

IN THE
Supreme Court of the United States

GREGORY WADDELL HAYES,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether this Court should overrule the separate sovereigns exception to
Double Jeopardy.

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PETITION FOR WRIT OF CERTIORARI

Petitioner Gregory Waddell Hayes respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit.

OPINIONS BELOW

The Fourth Circuit's Opinion affirming Mr. Hayes's revocation and sentence is attached at Pet. App. 1a and is reported at 755 Fed. Appx. 318 (4th Cir. 2019).

LIST OF PRIOR PROCEEDINGS

1. *United States v. Gregory Waddell Hayes et al.*, No. 5:09-cr-00116-BO-1, United States District Court for the Eastern District of North Carolina.

Final judgment entered on May 8, 2018.

2. *United States v. Gregory Waddell Hayes*, No. 18-4332, United States Court of Appeals for the Fourth Circuit.

Opinion issued on March 5, 2019.

JURISDICTION

The Fourth Circuit issued its opinion on March 5, 2019. Pet. App. 1a. On May 21, 2019, The Chief Justice granted Mr. Hayes's application for an extension of time to file this petition and extended the time until August 2, 2019. This Court's jurisdiction rests on 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

The Fifth Amendment to the United State Constitution

No person shall be . . . subject for the same offense to be twice put in jeopardy of life or limb

STATEMENT OF THE CASE

In 2010, the federal district court for the Eastern District of North Carolina sentenced Mr. Hayes to 96 months of incarceration and 5 years of supervised release after he pleaded guilty to drug distribution. The district court later reduced the sentence to 83 months of imprisonment because of retroactive changes in the punishment for drug offenders. In 2015, he left prison and started his supervised release.

In 2017, he possessed and sold heroin. North Carolina punished him for doing that, sentencing him to 15-27 months of incarceration. In 2018, the United States Probation Office moved to revoke Mr. Hayes's supervised release based on that same conduct.

At his revocation hearing, Mr. Hayes admitted to possessing and selling the drugs. He objected to the federal court using conduct for which North Carolina has already punished him as the basis for revocation. The district court denied the

objection and sentenced him to 42 months of imprisonment. He timely appealed, arguing that the Double Jeopardy Clause prohibited the federal government from punishing him for conduct for which a state had already punished him. A panel of the Fourth Circuit issued an unpublished per curiam decision affirming the revocation and sentence and rejecting Mr. Hayes's argument. This petition follows.

REASONS FOR GRANTING THE PETITION

This Court should grant review because this case presents an important question of federal law that this Court should decide. Sup. Ct. R 10(c).

Mr. Hayes acknowledges that while the time for filing this petition was pending, this Court issued *Gamble v. United States*, which resolves this question against him. 139 S. Ct. 1960 (2019). He presents this argument that he preserved in the circuit court to provide this Court with an opportunity, if it chooses, to readdress this question.

The Double Jeopardy Clause of the Fifth Amendment says no person will “be subject for the same offense to be twice put in jeopardy of life or limb.” U.S. Const. amend. V. It is a “fundamental ideal in our constitutional heritage.” *Benton v. Maryland*, 395 U.S. 784, 794 (1969). Relevant to this appeal, it bars later prosecutions for the same offense as well as successive punishments. *North Carolina v. Pearce*, 395 U.S. 711, 717 (1969).

The courts have long imposed a judicially-created exception to the Clause’s protections. Under the “separate sovereigns” exceptions, “a single act gives rise to distinct offenses—and thus may subject a person to successive prosecutions—if it

violates the laws of separate sovereigns.” *Puerto Rico v. Sanchez Valle*, 136 S. Ct. 1863, 1867 (2016). Thus, if a state punishes someone for conduct that violates state criminal law, the Double Jeopardy Clause does not prohibit the federal government from prosecuting and punishing that person for the same conduct.

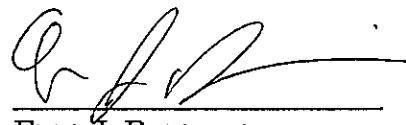
Under current law, this exception foreclosed Mr. Hayes’s appeal. *Gamble*, 139 S. Ct. 1960. But this Court should reconsider its recent decision in *Gamble*. Federal criminal jurisdiction is no longer the limited exception that it was when the courts created the exception. “[O]f all federal crimes enacted since 1865, over forty percent have been created since 1970.” *The Federalization of Criminal Law*, 11 Fed. Sent. R. 194 (Feb. 1999). In 2011 to 2015, the most recent years for which data is available, there were 79,834 to 102,619 new federal criminal defendants charged each year. U.S. Courts, Judicial Business 2015 Tables, Table D-13, *available at* goo.gl/ZCol0O (last visited August 30, 2018). Because of this expansion of federal criminal law, both the states and the federal government have substantial criminal law overlap. Thus, protecting individuals from later prosecutions for the same conduct requires eliminating the separate sovereigns exception. Granting this petition will allow this Court to do this.

CONCLUSION

For these reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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