

No. \_\_\_\_\_

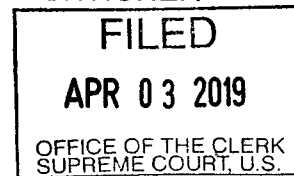
18-8851

IN THE  
SUPREME COURT OF THE UNITED STATES

Lester J. Smith, Jr. Pro-Se — PETITIONER  
(Your Name)

vs.

State of Georgia — RESPONDENT(S)



ON PETITION FOR A WRIT OF CERTIORARI TO

Georgia Supreme Court

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

PETITION FOR WRIT OF CERTIORARI

Lester Smith #977285  
(Your Name)

Hancock S.P. P.O. Box 339  
(Address)

Sparta, GA 31087  
(City, State, Zip Code)

\_\_\_\_\_  
(Phone Number)

# TABLE OF CONTENTS

Questions presented	i
Table of Contents	1 a
Table of Authorities	1 b
Opinions below	IV
Jurisdiction	iii
Statutory and Constitutional Provisions Involved	1, 2, 3,
Statement of the Case	4
Reasons For Granting the Writ	5, 6, 7, 8, 9,

I. The Georgia Supreme Court Misapplied Clearly established Federal law, and has Superseded the U.S. Supreme Court adjudications.

II. The Georgia Supreme Courts decision is in conflict with other Circuits, State laws of Georgia, and this Court' decisions.

Conclusion 10

(Appendix) Decision of the Georgia Supreme Court Smith v. State, 290 Ga 768 (2012) A-1

Georgia Supreme Court order dismissing appeal-A-2

Morgan V. Devine, 35 S. Ct. 712 (1915)- A-3

Drinkard V. Walker, 281 Ga. 211 (2006)- A-4

# TABLE OF AUTHORITIES

## Cases

Blockburger V. United States, 284 U.S. 299 (1932)	5, 6,
Brown V. Ohio, 432 U.S. 161 (1977)	6,
Chitwood V. State, 170 Ga. App. 599 (1984)	5,
Drinkard v. Walker, 281 Ga. 211 (2006)	5,
Ex parte Snow, 7 S.Ct. 556 (1887)	8,
Gunter V. State, 155 Ga. App. 176 (1980)	5
Harris V. Oklahoma, 433 U.S. 682 (1977)	6
McNeely V. State, 296 Ga. 422 (2015)	7
Missouri V. Hunt, 459 U.S. 359 (1983)	5, 8,
Morgan V. Devine, 35 S.Ct. 712 (1915)	8
North Carolina V. Pearce, 395 U.S. 711 (1969)	6
Smith V. State, 296 Ga. 768 (2012)	4
Whalen V. United States, 445 U.S. 684 (1980)	6

## Statutes

O.C.G.A. § 16-1-7	2, 3, 5,
O.C.G.A. § 40-6-395	5
U.S. CONST. AMEND V.	1, 5, 7, 8,
U.S. CONST. AMEND XIV	1, 5, 7, 8,
U.S. CONST. ART. I, Sec. 8	2
U.S. CONST. ART. VI	2, 7,

### QUESTION(S) PRESENTED

Mr. Smith alleges that the State of Georgia has illegally sentenced him to 25 years for five counts of attempt to elude police. Which occurred out of a single incident, and a single jurisdiction for prosecution. All evidence used by the State was the same evidence for all five counts.

The Georgia Supreme Court ruled that the State was correct, as the State misapplied federal and state laws on this issue.

1. Did the State of Georgia err in sentencing Mr. Smith, multiple punishments for the offense of attempt to elude police, stemming from a single criminal act, occurrence, and single event? Also, in a single jurisdiction known to the prosecutor, and the courts?

2. Did the State of Georgia err in prosecuting Mr. Smith for the same conduct?

3. Did the State of Georgia violate the U.S. Supremacy 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:

## 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 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 Feb. 18, 2019  
A copy of that decision appears at Appendix A-2, A-1

☐ 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).

