

NO. 21-6168

IN THE

SUPREME COURT OF THE UNITED STATES

IN: RE VANCE L. WHITE PRO SE PETITIONER

VS.

BOBBY LUMPKIN, DIRECTOR, TEXAS DEPARTMENT OF
CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISIONS

RULE 44. MOTION FOR REHEARING
THE REQUEST, RELIES ON THE
RULE 44.2 CONTROLLING EFFECTS AND OTHER SUBSTANTIAL GROUNDS

MOTION FOR REHEARING

RULE 21.2 MOTIONS TO THE COURT
RULE 21.2 (a)

RESPECTFULLY SUBMITTED

MR. VANCE L. WHITE

I.D. NO. 2033401

JESTER III UNIT

3 JESTER ROAD

RICHMOND, TEXAS

77406

MOTION FOR REHEARING AGUEMENT

[INDICTMENT]

IN HAMLING VS. UNITED STATES, 418 U.S. 87,
117-118 [1974]

THE UNITED STATES SUPREME COURT ARTICULATED
THE FOLLOWING [TEST] FOR DETERMINING THE
LEGAL SUFFICIENCY OF AN INDICTMENT.

- ① AN INDICTMENT IS SUFFICIENT IF IT
CONTAINS THE ELEMENTS OF THE OFFENSE
CHARGED.
- ② AND FAIRLY INFORMS A DEFENDANT OF THE
CHARGE AGAINST WHICH HE OR SHE MUST DEFEND.
- ③ AND ENABLES HIM OR HER TO PLEAD AN ACQUITTAL OR
CONVICTION IN BAR OF FUTURE PROSECUTIONS FOR
THE SAME OFFENSE
- ④ IT IS GENERALLY SUFFICIENT THAT AN INDICTMENT
SET FORTH THE OFFENSE IN THE WORDS OF THE
STATUTE ITSELF AS LONG AS "THOSE WORDS OF
THEMSELVES FULLY, DIRECTLY AND EXPRESSLY
WITHOUT ANY UNCERTAINTY OR AMBIGUITY, SET
FORTH ALL THE "ELEMENTS" NECESSARY TO
CONSTITUTE THE OFFENSE INTENDED TO BE
PUNISHED.

IN: HAMLING VS. UNITED STATES, 418 U.S. 87, 117, 118 [1974].

HONORABLE JUDGE KRISTIN M. GUINEY ALTERED THE INDICT-
MENT IN THE PLEA OF GUILTY STAGE. WHICH RESULTED IN
AN INCREASED PRISON SENTENCE. FOR ME VANCE L. WHITE

MOTION FOR REHEARING

MY NAME IS UANCE L. WHITE
AND I WAS INDICTED FOR THE OFFENSE OF
AGGRAVATED ASSAULT.

THE INDICTMENT STATES I UANCE L. WHITE
SHOT THE ALLEGED VICTIM MAURICE FITZGERALD
THE ALLEGED VICTIM OR COMPLAINANT WITH A
FIREARM. THE STATE NEVER PRESENTED A FIREARM
OR ALLEGED VICTIM.

IN CAUSE NUMBER 0143646702010
IN THE 179TH DISTRICT COURT OF HARRIS COUNTY TEXAS

[TRIAL JUDGE]

HONORABLE KRISTIN M. GUINEY

THIS CASE WAS A PLEA BARGAIN CASE

THIS CASE EXCEEDS THE STATUTORY MAXIMUM
OF 2 TO 10 YEARS.

APPENDI VS, NEW JERSEY, 530 U.S. 466 [2000]

THE COURT RULED ANY FACT THAT INCREASES THE PENALTY
FOR A CRIME BEYOND A REASONABLE STATUTORY MAXIMUM
MUST BE SUBMITTED TO A JURY AND PROVED BEYOND A
REASONABLE DOUBT. JUSTICE CLARENCE THOMAS CONCURRED.

