No. : 21-7998

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Lamar Daniel Ron Wilson **PETITIONER**
Pro Se

VS.

Dexter Payne, **Respon-**
dent
Director, Arkansas Dep't of Corrections

ON PETITION FOR WRIT OF CERTIORARI
TO THE
UNITED STATES SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

PRO SE

ISSUES

1. Is a plea agreement, the statement of the accused, "I did it.", the sole piece of information necessary to convict? Specifically, is felony information and indictments/ charges not necessary?

2. U.S. Constitutional Amendment violations

A) 4th & 14th: Is it proper due process to convict, twice even, without felony information and a valid charging instrument/ indictment?

B) 5th: In reference to this Court's previous decisions in Ball v U.S. and Benton v Maryland, is a new trial double jeopardy despite a previous acquittal (set aside) of the same conviction?

C): 6th: In the event of no valid charging instrument(s), and no supporting information on file, is there an accusation to be answered to?

3. Ineffective counsel

A) Is it in the best interests of the defendant for trial, as effective counsel, to refuse to move for a directed verdict at trial knowing full well prosecution has presented no evidence to establish even constructive guilt? Or rather, to pursue the continuing conviction of the accused prior to a preliminary hearing for a new trial knowing full well no charges/ indictments and no evidence has been presented at any time?

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TABLE OF AUTHORITIES

CASES

1) **U.S. v Smallwood** (7th Cir., 1999, 188 F. 3D 905)

"It is true that "a conviction must rest upon firmer ground than the uncorroborated admission or confession of the accused."

Referencing ***Wong Sun v. United States***, 371 U.S. 471, 488-89, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963) and ***United States v. Grizales***, 859 F.2d 442, 445 (7th Cir. 1988)

"The requirement that a defendant's statements be corroborated "extends beyond strict confessions to cover statements by the accused that show essential elements of the crime."

2) **Benton v Maryland** (395 U.S. 784 (1969)

"[c]onditioning an appeal of one offense on a coerced surrender of a valid plea of former jeopardy on another offense exacts a forfeiture in plain conflict with the constitutional bar against double jeopardy."

Referencing **U. S. v. Sanges**, 144 U.S. 310 , 12 Sup. Ct. 609

"If the judgment is upon an acquittal, the defendant, indeed, will not seek to have it reversed, and the government cannot."

3) **Chancellor v State**, 33 Ark. 815 (1878)

"There is nothing in the record to show that the indictment was brought into court by the grand jury. The indorsement of the clerk, "filed in open court," is not sufficient."

Referencing *McKensie* v. *State,* 24 Ark., 636 and ***Holcomb* v. *State,*** 31 Ark., 427.

4) **Hagen v State** (SCt of AR, 315 Ark. 20 (1993)

"The State admits that neither an information, nor an indictment, nor a citation was filed in this case, but asks us to declare the error harmless. We have clearly indicated that we would not apply the harmless error doctrine in a case in which a criminal defendant was never charged. In **Hedrick v. State**, 292 Ark. 411, 730 S.W.2d 488 (1987), we wrote that "a conviction upon a charge not made would be sheer denial of due process." Id. at 413, 730 S.W.2d at 490 (citing **Thornhill v. Alabama**, 310 U.S. 88, 60 S. Ct. 736, 84 L. Ed. 1093 (1940)). In **Allen v. State**, 310 Ark. 384, 386, 838 S.W.2d 346, 347 (1992), we wrote:

Some constitutional rights are so basic to a fair trial that their violation "can never be treated as harmless." **Gomez v. United States**, 490 U.S. 858 [109 S. Ct. 2237, 104 L. Ed. 2d 923] (1989). Examples are the right to counsel, see **Penson v. Ohio**, 488 U.S. 75, 88 [109 S. Ct. 346, 353, 102 L. Ed. 2d 300] (1988), and the right for a grand jury proceeding to be free of racial discrimination. **Vasquez v. Hillery**, 474 U.S. 254 [106 S. Ct. 617, 88 L. Ed. 2d 598] (1986). In **Pope v. Illinois**, 481 U.S. 497, 502 [107 S. Ct. 1918, 1921, 95 L. Ed. 2d 439] (1987), the opinion of the court states that the harmless error inquiry is appropriate only when the trial was not fundamentally unfair. Quite probably one's right to be informed of a charge is that type of fundamental right that cannot be reviewed for harmless error since the right to notice of a charge is "so rooted in the traditions and conscience of our people as to be ranked as fundamental." **Schad v. Arizona**, ___ U.S. ___, ___, 111 S. Ct. 2491, 2497 [115 L. Ed. 2d

555] (1991) (quoting **Speiser v. Randall,** 357 U.S. 513, 524 [78 S. Ct. 1332, 1341, 2 L. Ed. 2d 1460] (1958))."