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 \_\_\_\_\_ to the petition and is

- ☒ reported at Smith v. State, 290 Ga. 774 (2012); or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

The opinion of the Supreme Court of Georgia court appears at Appendix A-1 to the petition and is

- ☒ reported at Smith v. State, 290 Ga. 768 (723 SE2d 915) (2012); or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The following Statutory and Constitutional provisions are involved in this case.

### U.S. CONST., AMEND. V

No person shall be subject for the same offense to be put twice in jeopardy of life or limb, nor be deprived of life, liberty, or property, without due process of law.

### U.S. CONST. AMEND. XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are Citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the U.S.; 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 protections of the laws.



# U.S. CONST. BILL OF RIGHTS

## Article I. Section 8.

To make all laws which shall be necessary and proper for carrying into execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or any Department or Office thereof.

## Article VI.

This Constitution, and the Laws of the U.S. which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the U.S., shall be the Supreme Law of the Land; And the Judges in every State shall be bound thereby, anything in the Constitution or Laws of the land (i.e. any state) to the contrary notwithstanding.

GEORGIA STATUTE O.C.G.A. § 16-1-7. Multiple prosecutions for same conduct.

(a) When the same conduct of an accused may be established, the commission of more than one crime, the accused may be prosecuted for each crime. He may not, however, be convicted of more than one crime if;

(1) One crime is included in the other; or

(2) The crimes differ only in that one is defined to prohibit a designated kind of conduct generally and the other to prohibit a specific instance of such conduct.

(b) If the several crimes arising from the same conduct are known to the proper prosecuting officer at the time of commencing the prosecution and are within the jurisdiction of a single court, they must be prosecuted in a single prosecution except as provided in subsection (c) of this code section.

(c) When two or more crimes are charged as required by subsection (b) of this code section, the court in the interest of justice may order that one or more of such charges be tried separately.

## STATEMENT OF THE CASE

Mr. Smith was convicted of Murder *inter alia*, see Smith v. State, 290 Ga. 768 (2012). Mr. Smith were also charged with five counts of attempt to elude police. He was found guilty on all five counts, which were the result of a single criminal incident, act, transaction. As well as under the same jurisdiction that was well known to the court. Hence, Mr. Smith were found guilty on all five counts of eluding, and sentenced five years as to each count totaling 25 years of prison confinement added to his sentence.

Mr. Smith raised this issue on direct appeal, and the Ga. Supreme Court upheld said sentence. Smith sought state and federal habeas corpus relief on this issue, and received no relief. Smith then filed a motion to modify and reduce his sentence, and a timely discretionary application to appeal. At all times after his direct appeal, Smith contends that his sentence for eluding is illegal and void under both state, and federal laws.

Mr. Smith cannot be legally sentenced to 25 years for a criminal act arising out of a single criminal incident, especially using the same evidence that was used in all counts. Only one crime of eluding were committed by Mr. Smith in a single criminal event. Mr. Smith's 25 year sentence is contrary to state, and federal laws.

## REASONS FOR GRANTING THE PETITION

The Georgia Supreme Court misapplied the Blockburger v. United States, 284 U.S. 299, 52 S. Ct. 180, 76 L. Ed. 306 (1932) test for multiple punishments for the same offense.

First, the Court flagrantly misstated the definition of the Blockburger opinion, and clearly misinterpreted its language.

Mr. Smith were charged with five counts of eluding police, inter alia, and was the result of a single criminal act, under one jurisdiction. Under Georgia Law, a violation of this Statute (See O.C.G.A. § 40-6-393) carries a maximum punishment of five years imprisonment, not 25 years. The Court further relied on Drinkard v. Walker, 281 Ga. 211 (2006), to sentence Mr. Smith multiple times for the same offense, arising out of a single incident. (See Drinkard Case attached hereto). Drinkard quoting O.C.G.A. § 16-1-7(a).