THE COURT RULED THAT IT IS UNCONSTITUTIONAL FOR A
LEGISLATURE TO REMOVE FROM THE JURY THE ASSESSMENT
OF FACTS THAT INCREASE THE PRESCRIBED RANGE OF
PUNISHMENT OR PENALTIES TO WHICH A CRIMINAL
DEFENDANT IS EXPOSED IT IS EQUALLY CLEAR THAT SUCH
FACTS MUST BE ESTABLISHED BY PROOF BEYOND A REASONABLE
DOUBT. JUSTICE STEVENS DELIVERED THE OPINION OF THE
COURT. (2)

MOTION FOR REHEARING

I WAS CHARGED WITH "AGGRAVATED ASSAULT"

I ENTERED INTO A PLEA BARGAIN ON NOVEMBER 05, 2015
THINKING I WAS GETTING A SENTENCE OF 2-TO-10 YEARS
IN PRISON" THE STATUTORY MAXIMUM. 2-TO-10 YEARS

AFTER ENTERING INTO THE PLEA BARGAIN THE JUDGE
HONORABLE KRISTIN M. GUINEY FOUND ME GUILTY OF AGGRAVATED
ASSAULT WITH A DEADLY WEAPON. THE INDICTMENT STATED
I CAUSED [SERIOUS BODILY INJURY, THE ALLEGED VICTIM
SAID THAT HE COULD NOT BE ONE HUNDRED PERCENT
SURE THAT I WAS THE ONE THAT SHOT HIM OR SHOT AT HIM.

RE: JONES VS. STATE, 526 U.S. 227 [1999]

THE COURT WAS PRESENTED WITH A [CAR JACKING - STATUTE]
THAT INCREASED THE PENALTY IF SERIOUS BODILY INJURY
OCCURRED. JUSTICE SOUTER'S OPINION FOR THE COURT
LOOKED AT THE ABOVE "FACTORS" AND THE COURT [HELD]
THAT [SERIOUS BODILY INJURY] WAS AN ELEMENT
RATHER THAN MERELY A SENTENCING CONSIDERATION.

RE: TEXAS VS. VANCE L. WHITE, CAUSE NO. 014364670-2020
THE STATE OF TEXAS FAILED TO PROVE ALL OF THE
ELEMENTS FOR THIS TO BE AN AGGRAVATED ASSAULT
WITH A DEADLY WEAPON. I DID NOT SHOOT THIS PERSON.

THE SUPREME COURT ALSO [HELD] IN APPENDI VS. NEW JERSEY,
530 U.S. 466 [2000], CASE REVERSED

THAT, IF THE LEGISLATURE DEFINES SOME CORE CRIME AND
THEN PROVIDES FOR INCREASING THE PUNISHMENT OF THAT
CRIME UPON A FINDING OF SOME [AGGRAVATING FACT] OF
WHATEVER SORT INCLUDING THE OTHER CHARGE OF 1 OR FACT OF
A [PRIOR CONVICTION] THE [CORE] CRIME" AND THE [AGGRAVATING
FACT] TOGETHER CONSTITUTE AN [AGGRAVATED CRIME]. THE COURT ALSO
[HELD] THAT THE AGGRAVATING FACT IS AN ELEMENT OF THE
AGGRAVATING OR AGGRAVATED CRIME (3)

MOTION FOR REHEARING

THE PLEA BARGAIN CASE TEXAS VS. WHITE CAUSE NO. 01436467010
107. WHITE WAS FOOLED INTO A PLEA AGREEMENT - THE
CONVICTION IS NOT THE SAME AS CHARGED BY THE
GRAND JURY. IN THE INDICTMENT

FATAL VARIANCE
THE CRIME OF CONVICTION IS NOT THE SAME AS CHARGED
IN - THE INDICTMENT BY THE GRAND JURY IN THE INDICT-
MENT. HONORABLE JUDGE KRISTIN M. GUINNEY VIOLATED THE
FIFTH AMENDMENT GRAND JURY GUARANTEE WHEN SHE ADDED
THE AGGRAVATING ELEMENTS TO - THE END OF THE PLEA.
SOME COURTS REFER TO - THIS KIND OF CASE AS ONE IN
WHICH AN UNCONSTITUTIONAL - AMENDMENT OF THE
INDICTMENT OCCURS.

