

21-7470

ORIGINAL

No. _____

Supreme Court, U.S.
FILED

MAR 04 2022

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

Reggie Orlando Williams — PETITIONER
(Your Name)

vs.

State of Texas — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Texas Court of Criminal Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Reggie Orlando Williams # 1619177
(Your Name)

Connally Unit
899 FM 632

(Address)

Kenedy, TX. 78119

(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

When the State of Texas failed to elect
which charging transaction of the offense the
State was going to have Petitioner convicted under.
Does the same result in a violation of Double
Jeopardy as guaranteed by the Fifth Amendment of
The U.S. Constitution.

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:

RELATED CASES

Ex Parte Reggie Orlando Williams
Texas Court of Criminal Appeals
Petition For Writ of Habeas Corpus Proceeding
Writ No. W366-81936-09- HC3

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Brown v Ohio 432 U.S. 161 (1977)	p. 6
Fortune v State 745 SW2d 364 (Tex. Crim. App. 1988)	p. 8
Hall v State 225 SW3d 524 (Tex. Crim. App. 2007)	p. 7
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STATUTES AND RULES

Texas Code Criminal Procedure Article 11.07 - p. 8, 9

OTHER

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 is unpublished.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 is unpublished.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 A 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 is unpublished.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 _____ 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.

1.

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 _____. A copy of that decision appears at Appendix A.

A timely petition for rehearing was thereafter denied 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. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Constitution Fifth Amendment

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 offense to be twice put 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.

STATEMENT OF THE CASE

Reggie Orlando Williams, [Hereafter referred to as Williams] was convicted by a jury of five separate counts alleged in one indictment. Specifically Williams was convicted in Count I for Aggravated Sexual Assault of Child, Count II Indecency with A Child, Count III Indecency with A Child, Count IV Sexual Assault of A Child and Count V Sexual Assault of a child. On August 8, 2011, the Dallas Court of Appeals affirmed his conviction. See Williams v State, No. 05-10-00002-CR 2011 WL 3435372 (Tex.App. Dallas Aug. 8, 2011, no pet.)

Williams first state application for writ of habeas corpus was denied. See Ex parte Williams, No. WR-81,203-01 (Tex.crim. App. Apr. 23, 2014). Williams second state application for writ of habeas corpus was denied/and/or dismissed as a subsequent writ. See Ex parte Williams No. WR-81,203-03 (Tex. Crim. App. Mar. 24, 2021) (not designated for publication). Williams third state application for writ of habeas corpus was dismissed as a subsequent writ. See Ex parte Williams, No. WR-81,203-04 (Tex.Crim. App. Feb. 16, 2022) (Not designated for publication)

REASONS FOR GRANTING THE PETITION

There are three distinct types of double jeopardy claims protected by the Fifth Amendment of the United States Constitution. First, protection against a secondary prosecution for the same offense after acquittal. Second protection against a second prosecution for the same offense after conviction. Third, protection against multiple punishments for the same offense. See *North Carolina v Peace* 395 U.S. 711, 717 (1969), overruled on other grounds by *Alabama v Smith* 490 U.S. 794 (1989).

This case involves the third category of protection provided by the Fifth Amendment. In *Lang v State* 183 SW3d 680 (Tex. Crim. App. 2006), the Texas Court of Criminal Appeals [hereafter referred to as T.C.C.A.] laid out the two contexts in which a multiple punishments claim can arise;

(1) the lesser-included offense context, in which the same conduct is punished twice; once for the basic conduct, and a second time for that same conduct plus more (for example, attempted assault of "Y" and assault of "Y", assault of "X" and aggravated assault of "X");

See e.g. *Brown v Ohio* 432 U.S. 161, 168-69 (1977)
(Joyriding is a lesser-included offense of theft of an automobile)

(2) punishing the same criminal act twice under two distinct statutes when the legislature intended the conduct to be punished only once (for example, causing a single death by committing both intoxication manslaughter and involuntary manslaughter)

See generally *Whalen v United States* 445 U.S. 684, 691-92 (1980) ("The assumption underlying the [Blockburger] rule is that Congress ordinary 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").

The "same elements" test first articulated by the United States Supreme Court in *Blockburger v United States* 284 U.S. 299 (1932) is used to determine if two convictions constitute "multiple punishment" under Double Jeopardy Clause:

The applicable rule is that where the same act or transaction constitutes a violation of two distinct statutory provisions the test to applied to

determine whether are two or more offenses or only one, is whether each provision requires proof of a fact which the other does not. *Id.* at 304.

The T.C.C.A. adopted the "Blockburger" test long ago and continues to apply it as the first means of analyzing a multiple punishment double jeopardy claim when the legislature's intent is not clearly expressed. See *Langs* 183 S.W.3d at 685. In *Missouri v Hunter* 459 U.S. 359 (1983). The Supreme Court stated that legislative intent is the primary consideration in any multiple-punishment double jeopardy claim. *Id.* at 368-69.

Under the Cognate-pleadings approach adopted by the T.C.C.A. double jeopardy challenges, should be made even to offenses that have differing elements under "Blockburger", if the same "facts required" are alleged in the indictment. See *Hall v State* 225 U.S. 524 (Tex. Crim. App. 2007).

The violation of the one offense per indictment rule is reviewable in a post-conviction collateral attack. The T.C.C.A. has repeatedly stated that while courts will not raise this error

Sua sponte, it is fundamental error. See *Wimberly v State* 249 SW 497, 497 (Tex.Crim.App. 1923). Such fundamental error "calls for review when raised almost at anytime" *Id*

For the same reason, "objections to such convictions should be permitted at any time, with no trial objection requirement". See *Fortune v State* 745 SW2d 364, 370 (Tex.Crim.App. 1988)

A defendant can challenge a fundamental error in a variety of ways and in several courts. See *Fortune* 745 SW2d at 368. At trial a defendant can object to the charging instrument on the ground that the state misjoined the offense. See *Fortune* 745 SW2d at 368.

Another option for a defendant at trial is to file a motion to request the state to elect the court in the indictment on which it wishes to proceed. *Id*. Thus here it was reasonable for Williams to raise and bring the double jeopardy violation claim to the attention of the Texas Court of Criminal Appeals by way of his subsequent state Application for writ of habeas corpus pursuant to Texas Code of Criminal Procedure Article 11.07. In light of the double jeopardy

claim which is a fundamental error. Accordingly this Court should grant Williams Petition For Writ of Certiorari due to the Texas Court of Criminal Appeals erred when that Court dismissed Williams T.C.C.P. Art. 11.07 under section (4).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Reggie Williams
signature

Date: MARCH 7, 2022