This Court has long held that a defendant cannot be subjected to multiple punishments, under the double jeopardy clause of the Fifth Amendment to the U.S. Const. and Fourteenth Amend. equal protection of said law. In Missouri v. Hunter, 459 U.S. 359 (1983), this Court clearly redefines its meaning of punishments for the same offense. Legislators intent was to treat separate offenses as a single offense, and the subsections merely define modes of committing that one crime. Gunter v. State, 155 Ga App. 176 (1989); Chitwood v. State, 170 Ga. App. 599 (1984).

The Missouri V. Hunter Case quotes this courts previous findings of this issue, in Whalen V. U.S. 445 U.S. 684 (1980); and North Carolina V. Pearce, 395 U.S. 711 (1969). Which is the case with precedent law of this Court, on the issue herein before the Court.

This Court held in Blockburger the Criteria for analyzing cumulative punishment; quoting Blockburger,

"The applicable rule is that where the same act or transaction constitutes a violation of two distinct Statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact which the other does not."  
284 U.S. at 304, 52 S. Ct. at 182.

In Mr. Smith's case, his offenses of attempting to elude police are infact the same. Hence, does not involve a different Statutory provision, nor that determining factor. It is not legally logical to sentence any defendant to multiple sentences as a result of the same offense committed out of a single criminal act, occurrence, transaction. Harris V. Oklahoma, 433 U.S. 682 (1977) (per curiam); Brown V. Ohio, 432 U.S. 161 (1977).

In each case cited herein, all involve a claim of double jeopardy involving two separate statutes. Whereas in this case, only one statute of the same is at issue. Hence, constituting double jeopardy under the multiple punishment clause. The State of Georgia's judicial judges, and prosecutors have knowingly violated Mr Smith's Constitutional rights. All States are under the Supremacy Clause of article VI of the U.S. Const.

Assuming arguendo, in *McNeely v. State*, 296 Ga. 422 (2015), attempt to elude police were merged into that defendant's murder charge. Although eluding was the underlying felony for Felony Murder. If anything, Mr. Smith's five counts of attempt to elude police should have merged with each other. Hence, not subjecting Mr. Smith to multiple punishments, in direct violation of the Fifth, and Fourteenth Amendments of the U.S. Const.

## II. THE DECISION OF THE GEORGIA SUPREME COURT IS IN CONFLICT WITH THE DECISIONS OF THE U.S. SUPREME COURT

In the closely analogous case of defining double jeopardy, punishment and multiple prosecutions for the same offense. This Court in *Missouri v. Hunter*, *supra*, not only laid out the meaning of such criteria, but it also revisited the *Blockburger* language of same.

Hence, the standard has never changed from this honorable Court's findings of double jeopardy, the prohibition of multiple punishments for the same offense arising out of the same single criminal act, occurrence, transaction, or event. This Court has long held the differences of two statutory provisions that would likely arise to the same conduct as to establish one offense. *Ex parte Snow* 7 S.Ct. 558 (1887); and *Morgan v. Devine*, 35 S.Ct. 712 (1915).

Mr. Smith's case does not involve the issue of two or more distinct statutes, but only one statute. The Fifth Amendment clearly prohibits multiple punishments for a single offense arising from one criminal event. Mr. Smith is entitled to equal protection of all laws as the Fourteenth Amendment establishes this right.

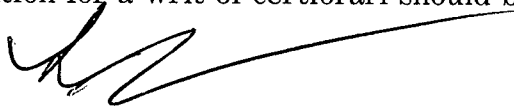
These cases illustrate that the Georgia Supreme Court, is infact out of Step with this Courts opinions. Certiorari Should be granted to correct this error. Also, the Georgia Supreme Court is out of Step to a plethora of other U.S. Court of Appeals Circuits appellate Court on this issue.



**CONCLUSION**

For the foregoing reasons Stated herein as a matter of  
Clearly established Federal law.

The petition for a writ of certiorari should be granted.



Respectfully submitted,

Lester Smith #977283 Pro-Se

Date: April 1, 2019