US v Alvarez-Moreno, 657 F3d 896 (9th Cir. 2011)

"In a bench trial jeopardy attaches when the court begins to hear evidence."

Joyner v State, Ark, 2009; Webb v State, Ark, 2012; Hartman v State, Ark, 2015

"We reasoned that second-degree sexual assault is not a lesser-included offense of rape because it requires proof of two elements that rape does not:..."

Pratt v. State, Ark, 2004

"...sexual indecency with a child is not a lesser-included offense of rape because it requires additional elements which are not required to prove rape."

STATUTES

Ark. Code Ann. §5-1-112

A former prosecution is an affirmative defense to a subsequent prosecution for the same offense under any of the following circumstances:

(1)(A) The former prosecution resulted in an acquittal.

Ark. Code Ann. §5-1-113

A former prosecution is an affirmative defense to a subsequent prosecution for a different offense under the following circumstances:

(1) The former prosecution resulted in an acquittal or in a conviction as set out in § 5-1-112, and the subsequent prosecution is for:

(A) Any offense of which the defendant could have been convicted in the first prosecution; (...)

Ark. Code Ann. §16-89-111(d)

(d) A confession of a defendant, unless made in open court, does not warrant a conviction unless: (1) Accompanied with other proof that the offense was committed; or (2) Supported by substantial independent evidence that would tend to establish the trustworthiness of the confession.

Ark. Code Ann. §16-89-130

(a) A new trial is the reexamination of an issue of fact in the same court by another jury after a verdict has been given.

Ark. Code Ann. §19-90-111

(c) The court in which a trial is had upon an issue of fact may grant a new trial when a verdict is rendered against the defendant by which his or her substantial rights have been prejudiced, upon his or her motion, in the following cases

(5) Where the verdict is against law or evidence; (...)

REASONS TO GRANT CERTIORARI

This petitioner believes his Petition for Certiorari to be of dire public concern for the following reasons:

1) Petitioner was convicted by plea agreement without charges, evidence, and/ or felony information to support his standing conviction.

2) Has also been previously convicted by jury of the same uncharged allegation at a prior trial. At that trial the conviction was set aside by the bench.

3) Is in firm agreement with Hedrick v. State, as referenced in Hagen v. State, "a conviction upon a charge not made would be sheer denial of due process." And furthermore, to have been convicted twice on the same offense would be double jeopardy.

4) Further believes it is a traumatic deviation from established law and appellate practices to for the previous appellate courts to uphold any convictions that lack valid charging instruments, evidence, and felony information.

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

[X] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix D to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

The opinion of the United States district court appears at Appendix C to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished. (To this petitioner's knowledge.)

[ ] For cases from **state courts**:

The opinion of the highest state court to review the merits 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 _____ 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.

JURISDICTION

[X] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was 14 March, 2022.

[X] 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 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).

FACTS

1. Mr. Wilson was charged with rape of an alleged victim who was less than 14 years of age.

2. Petitioner was subsequently tried and acquitted of said charge by a jury on 10 August, 2015. No other charges or indictments were filed prior to this trial.

3. Prior to the case going for jury deliberations, the Court, *not the State*, presented to the jury second degree sexual assault[1] and sexual indecency with a child[2] as lessers included to rape. See transcripts.

4. Petitioner objected arguing neither are lessers included to rape, and were in fact required as to be separate charges unto themselves.

5. The Court ignored Petitioner's objections. The jury returned with not guilty to rape, guilty to second degree sexual assault, and guilty to sexual indecency with a child.

