Exhibit 1

REL: November 5, 2021

SUPREME COURT OF ALABAMA

OCTOBER TERM, 2021-2022

1200443

Ex parte Sherman Collins

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS

(In re: Sherman Collins

v.

State of Alabama)

(Sumter Circuit Court, CC-12-109; Court of Criminal Appeals, CR-14-0753)

MENDHEIM, Justice.

Sherman Collins petitioned this Court for a writ of certiorari to review the Court of Criminal Appeals' decision in Collins v. State, [Ms. CR-14-0753, Oct. 13, 2017] ___ So. 3d ___ (Ala. Crim. App. 2017) (opinion on original submission); [Ms. CR-14-0753, July 13, 2018] ___ So. 3d at ___ (opinion on return to remand); [Ms. CR-14-0753, Oct. 25, 2019] ___ So. 3d at ___ (opinion on return to second remand); and [Ms. CR-14-0753, Mar. 12, 2021] ___ So. 3d at ___ (on application for rehearing), affirming Collins's convictions in the Sumter Circuit Court for capital murder for the intentional killing of Detrick Bell for pecuniary gain, a violation of § 13A-5-40(a)(7), Ala. Code 1975, and for criminal conspiracy, a violation of § 13A-4-3, Ala. Code 1975, and affirming his resulting sentences of death for his capital-murder conviction and of 120 months' imprisonment for his criminal-conspiracy conviction. We granted certiorari review to consider whether the Court of Criminal Appeals' decision is in conflict with Blockburger v. United States, 284 U.S. 299 (1932); we conclude that it is. As a result, we affirm the Court of Criminal Appeals' decision insofar as it affirms Collins's capital-murder conviction and his resulting

sentence to death and we reverse the Court of Criminal Appeals' decision insofar as it affirms Collins's criminal-conspiracy conviction and his resulting sentence to 120 months' imprisonment. We also remand this cause to the Court of Criminal Appeals to remand the cause to the trial court to set aside Collins's criminal-conspiracy conviction and resulting sentence.

Facts and Procedural History

An extensive recitation of the facts, which is not necessary for our purposes in this case, is set forth in Collins. In short, on June 17, 2012, Collins entered into an agreement with Kelvin Wrenn to kill Detrick "Speedy" Bell in exchange for $2,000, and, in accordance with the agreement, Collins shot and killed Bell. Collins confessed to entering into an agreement with Wrenn to kill Bell and to killing Bell. Collins was charged and, following a jury trial, convicted of capital murder for the intentional killing of Bell for pecuniary gain, a violation of § 13A-5-40(a)(7), and of criminal conspiracy, a violation of § 13A-4-3. Collins was sentenced to death for his capital-murder conviction and to

120 months' imprisonment for his criminal-conspiracy conviction. Collins appealed.

In affirming Collins's convictions on appeal, the Court of Criminal Appeals noted the following:

> "Collins's convictions for capital murder and conspiracy to commit murder do not violate the Double Jeopardy Clause. As this Court stated in Williams v. State, 830 So. 2d 45 (Ala. Crim. App. 2001), when considering whether Williams's convictions for robbery/murder and conspiracy to commit first-degree robbery constituted a double-jeopardy violation:
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> > " 'Under § 13A-4-3, [Ala. Code 1975,] "[a] person is guilty of criminal conspiracy if, with the intent that conduct constituting an offense be performed, he agrees with one or more persons to engage in or cause the performance of such conduct, and any one or more of such persons does an overt act to effect an objective of the agreement." On the other hand, an objective of murder made capital pursuant to § 13A-5-40(a)(2), [Ala. Code 1975,] requires no agreement to effect that offense. See §§ 13A-6-2(A)(1); 13A-8-41; and 13A-8-43, Ala. Code 1975. Likewise, the offense of murder made capital pursuant to § 13A-5-40(a)(2) requires proof of an intentional killing; § 13A-4-3 requires no such proof. Clearly, the two offenses for which the appellant was convicted and sentenced are not the same under the Blockburger [v. United States, 284 U.S. 299 (1932),] test. Therefore, we find no merit in the appellant's

> argument that his rights under the Double Jeopardy Clause were violated.'
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> "Williams, 830 So. 2d at 48."

Collins, ___ So. 3d at ___ n.6 (opinion on original submission).

Standard of Review

"'"This Court reviews pure questions of law in criminal cases de novo."'" Ex parte Knox, 201 So. 3d 1213, 1216 (Ala. 2015) (quoting Ex parte Morrow, 915 So. 2d 539, 541 (Ala. 2004), quoting in turn Ex parte Key, 890 So. 2d 1056, 1059 (Ala. 2003)).