INIRE

EX-PARTE BAIN, 122 U.S. 1 [1887] PROHIBITING
AMENDMENT OF AN INDICTMENT EXCEPT BY THE
RESUBMISSION TO - THE GRAND JURY.

THE LANGUAGE OF THE STATUTE MAY BE USED
BUT IT MUST BE ACCOMPANIED WITH SUCH A
STATEMENT OF THE FACTS AND CIRCUMSTANCES
AS WILL INFORM THE ACCUSED OF THE SPECIFIC
OFFENSE. IT WAS CHARGED WITH AGGRAVATED ASSAULT.
BUT-SEE

UNITED STATES VS. ATTANASIO, 870 F.2d 809 2d, CIR. 1989
NOTING THAT THE FIFTH AMENDMENT GRAND JURY GUARANTEE
IS VIOLATED WHEN EVIDENCE AND JURY INSTRUCTIONS
MODIFY THE ESSENTIAL ELEMENTS SET FORTH IN THE IN-
DICTMENT TO SUCH AN EXTENT THAT THE CONVICTION OFFENSE
IS DIFFERENT FROM THAT CHARGED IN THE INDICTMENT. (4)

MOTION FOR REHEARING

NOTING THAT THE FIFTH AMENDMENT GRAND JURY GUARANTEE IS VIOLATED WHEN EVIDENCE AND JURY INSTRUCTIONS MODIFY THE ESSENTIAL ELEMENTS SET FORTH IN THE INDICTMENT TO SUCH AN EXTENT THAT THE CONVICTION OFFENSE IS DIFFERENT FROM THAT CHARGED IN THE INDICTMENT.

[28 U.S.C. 2242 (a) (3) POWER TO GRANT WRIT]

IN RUSSSELL VS. UNITED STATES, 369 U.S. 749 S.C.T. [1962]

CASE WAS REVERSED [INDICTMENT], MUST IDENTIFY

THE SUBJECT "WHICH WAS UNDER [INQUIRY] AT THE TIME OF

DEFENDANT'S ALLEGED CONDUCT. THE INDICTMENT MUST

CONTAIN SUCH AN "AVERMENT," REVERSED CASE

[CONGRESS] HAS EXPRESSLY PROVIDED NO-ONE CAN BE PROSECUTED

UNDER [a.u.s.c. - 292] EXCEPT UPON INDICTMENT BY A GRAND JURY,

HONORABLE STATE JUDGE KRISTIN M. GUINEY ADDED THREE NEW

AGGRAVATORS WHEN SHE EXCEPTED THE PLEA FROM VANCE L. WHITE,

28 U.S.C. 2249-CERTIFIED COPIES OF INDICTMENT [PLEA] AND

JUDGMENT; DUTY OF RESPONDENT, ON APPLICATION OF A WRIT OF

HABEAS CORPUS.

28 U.S.C. 2253-APPEAL-(B) (2) (3) C.O.H.

(A) A CERTIFICATE OF APPEALABILITY MAY ISSUE UNDER PARAGRAPH

(2) ONLY IF THE APPLICANT HAS MADE A SUBSTANTIAL SHOWING

OF THE DENIAL OF A CONSTITUTIONAL RIGHT.

28 U.S.C. 2254

28 U.S.C. 2247-DOCUMENTARY EVIDENCE

VANCE L. WHITE PRESENTED DOCUMENTARY EVIDENCE TO THE

UNITED STATES DISTRICT COURT, SHALL BE ADMISSIBLE IN

EVIDENCE.