6. Mr. Wilson's judgment for sexual indecency with a child was set aside by the Court following the jury's decisions[3] due to improprieties. However, on 15 September, 2015 the Court later set aside the second degree sexual assault for the same improprieties[4], but in exchange for a renewed conviction, under a plea agreement, for the sexual indecency with a child. All thus resulting in, collectively, Cumulative-error, Structural error, Plain error, and Clear-error.

1 Joyner v State. Ark. 2009: Webb v State. Ark. 2012: Hartman v State. Ark. 2015 – Second degree sexual assault not a lesser included to rape.

2 Pratt v. State, Ark, 2004 – Sexual indecency with a child not a lesser included to rape

3 Motion for New Trial, Circuit Court of Garland County. 25 August. 2015

4 Motion for New Trial Order, 12 October, 2015

PREVIOUS COURT

Order dated 31 January, 2022, from Chief District Judge Susan Hickey, *ver batim*, in part,

"Upon *de novo* review of the Report and Recommendation, and for the reasons discussed above. the Court finds that Wilson has offered neither fact nor law which would cause the Court to deviate from Judge Bryant's Report and Recommendation." (IV. Conclusion; page 3)

Mr. Wilson argues that he has only presented appropriate fact and law.

ARGUMENTS

The sole argument of this petitioner's appeal process has been that he is under an illegal sentence by unwarranted double jeopardy, and that his attorney knew this. Or should have known. Petitioner has only ever stated fact and law, nothing more. Petitioner affirmatively shows as follows:

1. Double Jeopardy, Lack of jurisdiction, & 4th, 5th, 6th, & 14th amendment violations

The petitioner's original Court erred on the side of vindictive prosecution by obviously depriving Petitioner of multiple legislative and Constitutionally provided rights. The State has repeatedly admitted that no felony information, warrant, indictments or evidence has ever existed against this petitioner in his records for the convicted allegation of sexual indecency with a child. Yet, he was convicted. It was set aside (acquitted) by the bench. Then re-instated as a plea, under the pretext of a new trial. A new trial that was in fact designed to deprive Mr. Wilson of his due rights, and to maintain a false conviction through a plea agreement, thus resulting in fraud against the state. A plea agreement that lacks substance due to no valid evidences that were ever produced, and so could not be shown prior to trial and new trial, to prove the petitioner's *actual* guilt. U.S. v Smallwood states a conviction must rest upon firmer ground than the uncorroborated admission or confession of the accused. As the new trial was limited to a bench hearing it is further limited under US v Alvarez-Moreno. "In a bench trial jeopardy attaches when the court begins to hear evidence." A defendant's statement for plea is still evidence.

No indictments, no evidence, and a baseless plea. As well as a previous conviction and acquittal on no information, other than that stated for the rape charge. A rape charge that was acquitted by a jury. No acquittal can be reversed under any circumstances. "If the judgment is upon an acquittal, the defendant, indeed, will not seek to have it reversed, and the government cannot." U. S. v. Sanges, 144 U.S. 310 , 12 Sup. Ct. 609 (1892). Minus the necessary felony information to support sexual indecency with a child, and entered into the records at the appropriate time, the trial court did in fact exceed it's authorities and did operate outside it's jurisdiction. Furthermore, having ruled from the bench, and as such did in point of fact convict Mr. Wilson without subject-matter jurisdiction. A conviction rendered without the appropriate felony information and indictment can only be regarded as void, and duly subject as reversible error. No felony information and indictment is actual proof in and of itself to indicate no victim and/or accusation. Therefore, no guilt. Neither actual nor constructive. Only fabricated. Chancellor v State states "There is nothing in the record to show that the indictment was brought into court by the grand jury. The indorsement of the clerk, "filed in open court," is not sufficient."

Benton v Maryland (1969) clearly stated in section IV, para. 1: "It is clear that petitioner's larceny conviction cannot stand once federal double jeopardy standards are applied. Petitioner was acquitted of larceny in first trial. Because he decided to appeal his burglary conviction, he is forced to suffer retrial on the larceny count as well." This same scenario now exists with this petitioner.

