NO. _____

# In The Supreme Court of the United States

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## MICHAEL EUGENE SPRY,

*Petitioner*,

**v.**

## UNITED STATES OF AMERICA,

*Respondent*.

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**ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT**

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# PETITION FOR WRIT OF CERTIORARI

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***Dated: December 13, 2019***

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## QUESTIONS PRESENTED

I. WHETHER THE APPELLANT MICHAEL EUGENE SPRY'S SENTENCE WAS UNREASONABLE AS IT WAS GREATER THAN NECESSARY AND AS SUCH, FAILS TO COMPLY WITH TITLE 18, UNTIED STATES CODE, SECTION 3553?

II. WHETHER THE DOUBLE JEOPARDY CLAUSE PROHIBITS A FEDERAL COURT FROM REVOKING SUPERVISED RELEASE AND SENTENCING SOMEONE BASED ON CONDUCT FOR WHICH A STATE HAS ALREADY PUNISHED THAT PERSON?

## LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

## STATEMENT OF RELATED CASES

United States v. Michael Spry, 2:16-CR-0013, Eastern District of North Carolina. Judgment Entered November 21, 2018.

United States v. Michael Spry, 18-4884, Fourth Circuit Court of Appeals. Judgment Entered September 16, 2019.

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**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.

## INTRODUCTION

Appellant Michael Eugene Spry was charged in two counts of a five-count indictment on May 5, 1998, in the District of Colorado. The Petitioner was charged in Count Three with Armed Bank Robbery; Aiding and Abetting in violation of 18 U.S.C. Section 2113(a) and with Possession or Use of a Firearm in Connection with a Crime of Violence in violation of Title 18, United States Code, Section 924(c)(1) and 2 in Count Four of the Indictment.. On or about June 21, 1999, Petitioner Spry plead guilty to both counts of the charged counts within the Indictment. The Petitioner was sentenced on September 30, 1999 before the Honorable Walker D. Miller to One Hundred Seventeen (117) months of incarceration to be followed by five (5) years of supervised release.

Following his incarceration and release, the Petitioner's case was transferred to the Eastern District of North Carolina on April 4, 2016. On or about April 4, 2017, the United States Probation Office filed a motion for revocation of Mr. Spry's supervised release, alleging two violations. First, the Office alleged that Mr. Spry had failed to report to the probation officer as directed by the court or probation officer. Second, it alleged that the offender has absconded from supervision. . A modified motion for revocation was filed on May 22, 2018 by the United States Probation Office that alleged three violations of Mr. Spry's supervised Release. The first two violations were the

same as those found on the April 4, 2017 revocation motion. The third violation alleged that Mr. Spry engaged in criminal conduct. A revocation hearing was conducted and the Court sentenced the Petitioner to thirty-six months incarceration. The Petitioner filed a timely notice of appeal.

The petitioner respectfully prays for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit.

## OPINIONS BELOW

The opinion and judgment of the United States Court of Appeals for the Fourth Circuit in United States v. Michael Spry was entered on September 16, 2019, is unpublished, and is reprinted in the Appendix, at 1a.

## JURISDICTION

The decision of the United States Court of Appeals for the Fourth Circuit was entered on September 16, 2019 and the mandate issued on October 8, 2019. The petitioner invokes this Court's jurisdiction under 28 U.S.C. § 1254(1).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Constitution, Amendment V:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

18 U.S.C. § 3553 is produced at Appendix Page 5a.

## STATEMENT OF THE CASE

### A. Factual basis

Petitioner Michael Spry, filed a Notice of Appeal on December 4, 2018, challenging his sentence entered by the Court. The District Court sentenced the Petitioner to Thirty-Six (36) months in custody. The Petitioner filed a Notice of Appeal by and through his legal counsel.

B. **Decisions Below.** Petitioner Michael Spry, pled guilty to the Counts of the Indictment against him on May 5, 1998. The District Court entered judgment against Spry orally on September 30, 1999. Upon his release from incarceration, Spry was placed on supervised release and transferred to the Eastern District of North Carolina. A revocation motion was filed against the Petitioner and a hearing was held in the Eastern District of North Carolina. After admitting his violations, the Appellant was sentenced to thirty-six months in custody. The Fourth Circuit Court of Appeal did not hear this case, but rather, ruled without oral argument on September 16, 2019.

