

21-8143

No. \_\_\_\_\_

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

MARCUS BRANCH — PETITIONER, *pro se*

Supreme Court, U.S.  
FILED

JUN - 7 2022

OFFICE OF THE CLERK

vs.

STATE OF OHIO — RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO THE

EIGHTH DISTRICT OF OHIO COURT OF APPEALS

MACUS BRANCH, #774-701  
TRUMBULL CORRECTIONAL INSTITUTION  
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## **QUESTIONS PRESENTED**

**FIRST QUESTION PRESENTED FOR REVIEW:**

WAS THE "DOUBLE JEOPARDY" CLAUSE VIOLATED WHEN I WAS SENTENCED THREE TIMES FOR THE EXACT SAME OFFENSE I'M HERE FOR NOW PURSUANT TO USCS CONSTITUTION, AMENDMENT 5?

**SECOND QUESTION PRESENTED FOR REVIEW:**

WILL IT BE PROVEN THAT MY CASE IS UNCONSTITUTIONAL BECAUSE IT VIOLATES THE DOCTRINE OF THE SEPERATION OF POWERS BECAUSE IT ALLOWED A NON-JUDICIAL AGENCY (THE PAROLE BOARD) TO PERFORM THE JUDICIAL FUNCTION OF TRYING AN INDIVIDUAL FOR A CRIMINAL OFFENSE AND IMPOSING SENTENCE?

**THIRD QUESTION PRESENTED FOR REVIEW:**

WHERE MY DUE PROCESS RIGHTS VIOLATED BECAUSE I WAS ARRESTED FOR THE CRIME ON SEPTEMBER 3, 2019. AND I DIDN'T GET ARRAIGNED FOR IT UNILL FEBRUARY 25, 2020? (WHEN I GOT ARRESTED: THEY WAITED FOR PAROLE TO IMPOSE A SENTENCE FIRST BEFORE ARRAIGNING ME)

**FOURTH QUESTION PRESENTED FOR REVIEW:**

IS THERE PROOF THAT I'VE ALREADY PREVIOUSLY SERVED PRISON TIME FOR THIS EXACT SAME CASE THAT I'M HERE FOR ALREADY?

**FIFTH QUESTION PRESENTED FOR REVIEW:**

WERE MY CONSTITUTIONAL RIGHTS VIOLATED? OR DOES THIS CASE  
ALIGN ITSELF WITH: OHIO CONSTITUTION, ARTICLE 1, SECTION 10; OHIO  
REVISED CODE ANNOTATED 2941.25; CRIMINAL RULE 7 (D); OR OHIO  
REVISED CODE ANNOTATED 2967.11?

## 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

1.STATE V. NUTT, 1999 OHIO APP. LEXIS 4460 (SEPTEMBER 16, 1999)

2.STATE V. MARTELLO, 97 OHIO ST. 3D 398 (DECEMBER 13, 2002)

3.STATE V. BRANCH, 2022-OHIO-132 (JANUARY 20, 2022)

4.WHITE V. KONTEH, 1999 OHIO APP. LEXIS 1230

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## **TABLE OF AUTHORITIES CITED**

### **CASES**

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- 1.STATE V. NUTT, 1999 OHIO APP. LEXIS 4460 (SEPTEMBER 16, 1999)
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### **STATUTES AND RULES**

- 1.UNITED STATES CONSTITUTION, FIFTH AMENDMENT
- 2.OHIO CONSTITUTION, ARTICLE 1, SECTION 10
- 3.OHIO REVISED CODE ANNOTATED 2941.25
- 4.CRIMINAL RULE 7 (D)
- 5.OHIO REVISED CODE ANNOTATED 2967.11

### **OTHER**

**PROOF I've Previously Served Prison Time For Parole, For This Case: Prior  
To Being Sentenced To 4 More Years Of Parole Time – Appendix D**

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 \_\_B\_\_ to the petition and is

☒ reported at \_\_\_\_\_ STATE V. BRANCH, 2022-OHIO-132 (JANUARY 20, 2022) \_\_\_\_\_; 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

☐ 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 in Appendix \_\_\_\_\_

☐ An extension of time to file the petition for writ of certiorari was Granted to and including \_\_\_\_\_ 9date) on \_\_\_\_\_ (date) in Application No. \_\_\_\_A\_\_\_\_\_.

The jurisdiction of this Court is invoked under U.S.C. § 1254(1).

☒ For cases from **state courts**:

The date on which the highest state court decided my case was \_\_\_\_\_APRIL 26, 2022\_\_\_\_\_.

A copy of that decision appears at Appendix \_A\_.

☒ A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_May 13, 2022\_\_\_\_\_ and a copy of the order denying rehearing appears at Appendix \_C\_.

☐ An extension of time to file the petition for writ of certiorari was Granted to and including \_\_\_\_\_ 9date) on \_\_\_\_\_ (date) in Application No. \_\_\_\_A\_\_\_\_\_.