MOTION FOR REHEARING

[CLAIM OF INEFFECTIVE ASSISTANCE]

ARE GOVERNED BY STRICKLAND'S GENERAL REQUIREMENTS AT SENTENCING. STRICKLAND VS. WASHINGTON, 466 U.S. 668, 695, 80 L.Ed 674 [1984]

DEFENSE COUNSEL TED R. DOEBBLER NEVER INVESTIGATED MY CASE.

ON NOVEMBER 27, 1990 I PLEADED GUILTY TO POSSESSION OF A CONTROLLED SUBSTANCE [COCAINE] UNDER A GRAM A REGULAR FELONY AT THE TIME OF MY PLEA IN 1990.

TEXAS LEGISLATURE AMENDED TEXAS PENAL CODE ANN. 12.42 AFTER THE WHITE'S CONVICTION, THE SENTENCE IMPOSED UPON WHITE" EXCEEDED STATUTORY AUTHORITY IN EFFECT AT THE TIME. SEPTEMBER 01, TO PRESENT 2022] SEPTEMBER 01, 2013 TO THE PRESENT DATE JANUARY 30, 2022.

UNDER SECTION 12.42 TEXAS PENAL CODE 12.42 STATE JAIL FELONY CANNOT BE FURTHER ENHANCED AS-A REGULAR FELONY.

SECTION 12.42 (E) TEXAS PENAL CODE C, SUPP. (2012) ONLY REGULAR FELONIES CAN BE USED TO ENHANCE OFFENSES DESIGNATED BY SECTION 12.42 (B) (C) OR (D).

IF MY ATTORNEY WOULD HAVE FILED A MOTION TO QUASH THE INDICTMENT, ACCORDING TO TEXAS PENAL CODE SECTION 12.42 THE MOTION TO QUASH WOULD HAVE BEEN GRANTED.

PURSUANT TO TEXAS PENAL CODE ANN. 12.42 DEFENDANT'S WHITE'S SENTENCE COULD NOT HAVE BEEN ENHANCED BECAUSE HE DID NOT COMMIT A STATE JAIL FELONY UNDER THE CIRCUMSTANCES" DESCRIBED IN-TEXAS PENAL CODE ANN. 12.35 AS REQUIRED. WHITE COULD NOT BE SENTENCED UNDER TEXAS PENAL CODE ANN. 12.42 AS THE STATE CONTENDS, BASED ON THE FACT THAT THE STATE JAIL FELONY DID NOT INVOLVE THE USE OF A DEADLY WEAPON. (6)

MOTION FOR REHEARING

[CLAIM OF INEFFECTIVE ASSISTANCE]

THE INDICTMENT AGAINST WHITE STATED AGGRAVATED ASSAULT AT THE PLEA OF GUILTY STAGE, WHITE NEVER ADMITTED TO ANY ELEMENTS OF THE CRIME CHARGED IN THE INDICTMENT, AS REQUIRED. AFTER FINDING WHITE GUILTY JUDGE KRISTIN QUINCY ADDED THREE AGGRAVATORS TO THE SENTENCE SHE THEN VIOLATED THE STRUCTURES OF EX-PARTE BAIN, 121 U.S. 1 [1887] PROHIBITING AMENDMENT ON AN INDICTMENT EXCEPT BY THE RESUBMISSION TO THE GRAND JURY.

THE THREE AGGRAVATORS ARE AS FOLLOWS

- ① BY FINDING THAT WHITE USED OR EXHIBITED A DEADLY WEAPON NAMELY A FIREARM DURING THE COMMISSION OF A FELONY OFFENSE OR DURING

② IMMEDIATE FLIGHT THEREFROM OR

- ③ WAS A PARTY TO THE OFFENSE AND KNEW THAT A DEADLY WEAPON WOULD BE USED OR EXHIBITED.

