

No. 19-8119

ORIGINAL

Supreme Court, U.S.
FILED

MAR 09 2020

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

WALTER E. WILLIAMS — PETITIONER
(Your Name)

vs.

MARK S. INCH, ET. AL. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

WALTER E. WILLIAMS
(Your Name)

110 MELALUECA DRIVE
(Address)

CRAWFORDVILLE, FLORIDA 32327
(City, State, Zip Code)

UNKNOWN
(Phone Number)

RECEIVED

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SUPREME COURT, U.S.

QUESTION(S) PRESENTED

Can a trial court acquit and convict for same crime without violating the prohibitions of the FIFTH Amendment involving double jeopardy in this case?

Can a jury's verdict that is true legally inconsistent be upheld where an essential element for the crime is absent in the verdict to lawfully convict for that crime?

Can there be a felony-murder conviction when there is no underlying-felony to support a conviction in accord with proper due process of law?

Can the Petitioner's detention herein be legally justified when the crime which is the cause of said detention he was granted a judgment of acquittal in this case?

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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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☐ is unpublished.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☐ is unpublished.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 C 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☒ is unpublished.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 STATE APPEALS court 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.

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 2/7/20.
A copy of that decision appears at Appendix C.

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

☐ 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).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

FIFTH Amendment of the United States Constitution involving the prohibitions against double jeopardy.

Section 782.04 (1)(a)(2), Florida Statutes, (2020)

STATEMENT OF THE CASE

On February 12, 1992, Petitioner was charged by a grand jury indictment with one (1) count of First Degree Premeditated Murder in this case.

On June 14, 1994, Petitioner proceeded to trial upon charged offense, whereupon, a jury was sworn and empaneled and jeopardy had attached.

On June 15, 1994, Petitioner moved for a judgment of acquittal as to the charged offense, which was granted by trial judge.

On June 16, 1994, Petitioner was erroneously convicted for the same crime of which he was acquitted herein.

On August 28th, 1994, Petitioner was illegally sentenced to a Life imprisonment with a minimum mandatory twenty-five (25) years imprisonment where he has resided ever since.

On September 30, 2019, Petitioner filed a timely petition for writ of habeas corpus relief with the Second District Court of Appeals.

On October 22, 2019, the Second District Court of Appeals summarily denied the petition, contrary to the expressed provisions of Article I, § 13, Florida Constitution, Rule 1.630

Florida Rules of Civil Procedures, and Section 79.01, Fla. Statutes, (2019), in this case.

On November 5, 2019, Petitioner filed a timely motion for rehearing of the Court's decision to summarily deny the petition for writ of habeas corpus.

On January 21, 2020, the Second District Court of Appeal abused its judicial discretion, by summarily denying petitioner's motion for rehearing / rehearing en banc without addressing the merits as required in accord with due process of law in this case.

On January 31, 2020, Petitioner filed a timely directions to the Clerk of Court, a notice to invoke discretionary jurisdiction of the Supreme Court of Florida, with an appellant's jurisdictional brief in this case.

On February 7, 2020, the Supreme Court of Florida arbitrarily dismissed petitioner's case without addressing the merits of the petitioner's case. Because the Clerk of Second District Court of Appeal failure to submit the entire record herein.

On February 2020, Petitioner filed a timely motion for rehearing to the Supreme Court of Florida in this case.

REASONS FOR GRANTING THE PETITION

That the Court should grant certiorari in this case, as the Supreme Court of Florida and the state court of appeals has entered a decision in this case, in conflict with the decision of the United States Supreme Court on the same important matter; as the decision of the state court of last resorts has so far departed from the accepted and usual course of judicial proceedings and sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power herein.

Where, the facts in this case plainly reflects that rulings of the Supreme Court of Florida and the state District Court of appeals are in direct conflict with this Honorable Court's holding in United States v. Martin Linen Supply Co., 430 U.S. 564, 571, 97 S. Ct. 1349, 1354, 51 L. Ed. 2d 642 (1977); where the Court stated:

"the ruling of the judge... actually represents a resolution, correct or not, of some or all of the factual elements of the offense charged."

In such cases, "[p]erhaps the most fundamental rule in

the history of double jeopardy jurisprudence has been that "[a] verdict of acquittal.... could not be reviewed, on error or otherwise, without putting [a defendant] twice in jeopardy and thereby violating the Constitution." United States v. Ball, 163 U.S. 662, 670-71, 16 S. Ct. 1192, 1195, 41 L. Ed. 300 (1896)" Id.; see Lee v. United States, 432 U.S. 23, 29-30, 97 S. Ct. 2141, 2145, 53 L. Ed. 2d 80 (1977).