The jurisdiction of this Court is invoked under U.S.C. § 1257(A).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Involved herein are Amendments V and XIV to the United States

Constitution:

### Amendment V:

"No person shall be deprived of life, liberty, or property, without the due process of law..."

### Amendment XIV:

"...No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

## STATEMENT OF THE CASE

I was Sentenced THREE Times for this crime! 1. September 3, 2019 Until February 17, 2020 (Judicial (Parole) Sanction Time), 2. February 25, 2020 Until February 25, 2023 (F3: Attempted Felonious Assault), and from 3. February 25, 2023 Until March 3, 2027 (Judicial (Parole) Sanction Time). IF THAT ISN'T A VIOLATION OF DOUBLE JEOPARDY: THEN I DON'T KNOW WHAT IS!!

I was on Parole For Case Number 632204. I committed this crime on September 2, 2019. Why Wasn't I Arraigned While I Was In Jail? I WASN'T ARRAIGNED UNTIL FEBRUARY 25, 2020!!!! I had turned myself in September 3<sup>rd</sup> (the next day). Saw a Detective from The Rocky River Police Department who read me My Miranda Rights and asked me questions about it. I'll Tell You Why: They Wanted Parole To Impose A Sentence FIRST Before They Tried Me In Common Pleas Court!... Therefore Violating My Due Process!..

But, Like I Said: I turned myself into The Parole Office(r) the next morning (September 3, 2019). I was taken to The Cuyahoga County Jail. I did two days in The Cuyahoga County Jail and was transported to Lorain Correctional Institution on September 5, 2019. I remained under The Same Prison Number As My Previous Case #A760122. I saw The Ohio Adult Parole Authority Hearing Board in October 2019. They found me Guilty of this offense and They Inappropriately Sentenced Me To Five And A Half Months of Prison Time for This Case (Note: VIOLATION OF THE DOCTRINE OF THE SEPERATION OF POWERS because it allowed a Non-Judicial Agency (The Parole Board) to perform The Judicial Function of trying an

individual for a criminal offense and imposing sentence\*). Then, I rode out to Mansfield Correctional Institution in January 2020. I was finally released from Mansfield Correctional Institution on February 17, 2020. And Like I Said: The crime happened September 2, 2019. I was Arrested for it September 3, 2019. And now I'm having My Arraignment February 25, 2020 **WHICH WAS A HUGE VIOLATION OF DUE PROCESS!**..They were supposed to Hold me in Jail until my Arraignment. And from there: They, inappropriately, Sentenced me to **THREE YEARS** for The F3: Attempted Felonious Assault and **FOUR YEARS** "Judicial (Parole) Sanction Time" Even after Parole had already imposed a Sentence!

**NOTE: Even In My Court of Appeals: They Said If I Can PROVE "I've Already Been Sentenced To Five And A Half Months For This Case For Parole: Then My "Judicial (Parole) Sanction" Time On My Case WOULD BE VACATED"...** State v. Branch, 2022-Ohio-132 (January 20,2022) If My Attorney Would Have Had The Information And Paperwork He Has Now: He could have proved that. But I have **PROOF** for you from The Cuyahoga County Sheriff (Records Division) and From Justin L. Ruggles, The Bureau of Records Management myself, Authorized, Time-Stamped, and Sealed so you could see for yourself that Parole had already imposed a five and a half month Sentence prior to

them imposing an extra 4 year sentence for Parole, therefore violating my Double  
Jeopardy.

## **REASONS FOR GRANTING PETITION**

**Introduction – To leave this case as it stands: Would Be Wrong. It would allow others in the Future: To have Their Constitutional Rights Violated. And, It also exposes Ohio for some of the Errors: and things they need to Correct in their Justice System. Plus, I Plan On Running For President Of The United States in 2024: To Help The Working Families, Provide Better Health Care, And More Jobs: So I Kinda Need Out Of Here.**

### **I. THE COURT SHOULD GRANT THE PETITION...**

**The Fifth Amendment Of The United States Constitution WAS VIOLATED! I Was Sentenced Three Different Times For This Case (September 3, 2019-February 17, 2020; February 25, 2020-February 25, 2023; February 25, 2023-March 3, 2027). Our Constitution Protects Us From “multiple Sanctions for the same offense.” Just Off This Alone: The Courts Should Find That My Sentence Is Un-Constitutional: And Refer Me Back To The State Courts To Be Resentenced. Mainly Striking Down The “Judicial (Parole) Sanction” Time On My Sentence.**

### **ARGUMENT**

#### **Proposition of Law No. 1:**

**“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 twice put**

**In 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.” Pursuant to USCS Const. Amend. 5**

Obviously, I was Sentenced THREE Times For The Same Offense (TWICE FOR PAROLE). I don't think there's Any Question Here: Were My Fifth Amendment Rights Violated? Like a Moocher at My GrandFather's Church!..In State v. Martello, 97 Ohio St. 3d 398 (December 13, 2002) : Martello caught a \*NEW Charge and got Locked-up...He went and Saw The Parole Board; And The Parole Board gave Martello a 91-day Prison Sentence. The Courts Determined that his 91-day Prison Sentence for Parole was enough. And they threw out (Dismissed) his whole Criminal Prosecution for the sake of not violating his Double Jeopardy Rights.