In the Order, 21 May, 2021, as signed by Judge Hickey, there is no rebuttal to Benton v Maryland, nor to Petitioner's claim of "no tangible/ extraneous evidence'. The State admitted no evidence existed at the time of trial. Judge Hickey appears to believe US v Smallwood holds no application in this regard, the statement of the accused is wholly enough, and so no evidence in the State's possession is necessary to convict. If this is so then perhaps anyone can be convicted at any time for anything. No

victim or evidence necessary for conviction. All that then matters is the accused is instructed to accept a plea, and they take it. Tyranny at it's purest. Further perpetuated by the appeal process to maintain said tyranny.

A new trial, under any other name remains a second prosecution. As stated by *Benton.*

2. Ineffective Counsel

Petitioner's trial counsel knew full well, or should have known, the following:

A) On 20 December, 2019 Judge Bryant ordered[5] the State to explain themselves regarding the petitioner's statement of "no tangible/ extraneous evidences entered to support any possible convictions." ... Specifically, the Court requests counsel for Respondent to address Petitioner's allegations regarding "no tangible/ extraneous evidences entered to support any possible convictions".

Explanation for the lack of evidence was ordered, the State's response was thus:

First, a thirteen page explanation. This was not requested. Second, it was nine pages in before the first mention of the explanation of evidence begins. The State's response, no date provided, does state, in part, page 11, paragraph 2:

> "Thus, to the extent the Court views Wilson's present complaint...to be an attack on the sufficiency of the evidence of sexual indecency with a child, it must be rejected because a direct attack on the sufficiency of the evidence of sexual indecency with a child is unavailable to Wilson." "As the foregoing discussion ... demonstrates, it is unavailable because Wilson, himself, supplied sufficient evidence of the offense by making his knowing and intelligent plea of no contest."

"The State admits that neither an information. nor an indictment. nor a citation was filed in this case, but asks us to declare the error harmless. We have clearly indicated that we would not apply the harmless error doctrine in a case in which a criminal defendant was never charged." Hagen v State.

The State has, in no unclear terms, admitted to no evidence available anywhere to support said conviction. That Mr. Wilson's statement provides *all of the* evidence necessary to convict him. While the statement of the accused, "I'm guilty of what you say I am.", may be in line with Arkansas Rules of Criminal Procedure 24.6 it does, however, defy the foundational concept of *actual guilt.* In the case of

5 20 December, 2019 U.S. District Court Order

Mr. Wilson such a statement provided by the State begs but one question to be asked in response – Do the courts believe whatever, any story, they are told so long as it provides a conviction? US v Smallwood states otherwise. Furthermore, such a statement is in clear violation of Wong Sun v US, US v Grizales, as well as others. In the very least the statements of the previous courts regarding Mr. Wilson's plea defies ACA §16-89-111(d): "A confession of a defendant, unless made in open court, *(the plea statement), will not warrant a conviction unless accompanied with other proof that the offense was committed.*" Explanation and emphasis added. To request latitude, if it may be acceptable of the courts to convict without evidence and charges, would it be acceptable of one to walk into a law enforcement office this day and admit to the murders of Abraham Lincoln and John F. Kennedy?

B) At the trial on 10 August, 2015 Mr. Adams failed to openly object and move for directed verdict based on no evidence entered for guilt. No rape test results, no prior statements at any time of such accusations, the rape accuser further failed to state any time/ frame (or a year) the stated incidents may have occurred. Virtually all rape victims vividly recall when their incidents occurred.

C) Following jury deliberations to the guilty verdicts of second-degree sexual assault and sexual indecency with a child Mr. Adams further failed to openly object to sentencing on allegations that were fabricated by the Court...in court. Sentences he knew were uncharged, as shown by the Motion for New Trial, and unsupported by any of the required informations.

D) On 15 September, 2015 Mr. Adams again further refused, or failed, to perform within the guidelines of all state and federal requirements expected of attorneys (i.e. Arkansas Rules of Professional Conduct) by pushing this petitioner into an unlawful plea agreement. A plea that he knew, or reasonably should have known, was wholly without due merits and would result in fraud against the state. Merits such as no standing charge or indictment, previously convicted without charge/ indictment, and no standing information. And the fact that the sought after plea conviction had been previ-

ously set aside (acquitted) by the bench for these same improprieties. And so Mr. Adams was due to argue a recurrence of double jeopardy at Mr. Wilson's 'new trial' hearing. He did not do this.