Discussion

As noted above, this Court granted certiorari review to consider whether the above-quoted portion of the Court of Criminal Appeals' decision is in conflict with Blockburger, supra. In his brief before this Court, Collins argues that the Court of Criminal Appeals' decision is in conflict with Blockburger because, he argues, "[t]he offense of capital murder for hire, as charged in this case under Ala. Code [1975,] § 13A-5-40(a)(7), encapsulates the offense of conspiracy to commit murder." Collins's brief at p. 12. Collins argues that the crime of criminal

conspiracy defined in § 13A-4-3(a) is a lesser-included offense of murder for hire as defined in § 13A-5-40(a)(7). Collins argues that his convictions and sentences for murder for hire and for criminal conspiracy violate double-jeopardy principles. Collins is correct.

In Williams v. State, 830 So. 2d 45 (Ala. Crim. App. 2001), the case relied upon by the Court of Criminal Appeals below, the Court of Criminal Appeals provided the following explanation of the Blockburger test:

> "The established test for determining whether two offenses are sufficiently distinguishable to permit the imposition of cumulative punishment was stated in Blockburger v. United States, 284 U.S. 299, 52 S. Ct. 180, 76 L. Ed. 306 (1932). 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 an additional fact that the other does not. The test emphasizes the elements of the two offenses. If each offense requires proof of a fact that the other does not, then the Blockburger test is satisfied, notwithstanding a substantial overlap in the proof offered to establish the offenses. In essence, the Blockburger rule is one of statutory construction. The assumption underlying the rule is that the legislative branch of government ordinarily does not intend to punish for the same offense under two different statutes. Therefore, where two statutory provisions proscribe the 'same offense,' they are construed not to authorize cumulative punishments, at least in the absence of a clear indication of contrary legislative intent. See Ex parte Rice, 766 So. 2d 143 (Ala. 1999)."

830 So. 2d at 47-48.

> Under § 13A-4-3(a),
>
> > "[a] person is guilty of criminal conspiracy if, with the intent that conduct constituting an offense be performed, he agrees with one or more persons to engage in or cause the performance of such conduct, and any one or more of such persons does an overt act to effect an objective of the agreement."

Section 13A-5-40(a)(7) makes a capital offense "[m]urder done for a pecuniary or other valuable consideration or pursuant to a contract or for hire." In the present case, the State charged Collins with violating § 13A-5-40(a)(7), alleging that he had entered into an agreement with Wrenn, whereby Collins agreed to murder Bell in exchange for Wrenn's paying Collins $2,000, and that Collins did, in fact, murder Bell. The State also charged Collins with violating § 13A-4-3(a), alleging that Collins had entered into an agreement with Wrenn, whereby Collins agreed to murder Bell in exchange for Wrenn's paying Collins $2,000, and that Collins took some overt act to effect an objective of the agreement. Obviously, murder made capital pursuant to § 13A-5-40(a)(7) requires proof of an intentional killing; § 13A-4-3(a) requires no such proof. This

is something that distinguishes the crimes. However, in this case, the State relied upon the same facts to prove that Collins violated § 13A-4-3(a) in proving that Collins violated § 13A-5-40(a)(7). Stated differently, once the State proved that Collins had violated §13-5-40(a)(7), it did not need to prove any additional fact to prove that Collins had also violated § 13A-4-3(a). We conclude that, as charged in this case, criminal conspiracy is a lesser-included offense of murder made capital pursuant to § 13A-5-40(a)(7). See § 13A-1-9(a)(1), Ala. Code 1975 ("A defendant may be convicted of an offense included in an offense charged. An offense is an included one if ... [i]t is established by proof of the same or fewer than all the facts required to establish the commission of the offense charged.").

Although we have not heretofore made such a conclusion, Mississippi, which has laws similar to our own concerning murder for hire and criminal conspiracy, has determined that criminal conspiracy is a lesser-included offense of murder for hire. In Stewart v. State, 662 So. 2d 552, 561 (Miss. 1995), the Mississippi Supreme Court stated:

> "Conspiracy and the underlying substantive offense are normally distinct and separate offenses. Pinkerton v. United States, 328 U.S. 640, 643, 66 S. Ct. 1180, 1181, 90 L. Ed. 1489