### **ARGUMENT**

In OUR CONSTITUTION! For Ohio: Ohio Constitution, Article 1, Section 10 says “No person shall be twice put in jeopardy for the same offense.”

Ohio Revised Code Annotated 2941.25 provides that “but the defendant may be convicted of **only one**.” Your Honor, I was Sentenced THREE Different Time Periods To Serve For The Same Offense. I'm not even asking to go Home right away. I'm just Praying & Believing That You'll make it Right in Your Honorable Courtroom. I've been Sentenced Twice For Parole And Have Already (ONCE IN JEOPARDY) Served Judicial (Parole) Sanction Time For Them. Your Honor, In Your Honorable Courtroom: I'm Asking that You'll Do The Right Thing And Terminate My Judicial Sanction Sentence On This Case.



I would fall under State v. Nutt.: In State v. Nutt, 1999 Ohio App. LEXIS 4460: Nutt got a 90-day bad time penalty for his \*NEW case from The Parole Board. Nutt also got a 9 month Prison Sentence from The Pickaway County Court of Common Pleas. Separate institutions, in different branches of Government, conducted the proceedings at different times and imposed different penalties. Each penalizing institution employed different rules of procedure, as well as different standards of proof. Therefore, Like mine, the bad time (Judicial (Parole) Sanction Time) proceeding against Appellant is entirely **SEPARATE** from my prosecution in The Common Pleas Court. Ohio Revised Code Ann. &2967.11, in substance, authorized the imposition of a new penalty for a new offense, while formally declaring the new penalty to be part of the original sentence. Appellant's ninety-day (Judicial (Parole) Sanction Time) bad time penalty was a new period of incarceration imposed as punishment for the Complicity (Attempted Felonious Assault) Charge and not part of Appellant's Original Prison Sentence. While &2967.11 attempted to formally make bad time (Judicial (Parole) Sanction ...Page # 3 Time) part of the original sentence, the purpose behind imposing bad time (Judicial (Parole) Sanction Time) was to punish new criminal conduct that occurred after imposition of the original sentence. **THE OUTCOME:** "Appellant's conviction and sentence in the lower court was in violation of the Double Jeopardy Clauses of the Ohio and United States Constitutions."

## II. THE COURT SHOULD GRANT THE PETITION...

### **Proposition of Law No. 2:**

#### **"The Doctrine Of The Seperation Of Powers"**

In Konteh, The Eleventh District Court of Appeals Concluded that The Statute was Un-Constitutional because it “**VIOLATED The Doctrine Of The Separation Of Powers** because it allowed a Non-Judicial Agency (The Parole Board) to perform The Judicial Function of trying an individual for a criminal offense and imposing sentence.” 1999 Ohio App. LEXIS 1230, \*20.

When The Parole Board (a Non-Judicial Agency) Performed The Judicial Function of trying Me for a criminal offense and imposing a Sentence of Five and a Half: They, too, **VIOLATED The Doctrine Of The Seperation Of Powers.**

III. THE COURT SHOULD GRANT THE PETITION...

IV. **Proposition of Law No. 3:**

V. **“Due Process”**

VI. The crime happened on September 2, 2019. Why wasn't I taken to Jail to be Arraigned for it UNTIL FEBRUARY 25, 2020??? I turned myself in September 3<sup>rd</sup> (the next day). Saw a Detective from The Rocky River Police Department who read me my Miranda Rights & asked me questions about it. I'll tell You why: They Wanted Parole To Impose A Sentence FIRST Before They Tried Me In Common Pleas Court...Therefore Violating My Due Process

### CONCLUSION

The Petition for Writ of Certiorari should be granted review due to the ground(S) presented herein and...

Me having to do Time for Parole, Twice, is a Violation Of My Double Jeopardy. They even said so at my Court of Appeals. The Problem was: My Attorney didn't have the information he needed to give to them. Now You Do.

So, I'm Asking, In Your Honorable Courtroom: Would You Do The Right Thing And Adjust/Amend My Sentence (Criminal Rule 7 (D)) And Vacate/Terminate The Judicial Sanction Time Left On My Case? Because Not Only Have I Completed/Served Prison Time/Judicial (Parole) Sanction Time As A Parole Violator For This Case But To Leave The Case As It Stands: Would Be A Clear Violation Of Double Jeopardy.

Thank-You & God Bless!..

Respectfully submitted,

Marcus A. Branch

Date: 06/01/2022

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