## REASONS FOR GRANTING THE PETITION

This case presents an exceptionally important question regarding the rights of defendants in the Federal criminal matter at the time of sentencing for a revocation hearing that should be settled by this Court: namely, whether the Court unjustly violated the Double Jeopardy Clause of the U.S. Constitution. At the time the probation violation hearing, the District Court correctly identified the Petitoner's policy statement range to be between twelve and eighteen months incarceration. The Court, however, failed to adequately address and consider Mr. Spry's history and

characteristics but rather dealt exclusively with the additional criminal charges for which he had been assessed and sentenced in state court following his placement upon supervised release. The Court had failed to consider Mr. Spry's acceptance of responsibility and the treatment that he had since received and for which he had never gotten through the supervised release system. This individualized analysis required by 18 U.S.C. § 3583(e) would counsel in favor of a sentence below the statutory maximum of thirty-six months. The District Court also failed to consider whether its sentence was unduly punitive with regard to the need to deter future criminal conduct and protect the public. In light of the large period of incarceration Mr. Spry had already received in state custody for much of the same underlying conduct, his supervised release revocation sentence did not need to be set at the statutory maximum to provide a deterrent for future criminal conduct. Instead the Court wishes to punish the Appellant for the underlying criminal charge and in fact orders that the period of supervised release be consecutive to any sentence for which he is already serving in state custody. The Court failed to adequately consider the factors set for in 18 U.S.C. Section 3553(a) when fashioning a sentence for revocation when it imposed the statutory maximum sentence rather than the policy statement range.

The Double Jeopardy Clause of the Fifth Amendment provides that no person shall "be subject for the same offense to be twice put in jeopardy of life or limb." U.S. Const. amend. V. This belief is a "fundamental ideal in our constitutional heritage." Benton v. Maryland, 395 U.S. 784, 794 (1969). The Courts have determined that this clause prevents subsequent prosecutions, as well as successive punishments, for the

same offense. North Carolina v. Pearce, 395 U.S. 711, 717 (1969). The Supreme Court has interpreted the Double Jeopardy Clause to contain a significant exception, known as the "dual-sovereignty doctrine" or the "separate sovereigns" exception. Puerto Rico v. Sanchez Valle, 136 S. Ct. 1863 (2016).

This Court has recognized that sanctioning new criminal conduct as a revocation of federal supervised release has many problems, inasmuch as those situations "[w]here the acts of violation are criminal in their own right, they may be the basis for separate prosecution, which would raise an issue of double jeopardy if the revocation of supervised release were also punishment for the same offense." *See* Johnson v. United States, 529 U.S. 694, 698 (2000). The United States Sentencing Guidelines identifies in situations where a federal district court were sentencing the defendant based on the seriousness of the new criminal conduct, it would be "substantially duplicat[ing] the sanctioning role of the court with jurisdiction over a defendant's new criminal conduct." U.S.S.G. Ch. 7 pt. A.3(b). The federal courts should not be permitted to do this as "the court with jurisdiction over the criminal conduct leading to revocation is the more appropriate body to impose punishment for that new criminal conduct." Id. For this reason, Congress specifically excluded "the seriousness of the offense" from the list of appropriate sentencing factors for district courts fashioning revocation sentences, rather than federal criminal sentences. Compare 18 U.S.C. § 3553(a)(2)(A) with 18 U.S.C. § 3583(e).

The Sentencing Guidelines provides an analysis of the conduct and sets forth the proposed range for each conduct. Thus, the central issue in any revocation hearing

based upon new criminal charges is (1) whether the defendant committed a criminal act and (2) how serious of a crime it was. The answers to these two questions affect the sentence imposed for a violation of a Defendant's supervised release. The Court determined that the Appellant Frye had a criminal history IV and that his most serious violation was the criminal conduct which was assessed as a Grade B pursuant to U.S.S.G. § 7B1.1. As a result, his range of imprisonment was between twelve (12) and eighteen (18) months in custody.

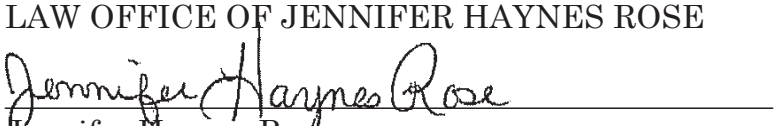
The Court stated that "if we only had these two violations [meaning the first two violations], and I would have expected to come back together just for those two, given the break that I gave him, I probably would give him a policy statement range sentence, somewhere in . . . little less than 12 to 18, but I would have stayed within the policy statement range for failure to report and absconding." he Court's sentence of Appellant was clearly unreasonable and made solely as a means to punish the Appellant for the underlying criminal conduct and NOT a violation of regulations. This in and of itself clearly shows that the Court was in violation of the Double Jeopardy Clause of the U.S. Constitution

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

LAW OFFICE OF JENNIFER HAYNES ROSE



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