> (1946); Griffin v. State, 545 So. 2d 729, 730 (Miss. 1989). Nevertheless, there are times when a defendant may not be charged with both conspiracy and the substantive offense. Pinkerton, 328 U.S. at 643, 66 S. Ct. at 1181. 'One is where the agreement of two persons is necessary for the completion of the substantive crime and there is no ingredient in the conspiracy which is not present in the completed crime.' Id.
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> "Miss. Code Ann. § 97-3-19(2)(d) (1972) capital murder provision reads as follows:
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> > " '(2) The killing of a human being without the authority of law by any means or in any manner shall be capital murder in the following cases:
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> > > " '(d) Murder which is perpetrated by any person who has been offered or has received anything of value for committing the murder, and all parties to such a murder, are guilty as principals.'
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> "We find that once the State has proven murder under this definition, no other evidence must be produced in order to establish the crime of conspiracy. Conspiracy to commit murder-for-hire is completely enveloped by our definition of murder-for-hire found in § 97-3-19(2)(d) of the capital murder statute."

We find convincing the reasoning set forth in Stewart by the Mississippi Supreme Court and conclude that criminal conspiracy is a lesser-included offense of murder for hire.

It is significant to note Stewart's reliance upon Pinkerton v. United States, 328 U.S. 640 (1946). Pinkerton is a significant case in double-jeopardy precedent -- relied upon by many other federal cases (some of which the State relies upon in its brief before this Court) -- that sets forth well-established principles concerning a criminal defendant's convictions for both a substantive offense and a conspiracy to commit that substantive offense. Pinkerton states, in pertinent part:

> "It has been long and consistently recognized by the Court that the commission of the substantive offense and a conspiracy to commit it are separate and distinct offenses. The power of Congress to separate the two and to affix to each a different penalty is well established. Clune v. United States, 159 U.S. 590, 594, 595 [(1895)]. A conviction for the conspiracy may be had though the substantive offense was completed. See Heike v. United States, 227 U.S. 131, 144 [(1913)]. And the plea of double jeopardy is no defense to a conviction for both offenses. Carter v. McClaughry, 183 U.S. 365, 395 [(1902)]. It is only an identity of offenses which is fatal. See Gavieres v. United States, 220 U.S. 338, 342 [(1911)]. Cf. Freeman v. United States, 6 Cir., 146 F.2d 978 [(1945)]. A conspiracy is a partnership in crime. United States v. Socony-Vacuum Oil Co., 310 U.S. 150, 253 [(1940)]. It has ingredients, as well as implications, distinct from the completion of the unlawful project. As stated in United States v. Rabinowich, 238 U.S. 78, 88 [(1915)]:
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> > " 'For two or more to confederate and combine together to commit or cause to be committed a

> breach of the criminal laws is an offense of the gravest character, sometimes quite outweighing, in injury to the public, the mere commission of the contemplated crime. It involves deliberate plotting to subvert the laws, educating and preparing the conspirators for further and habitual criminal practices. And it is characterized by secrecy, rendering it difficult of detection, requiring more time for its discovery, and adding to the importance of punishing it when discovered.'
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> "And see Sneed v. United States, 5 Cir., 298 F. 911, 912, 913 [(1924)]; Banghart v. United States, 4 Cir., 148 F.2d 521 [(1945)].
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> "Moreover, it is not material that overt acts charged in the conspiracy counts were also charged and proved as substantive offenses. As stated in Sneed v. United States, supra, 298 F. at page 913, 'If the overt act be the offense which was the object of the conspiracy, and is also punished, there is not a double punishment of it.' The agreement to do an unlawful act is even then distinct from the doing of the act."

Pinkerton, 328 U.S. at 643-44. Therefore, under federal law, it is well established that a substantive crime and a conspiracy to commit that substantive crime are generally separate and distinct offenses. However, the Pinkerton Court expressly recognized an exception to the above-quoted general principles:

> "There are, of course, instances where a conspiracy charge may not be added to the substantive charge. One is where the

> agreement of two persons is necessary for the completion of the substantive crime and there is no ingredient in the conspiracy which is not present in the completed crime. See United States v. Katz, 271 U.S. 354, 355, 356 [(1926)]; Gebardi v. United States, 287 U.S. 112, 121, 122 [(1932)]."

Pinkerton, 328 U.S. at 643 (emphasis added). This makes clear that, under federal law, if the conspiracy to commit a substantive crime is a lesser-included offense of the substantive crime, then the "conspiracy charge may not be added to the substantive charge." Id. This is exactly what the Mississippi Supreme Court recognized in Stewart, and that exception applies to the facts of the present case.