ATTORNEY FOR WHITE FAILED TO OBJECT TO THESE AGGRAVATORS THAT HONORABLE JUDGE KRISTIN QUINCY ADDED THREE AGGRAVATORS, HE VIOLATED THE GENERAL RULES OF STRICKLAND [1984] TED R. DOEBBLER ATTORNEY FOR WHITE, STRICKLAND VS. WASHINGTON, 466 U.S. 668, 694-696, 80 L. Ed 2d 674

IN RE RICHMOND VS. LEWIS, 506 U.S. 40 [1992] IN A STATE WHERE THE JURY MUST "WEIGH" OR "BALANCE" [AGGRAVATING] OR [MITIGATING] FACTORS TO DETERMINE WHICH PREVAIL IT IS CONSTITUTIONAL ERROR TO GIVE WEIGHT TO UNCONSTITUTIONAL VAGUE AGGRAVATING FACTOR EVENTIF OTHER VALID FACTORS ARE PRESENT,

MOTION FOR REHEARING

JAE LEE VS. UNITED STATES [JUNE 23, 2017] NO. 16-327 CASE NO. PREJUDICE PRONG. SUPREME COURT AND EN-BANG PRECEDENTS [HOLDING] YOU ONLY HAVE TO SHOW THAT YOU "I" UANCE L. WHITE WAS DEPRIVED OF THE GUARANTEED TRIAL DO TO MY LAWYER TED R. DOEBBLER'S ERRORS. I WOULD HAVE DEMAND A JURY TRIAL. I UANCE L. WHITE WOULD HAVE DEMANDED TRIAL ABSENT MY ATTORNEY'S TED R. DOEBBLER'S UNPROFESSIONAL ERRORS.

PROCEDURAL DEFAULT SHOULD BE FORGIVEN
THE PROCEDURAL DEFAULT APPLIES TO MY CASE UANCE L. WHITE'S CASE, CAUSE AND PREJUDICE,

MY SENTENCE EXCEEDS STATUTOY MAXIMUM.

IN-BELL VS. STATE, 693 S.W. 2d 434 TEXAS CRIMINAL APPEALS [1985]
BELL RULED AS A MATTER OF LAW [DEADLY CONDUCT IS A LESSER INCLUDED OFFENSE OF [AGGRAVATED ASSAULT] BY THE USE OF A DEADLY WEAPON. [AGGRAVATED ASSAULT REQUIRES ACTUAL USE OF A WEAPON. THE STATE FAILED TO PROVE THIS ELEMENT OR ANY OTHER ELEMENT OF THE CHARGE IN THE INDICTMENT THAT IS REQUIRED FIFTH AND FOURTEENTH AMENDMENT DUE PROCESS CLAUSE. SEE JACKSON VS. VIRGINIA, 443 U.S. 307, 315, 316, 99 S.C.T. 2781, 2786, 2787, 87, 62 L. Ed 2d 560 [1979],
THE STATE PRESENTED NO -PHYSICAL EVIDENCE, OR ANY CREDIBLE EVIDENCE.

SEE: SAFIAN VS. STATE, 543 S.W. 3d 216 [TEXAS CRIMINAL APPEALS, [2018],

IN: RE MASSARO VS UNITED STATES, 538 U.S. 500 [2003]
THE UNANIMOUS COURT REASONED THAT THE [DUAL-POLICIES] OF FINALITY AND CONSERVATION OF JUDICIAL" RESOURCES WOULD NOT BE SERVED BY REQUIRING EARLY RESOLUTION OF THIS ISSUE SINCE FACTS MAY NOT BE FULLY DEVELOPED IN TIME TO PRESENT THEM ON DIRECT APPEAL. ACCORDINGLY, AN INEFFECTIVE ASSISTANCE CLAIM BY A PRISONER MY BE BROUGHT IN COLLATERAL PROCEEDING. 28 U.S.C. 2254 A STATE PRISONER. WHETHER OR NOT THE ISSUE COULD HAVE BEEN RAISED ON DIRECT APPEAL. ⑧

MOTION FOR REHEARING

IN: MITCHELL VS. UNITED STATES, 526 U.S. 314 [1999].
THE COURT HELD BY A 5 TO 4 VOTE, THAT THE PLEA DOES
NOT OPERATE AS A [WAIVER] OF PRIVILEGE AT SENTENCING."

