the violation they try to lamely justify it as statutory construction fails on its face.

I have no idea what actually draws the justices of this court to a question. A great many violations of the Constitution seem to be allowed to go uncorrected solely due to procedural issues with no thought to if the Constitution was violated. Here the too court in the state violated the constitution and inmates are paying the price of it.

Important question upon which Supreme Court should rule. See S.Ct.R. 10(a)+(b)+(c).

3. Did MN Supreme Court's violation of rules of statutory construction render their effort to save their judicially created exception unavailing?

The MN Supreme Court was accurate when it described its action as a judicially created exception. That when attention was called to the violation they tried to lamely justify it as statutory construction. Since they did not actually follow rules of statutory construction and the exception is clearly adding to the statute (in a way that goes against its clear text), it clearly was exactly as they originally described it.

I have no idea what actually draws the justices of this court to a question. A great many violations of the Constitution seem to be

allowed to go uncorrected solely due to procedural issues with no thought to if the Constitution was violated. Here the too court in the state violated the constitution and inmates are paying the price of it.

Important question upon which Supreme Court should rule. See *S.Ct.R. 10(a)+(b)+(c)*.

4. Did MN Supreme Court draw an unreasoned distinction between Minn.Stat. § 609.035, 609.04 and 611.02.

The Minnesota Legislature used these three statutes to put limitations on when multiple convictions are permissible, or to put differently, defined when they are impermissible. The same type of resolutions naturally exist for them both. Yet the MN Supreme Court draws a distinction that allows sentences that are illegal under one to be corrected at any time, but not those that are illegal under the other two. There is no basis for the Court to permit violations of double jeopardy to go unremedied on this basis.

I have no idea what actually draws the justices of this court to a question. A great many violations of the Constitution seem to be allowed to go uncorrected solely due to procedural issues with no thought to if the Constitution was violated. Here the too court in the state violated the constitution and inmates are paying the price of it.

Important question upon which Supreme Court should rule. See *S.Ct.R. 10(a)+(b)+(c)*.

CONCLUSION

The State knows its laws. It willfully violates the three at issue in this petition in almost every criminal case. Judges, prosecutors, and attorneys are allowing these violations to occur. Yet only the inmates who are lucky enough to find a competent jailhouse attorney in time for their direct appeal or 1st post-conviction petition get relief. This is an injustice on a state-wide scale. I plead with this court's sense of justice and duty to the Constitution to look at this Petition. Further information on the legal arguments involved can be provided if the Court desires.

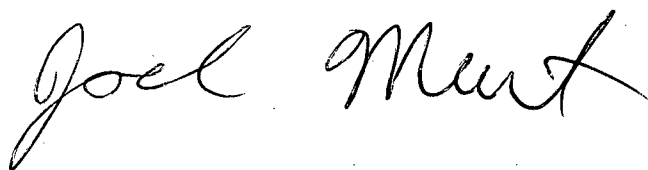
The important issues in this petition deserve review by the Supreme Court.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Joel Marvin Munt

Date: 1/13/2019

A handwritten signature in cursive script that reads "Joel Munt". The signature is written in black ink and is positioned below the typed name and date.

APPENDICES

APPENDIX A - Decision of the Minnesota Supreme Court

APPENDIX B - Denial of Rehearing by Minnesota Supreme Court