Despite the exception stated in Pinkerton, the State notes that some federal cases involving the federal murder-for-hire statute, 18 U.S.C. § 1958, have concluded that a federal criminal defendant charged with violating § 1958 may be convicted of and sentenced for both the substantive offense of murder for hire and conspiring to commit the substantive offense of murder for hire. See, e.g., United States v. Lingenfelter, 473 F. App'x 303 (4th Cir. 2012), United States v. Bicaksiz, 194 F.3d 390 (2d Cir. 1999), Plunkett v. United States, Criminal Action No. 4:04-cr-70083, June 6, 2011 (W.D. Va. 2011) (not reported in Federal

Supplement), and United States v. Gomez, 644 F. Supp. 2d 362 (S.D.N.Y. 2009). The State urges this Court to adopt the approach taken by these federal cases rather than that taken by the Mississippi Supreme Court in Stewart. The federal cases relied upon by the State, however, are inapposite to the present case and Alabama law.

The United States Supreme Court has explained that

> "Blockburger [v. United States, 284 U.S. 299 (1932),] established a rule of statutory construction in these terms:
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> > " 'The assumption underlying the rule is that Congress ordinarily does not intend to punish the same offense under two different statutes. Accordingly, where two statutory provisions proscribe the "same offense," they are construed not to authorize cumulative punishments in the absence of a clear indication of contrary legislative intent.' [Whalen v. United States,] 445 U.S. [684,] 691-692 [(1980)] (emphasis added).
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> "We went on to emphasize the qualification on that rule:
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> > " '[W]here the offenses are the same ... cumulative sentences are not permitted, unless elsewhere specially authorized by Congress.' Id., at 693 (emphasis added)."

Missouri v. Hunter, 459 U.S. 359, 366 (1983). In short, the United States Supreme Court has stated that the Blockburger test is a rule of statutory

construction that, if met, indicates that Congress did not intend to authorize cumulative punishments for the same offense, but such intention derived from applying the Blockburger test may be controverted by a special authorization of Congress indicating its intention otherwise. Congress's intent is the significant factor.

Collins notes that, in Alabama, the legislature has passed a law expressly stating its intent in situations such as the one presented in this case where a criminal defendant is charged with a substantive offense and a lesser-included offense. Collins directs this Court's attention to § 13A-1-8(b)(1), Ala. Code 1975, which states, in pertinent part: "When the same conduct of a defendant may establish the commission of more than one offense, the defendant may be prosecuted for each such offense. He may not, however, be convicted of more than one offense if ... [o]ne offense is included in the other, as defined in Section 13A-1-9[, Ala. Code 1975]." (Emphasis added.) As set forth above, criminal conspiracy is a lesser-included offense of murder for hire. In § 13A-1-8(b)(1), the legislature makes clear that a criminal defendant may not be convicted of both of those crimes based on the same conduct. See also § 13A-4-5(b)(3), Ala.

Code 1975 ("A person may not be convicted on the basis of the same course of conduct of both the actual commission of an offense and ... [c]riminal conspiracy of the offense.") Accordingly, unlike federal law, Alabama law makes abundantly clear that the legislature does not intend for a criminal defendant to be convicted of both murder for hire and the lesser-included offense of criminal conspiracy; the federal cases concerning § 1958 have no application in the present case and are not persuasive.

Lastly, we note that, in the present case, the Court of Criminal Appeals relied upon Williams, supra, in concluding that Collins's double-jeopardy rights were not violated. Williams, however, is a distinguishable case. In Williams, the criminal defendant was convicted of criminal conspiracy and murder made capital because it was committed during the course of a robbery, see § 13A-5-40(a)(2), Ala. Code 1975. The Court of Criminal Appeals stated in Williams that "the offense of murder made capital pursuant to § 13A-5-40(a)(2)[] requires no agreement to effect that offense." Williams, 830 So. 2d at 48. Accordingly, the Court of Criminal Appeals concluded that "the two offenses for which [Williams] was convicted and sentenced are not the same under the Blockburger test.

Therefore, we find no merit in [Williams]'s argument that his rights under the Double Jeopardy Clause were violated." Id. As explained above, however, the two offenses for which Collins was convicted and sentenced are the same under the Blockburger test; the crime of criminal conspiracy does not require proof of a fact that the crime of murder for hire does not.[1]

Conclusion

Based on the foregoing, Collins has established a conflict between the Court of Criminal Appeals' decision and Blockburger; the Court of Criminal Appeals erred in concluding that Collins's convictions and sentences for murder for hire and criminal conspiracy do not violate the

[1]As he did before the Court of Criminal Appeals, Collins also argues before this Court that the trial court's admission of a confession made by Wrenn, Collins's codefendant, allegedly violated Collins's right of cross-examination secured by the Confrontation Clause of the Sixth Amendment to the United States Constitution. We need not address this argument, however, because we specifically denied certiorari review of this issue. In his petition for certiorari review, Collins, citing Rule 39(a)(1)(D), Ala. R. App. P., alleged that the Court of Criminal Appeals' determination of this Confrontation Clause issue conflicted with prior decisions of the United States Supreme Court. We did not find Collins's allegation of conflict convincing and denied certiorari review of that particular issue. Accordingly, that issue is not properly before us, and, thus, we need not consider Collins's argument.

