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Supreme Court, U.S.

FILED

OCT 18 2022

OFFICE OF THE CLERK

No. 21-7855

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IN THE  
SUPREME COURT OF THE UNITED STATES

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JAMES WELLS HORSEY – Petitioner

vs.

STATE OF OKLAHOMA - RESPONDENT (S)

ON PETITION FOR A WRIT OF CERTIORARI TO

OKLAHOMA COURT OF CRIMINAL APPEALS

**PETITION FOR REHEARING**

JAMES WELLS HORSEY #849025

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**ORIGINAL**

## **PETITION FOR REHEARING**

Although rarely granted, “The right to reconsideration of the denial of a writ of certiorari is not to be deemed an empty formality as though such a petition for rehearing in the United States will be deemed as a matter of course.<sup>1</sup>” The grounds must be limited to intervening circumstances of a substantial or controlling effect including the subsequent ratification of a constitutional amendment affecting the point raised on appeal, or the handing down of an intervening, conflicting decision. This case may not be a major case, the topic is of national importance because small issues like this leads to major cases later on and there is no previous ruling on this particular issue. Petition is requesting a reconsideration for a rehearing for Denial of Writ of Certiorari on October 3, 2022 for Case No. 21-7855 in this court as allowed by Supreme Court Rule 44.2.

## **II. THIS DECISION WOULD BE IN CONFLICT WITH A PREVIOUS SUPREME COURT DECISION**

In the original petition, under Appendix F (Affidavit for Arrest Warrant), the term “appears to be” was used three times to describe the only two images in question. This is in direct conflict with a decision made by this court in 2002<sup>2</sup>. In that case, this court stated that acts or statutes that ban “youthful adult pornography” or “virtual child pornography” that “appears to be” was overbroad and therefore unconstitutional because of the use of the term “appears to be”. The petitioner is not challenging the

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<sup>1</sup> Flynn v U.S. N.Y.1955, 75 S.Ct.285.

<sup>2</sup> Ashcroft v Free Speech Coalition 122 S.Ct. 1389

Oklahoma Statute O.S 1021.2 as totally unconstitutional but somewhat overbroad and vague as applied because it prohibits “any child pornography.” There are no known victims in this case and was a non-production case. Nowhere in Oklahoma laws or state statutes has that exactly explained what juvenile pornography really is. This allows the State of Oklahoma to circumvent this ruling under the radar.

## **I. THE JURY TRIAL GUARENTEE WAS CLEARLY VIOLATED IN THIS CASE**

This leads to the second ground for rehearing being charged with a particular crime, punished for that crime but **not tried** on that crime. For example, murder and manslaughter both involved a death but are different charges, the same with child pornography and juvenile pornography. The issue is the State of Oklahoma have no separate statute for juvenile pornography but applies it as if it is **own statute within another statute**. By doing this, this make this an enhanced crime under the 85% and would require a person to have to register as a sex offender because of the statute it is placed under. According to *Jackson v Virginia*<sup>3</sup>, “It is axiomatic that a conviction on a charged not made or upon a charge not tried constitute a denial of due process.” In *Neder v United States*<sup>4</sup>, “an improper instruction on an element of the offense violated the Six Amendment jury trial guarantee’, it is a constitutional error. The constitution requires that an accused be on notice as to the offense that must be defended against and that only lesser offenses that meet these notice

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<sup>3</sup> 443 U.S. 307, 314, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979)

<sup>4</sup> 527 U.S. 1 (1999)

requirements may be affirmed by an appellate court. The lesser charge was not directly confirmed or affirmed as the actual sentence by the appellate court but the major offense was. To uphold a conviction on a charge that was neither alleged in an indictment as the official charge (**Child Pornography**) nor presented to a jury as the official charge (**Juvenile Pornography**) offends the most basic notions of due process. The original petition does involve an issue that was raise in a case this year see Vega v Tekoh<sup>5</sup> (minus the 1983 action) involving self-incrimination. See also App A page 1, Appendix D page 1 and Appendix F (difference in charges).

This rehearing, as also stated in the original petition for writ of certiorari, do not require any oral arguments, but petitioner is asking this court to reconsider its denial of writ of certiorari by reversing decision, requesting response for respondent, issue summary judgment if no response given in favor of the petitioner, or remand if necessary to OCCA.

The petition for rehearing should be granted.

Respectfully submitted,

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<sup>5</sup> 142 S.Ct. 2095 (2022)

## CERTIFICATION OF COUNSEL

This is to certify that this petition is restricted the grounds specified in the paragraph(s) and that it is presented in good faith and not for delay and this certificate bear the signature of counsel (or of a party unrepresented by counsel).

Respectfully submitted,



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