AT THE [PLEA CALLOQUY] THE U.S. DISTRICT JUDGE WHILE
ASSESSING WHETHER THERE WAS A [FACTUAL-BASIS] FOR THE
PLEA ASKED HER WHETHER SHE HAD DONE THE THINGS TO
WHICH SHE WAS PLEADING GUILTY.

SHE ADMITTED TO DOING SOME OF IT,
SAME AS VANCE L. WHITE AT THE PLEA CALLOQUY.
THE COURT ACCEPTED THE GUILTY PLEA.
AS IN WHITE'S CASE.

SHE DID NOT TESTIFY REGARDING THE QUANTITY OF DRUGS
WHITE DID - NOT TESTIFY REGARDING THE AGGRAVATED ASSAULT
WITH A DEADLY WEAPON,

THE SENTENCING JUDGE CONCLUDED THAT HER GUILTY
PLEA WAIVED HER FIFTH AMENDMENT SELF INCRIMINATION
PRIVILEGE AND THEREFORE THE [JUDGE] COULD DRAW
AN ADVERSE INFERENCE FROM HER SILENCE AT THE SENTENCING
HEARING. IN REVERSING THE UNITED STATES SUPREME COURT
EXPLAINED, THIS CASE APPLIES TO WHITE'S CASE

JUDGE KRISTIN M. GUINEY DID THE SAME TO VANCE L. WHITE
SHE ADDED THREE AGGRAVATORS TO THE PLEA BARGAIN.

NO. 21-6168

IN THE
SUPREME COURT OF THE UNITED STATES
VANCE L. WHITE PROSE PETITIONER

VS.
BOBBY LUMPKIN RESPONDENT

PROOF OF SERVICE

I VANCE L. WHITE DO SWEAR OR DECLARE THAT ON THIS DATE, FEBRUARY 02, 2022 AS REQUIRED BY SUPREME COURT RULE 29 I HAVE SERVED A MOTION FOR REHEARING ON EACH PARTY'S COUNSEL AND ON EVERY OTHER PERSON REQUIRED TO BE SERVED BY DEPOSITING AN ENVELOPE CONTAINING THE ABOVE DOCUMENTS IN THE UNITED STATES MAIL PROPERLY ADDRESSED TO EACH OF THEM AND WITH FIRST CLASS POSTAGE PREPAID, OR BY DELIVERY TO A THIRD PARTY COMMERCIAL CARRIER FOR DELIVERY WITHIN 3 CALENDAR DAYS.

THE NAMES AND ADDRESSES OF THOSE SERVED ARE AS FOLLOWS:

KEN PAXTON ATTORNEY GENERAL OF TEXAS
POST OFFICE BOX 12548
AUSTIN, TEXAS 78722-2548

NOTE: RULE 29(2)

IF SUBMITTED BY AN INMATE CONFINED IN AN INSTITUTION, A DOCUMENT IS TIMELY FILED IF IT IS DEPOSITED IN THE INSTITUTION'S INTERNAL MAIL SYSTEM ON OR BEFORE THE LAST DAY FOR FILING AND IS ACCOMPANIED BY A NOTARIZED STATEMENT OR DECLARATION IN COMPLIANCE WITH 28 U.S.C. 1746 SETTING OUT THE DATE OF DEPOSIT AND STATING THAT FIRST CLASS POSTAGE HAS BEEN PREPAID.

I DECLARE UNDER THE PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT. EXECUTED ON FEBRUARY 02, 2022

SIGNATURE Vance White