Double Jeopardy Clause. As a result, we affirm the Court of Criminal Appeals' decision insofar as it affirms Collins's capital-murder conviction and his resulting sentence to death and reverse the Court of Criminal Appeals' decision insofar as it affirms Collins's criminal-conspiracy conviction and his resulting sentence to 120 months' imprisonment. See Heard v. State, 999 So. 2d 992, 1009 (Ala. 2007) ("[W]hen a jury returns a verdict finding a defendant guilty of capital murder on one count and guilty of a lesser-included offense of another count, if that lesser-included offense is also a lesser-included offense of the offense resulting in the capital-murder conviction, under § 13A-1-8(b) and § 13A-1-9, Ala. Code 1975, the conviction for the lesser-included [offense] cannot stand."). We also remand this cause to the Court of Criminal Appeals with instructions for it to remand this cause to the circuit court for it to set aside Collins's conviction for criminal conspiracy and his resulting sentence therefrom. No return to remand need be filed.

AFFIRMED IN PART; REVERSED IN PART; AND REMANDED WITH INSTRUCTIONS.

Parker, C.J., and Bolin, Shaw, Wise, Bryan, Sellers, and Stewart, JJ., concur.

Mitchell, J., concurs specially.

MITCHELL, Justice (concurring specially).

Often overlooked is the fact that state law can provide greater protections of individual rights than protections under federal law.[2] This case offers an example.

Here, Sherman Collins cited three provisions in support of his argument that the two offenses for which he was convicted constitute the "same offense": (1) the Fifth Amendment to the United States Constitution, as analyzed under the test set out in Blockburger v. United States, 284 U.S. 299 (1932); (2) § 13A-1-8(b), Ala. Code 1975; and (3) § 13A-4-5(b), Ala. Code 1975. The majority opinion primarily rules in

[2]In this case, we have an Alabama statute that provides superior protection. But we are beginning to see the emergence of cases across the country where litigants correctly recognize that state constitutions may better protect individual rights than the United States Constitution. See, e.g., Olevik v. State, 302 Ga. 228, 806 S.E.2d 505 (2017) (holding that the Georgia state constitution's protection against compelled self-incrimination extends beyond testimony -- as the federal right has been interpreted -- to incriminating acts, such as breath tests); see also Jeffrey S. Sutton, 51 Imperfect Solutions: States and the Making of American Constitutional Law 16-20, 76 (Oxford Univ. Press 2018). The Alabama Constitution, like other state constitutions, is a relatively untapped source of law for the protection of individual rights, and it may hold promise for future litigants in a variety of contexts.

favor of Collins based on Blockburger and § 13A-1-8(b)(1), and I fully concur in the opinion.

I write separately to point out that in enacting § 13A-4-5(b)(3), Ala. Code 1975, which provides that "[a] person may not be convicted on the basis of the same course of conduct of both the actual commission of an offense and ... [c]riminal conspiracy of the offense,"[3] the Legislature has provided even greater protections for criminal defendants than under federal law. Whereas federal law recognizes that "the commission of [a] substantive offense and a conspiracy to commit it are separate and distinct offenses," Pinkerton v. United States, 328 U.S. 640, 643 (1946), and that convictions for both may stand so long as the Blockburger "same elements" test is satisfied, the Alabama statute sweeps more broadly and definitively, protecting a criminal defendant from being convicted based on the same course of conduct of both "criminal conspiracy of the offense"

[3]The Commentary to § 13A-4-5 explains that subsection (b) "deal[s] only with convictions, not with multiple charges or counts in an indictment or complaint." That is, a defendant may be charged with both criminal conspiracy of an offense and the actual commission of the offense, but not convicted of both.

(an inchoate crime) and "the actual commission of an offense" (a substantive crime).

To some, it may seem counterintuitive that state law can contain greater rights protections than federal law -- causing some litigants to cite state-law provisions but not develop any arguments around them or, worse, to bypass state law entirely. That is a mistake. I encourage parties in future cases involving counterpart rights under state and federal law not to assume either that the state-law right is inferior and unworthy of attention or that the state-law right is simply a carbon copy of the federal right. Making those assumptions could cause a litigant to lose his or her case or to obtain less relief than he or she is due.