E) By the stated failures Petitioner's trial counsel did in fact, not wholly work in Mr. Wilson's best interests. Mr. Adams knew that the trial court had not only acted vindictively, and with malice, against Mr. Wilson but he did not stand against the same in informing Petitioner the Court had no grounds for the plea, then refused it. Rather, Petitioner's counsel supported the Court by refusing all due information to the petitioner.

STATE'S CONCESSIONS

1) Lack of Jurisdiction, Due Process violations, Ineffective Counsel, Judicial Abuse

Response to Petition for Writ of Habeas Corpus, 8-5-2019: Page 21, para 2, lines 6-8: ..."holding that the trial court had jurisdiction *even after it erred by instructing the jury on offenses that were not lesser-included offenses of rape.*" Emphasis added.

Response... Section D, page 17-19 gave no contest to the Petitioner's statements of ineffective counsel, that the counsel knew well enough, or should have known, to speak openly for the record his objections, and to challenge the Court's actions of improprieties. The State did not contest this matter, and so conceded it to be agreed to fact.

Response to Petition for Writ of Habeas Corpus, 8-5-2019: Pages 10-12 entirely shied from the Petitioner's claim of no valid charging instruments. Here, by avoiding the discussion, and changing the subject to that of ineffective counsel, the State has admitted there were no valid charging instruments.

No judge, in any court proceeding, has any authority to introduce new charges. This authority resides only with the prosecution. Transcripts pages 341-346, and 355 on lines 10-15, show this to fact that it was Judge Hearnsberger that introduced the allegations of sexual indecency and sexual assault.

At no point in the Petitioner's appeals has the State contested Mr. Wilson's statements that it was, in shown fact, the Court that introduced the allegations of sexual indecency and 2nd degree sexual assault. A fact that acknowledges improprieties and is plain error.

2) Double Jeopardy

Response to Petition for Writ of Habeas Corpus, 8-5-2019: page 20, line 3: "At trial, the jury found Wilson guilty of both second-degree sexual assault and sexual indecency with a child." Line 6: "After Wilson's motion for a new trial resulted in that conviction *(sexual assault)* being set aside, he pleaded nolo contedere to sexual indecency." Explanation added.

Supplemental Response..., page 4, section B, lines 5-6: "Wilson seems to assert that his conviction was secured by means of various errors that he believes *adhered in the case due to his initial conviction of that same offense at an earlier jury trial."* Emphasis added. "Initial conviction of that same offense at an earlier jury trial." Admission of given fact. Twice convicted of the same offense.

3) State's Evidence

Response to Petition for Writ of Habeas Corpus, 8-5-2019: The State gave no recognition, thus no contest, to Petitioner's Ground Four in his Habeas filing, §2254. No contest is admission.

The State gave no contest to the following statements by the Petitioner, as stated in Petitioner's Response, 8-26-2019:

1) Page 3, Para 2: Petitioner stated Court and Prosecution acted in malice and vindiction due to Petitioner's acquittal, and subsequent efforts to make right. Thus, resulting in unnecessary interference for exercising a constitutional or statutory right.

2) Page 5, Para 2: Petitioner stated the Court introduced the additional charges of sexual indecency and sexual assault. At no point in the Petitioner's appeal process has this claim been contested. Without contest it is accepted fact. Even when ignored.

CLOSING

No charging instrument, no evidence, no felony information. If one stands before any court in this land today and states before a plea "I am guilty of the murder deaths of President Abraham Lincoln and John F. Kennedy.", is this person actually guilty? Or, rather, guilty because they said they are?

CONCLUSION

The Petition for a Writ of Certiorari should be granted.

Respectfully Submitted,

_____

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NOTARY

STATE OF ARKANSAS)
) SS
COUNTY OF _____)

Petitioner. Lamar D. Wilson, being first duly sworn under oath, presents that he has read and subscribed to the above and states that the information therein is true and correct.

SUBSCRIBED AND SWORN TO AND BEFORE ME this _____ day of _____, 2022.

_____
Notary Public

My commission expires: _____