When a jury acquits, "there is no exception [to the prohibition against trying the same person again for the same offense] permitting retrial once the defendant has been acquitted, no matter how 'egregiously erroneous,'" Sanabria v. United States, 437 U.S. 54, 75, 98 S. Ct. 2170, 2184, 57 L. Ed. 2d 43 (1978) (quoting Fong Foo v. United States, 369 U.S. 141, 143, 82 S. Ct. 671, 672, 7 L. Ed. 2d 629 (1962)), the acquittal may have been. The same rule obtains when acquittal rests on a judicial determination, after jeopardy has attached and before a verdict is returned, that the evidence does not establish the fact of the crime.

When the judge in this case first granted petitioner's motion for judgment of acquittal, there had been no jury verdict. Therefore,

submission of this case to the jury on the basis of the theory of first-degree felony murder without an underlying felony on which base such theory, constituted subjecting petitioner to further "factfinding proceedings going to guilt or innocence," prohibited by *Smalis* following an acquittal herein.

The United States Supreme Court, Justice Scalia, held in *Smith v. Massachusetts*, 543 U.S. 462, 125 S. Ct. 1129, 160 L. Ed. 2d 914 (U.S. Mass. 2005) that:

Although the common-law protection against double jeopardy historically applied only to charges on which a jury had rendered a verdict, see, e.g., 2 M. Hale, *Pleas of the Crown* [543 U.S. 467] *246, we have long held that the Double Jeopardy Clause of the Fifth Amendment prohibits reexamination of a court-decreed acquittal to the same extent it prohibits reexamination of an acquittal by jury verdict. See *Richardson v. United States*, 468 U.S. 317, 325, n.5, 104 S. Ct. 3081, 82 L. Ed. 2d 242 (1984).

This is so whether the judge's ruling of acquittal comes in a bench trial or, as here, in a trial by jury. See *Fong Foo v. United States*, 369 U.S. 141, 143, 82 S. Ct. 671, 7 L. Ed. 2d 629 (1962), (per curiam); *Sanabria*, *supra*, at 77-78, 98 S. Ct. 2170; *Martin*

Linen, supra, at 565-566, 574-575, 97 S. Ct. 1349.

Our cases have made a single exception to the principle that acquittal by judge precludes reexamination of guilt no less than acquittal by jury; When a jury returns a verdict of guilty and a trial judge (or an appellate court) sets aside that verdict and enters a judgment of acquittal, the Double Jeopardy Clause does not preclude a prosecution appeal to reinstate the jury verdict of guilty. United States v. Wilson, 420 U.S. 332, 352-353, 95 S. Ct. 1013, 43 L. Ed. 2d 232 (1975).

But if the prosecution has not yet obtained a conviction, further proceedings to secure one are impermissible: "Subjecting the defendant to postacquittal factfinding proceedings going to guilt or innocence violates the Double Jeopardy Clause." See Smalis v. Pennsylvania, 476 U.S. 140, 145, 106 S. Ct. 1745, 90 L. Ed. 2d 116 (1986).

Such, as in this case when the judge first granted petitioner's motion for judgment of acquittal, there had been no jury verdict. Submission of this case to the jury after granting the motion for judgment of acquittal herein, plainly subjected petitioner to further factfinding proceedings going to guilt

or innocence," prohibited by 'Smalis' following an acquittal.

A fact that all of the state courts refuse to recognize and correct in this case, which has now brought petitioner to this Honorable Court seeking justice and proper due process of law. For the correcting of a plain miscarriage of justice that has caused the petitioner to lose nearly thirty (30) years of his life in this case. Because the courts will not follow and obey the law in my case.

Since, the law in Florida is clear there can be no conviction for a crime of felony-murder without a conviction for the underlying felony in this case. See, Brown v. State, 959 So. 2d 218 (Fla. 2007) ("A conviction for first degree felony - murder requires an underlying felony, and a jury's determination of the existence of such a felony."); Eaton v. State, 438 So. 2d 822 (Fla. 1983) ("Because the underlying felony is a part of the crime charged, without the underlying-felony the charge can not stand."); Redondo v. State, 403 So. 2d 954 (Fla. 1981) ("Defendant could not be convicted of unlawful possession of a firearm during the commission of a felony, where the jury failed to find defendant guilty of the underlying felony."); Mahaun v. State, 377 So. 2d

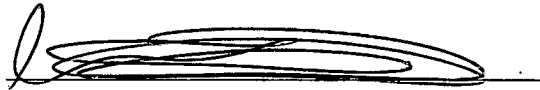
1158 (Fla. 1979) ("Verdict of guilty as to felony murder set aside where jury failed to find defendant guilty of the underlying felony.").

The mere passage of time cannot make an illegal conviction legal such as this one. Where, petitioner was acquitted and then convicted for the same crime. A fact that the state courts refuse to address on the merits in this case.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 3 / 9 / 20