

22-7562

No. _____

ORIGINAL

Supreme Court, U.S.
FILED

MAY 01 2023

OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

JOSEPH TETAK — PETITIONER

(Your Name)

vs.

JAY FORSHEY, WARDEN — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. Court of Appeals for Sixth Circuit

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

JOSEPH TETAK (#A748-299)

(Your Name)

(N.C.I.) 15708 McConnelsville Road

(Address)

Caldwell, Ohio 43724-8902

(City, State, Zip Code)

N/A

(Phone Number)

QUESTION(S) PRESENTED

Does the doctrine of stare decisis prevail on a state supreme court's determination of a constitutional issue in the same manner as this Court's determination of Supreme Law?

Does an intermediate state appellate court's decision govern the deference standard of federal habeas corpus where it conflicts with the primary judicial policymaker's decision on the same constitutional protection?

Is debatable a subjective or objective analysis?

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:

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT.....	6
CONCLUSION.....	7

INDEX TO APPENDICES

APPENDIX A	Order of the 6th Circuit Court of Appeals denying rehearing (Mar. 10, 2023)
APPENDIX B	Order of the 6th Circuit Court of Appeals denying certificate of appealability (Jan. 31, 2023)
APPENDIX C	R & R of the S.D. Ohio (Nov. 2, 2021) Opinion & Order of the S.D. Ohio (Aug. 15, 2022)
APPENDIX D	
APPENDIX E	
APPENDIX F	

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Agostini v. Felton , 521 U.S. 203	6
Brown v. Ohio , 432 U.S. 161	6
In re Nielson , 131 U.S. 176	6
Miller-El v. Cockrell , 537 U.S. 322	7
Missouri v. Hunter , 459 U.S. 359	6
State v. Logan , 60 OS2d 126	6
Welch v. United States , 578 U.S. 120	6

STATUTES AND RULES

OTHER

Double Jeopardy Clause	6
<u>Stare Decisis</u>	6

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 B to the petition and is

reported at 2023 U.S. App. LEXIS 2458; 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 c to the petition and is

reported at 2021 U.S. Dist. LEXIS 211203; 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 _____ 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

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was January 31, 2023.

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: March 10, 2023, and a copy of the order denying rehearing appears at Appendix A.

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).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Double Jeopardy Clause

28 U.S.C. §2254

STATEMENT OF THE CASE

In 2018, Tetak was indicted on one count of assault (Count 1) two counts of felonious assault (Counts 2 and 4), two counts of kidnapping with firearm specifications (Counts 3 and 6), and one count of rape with a firearm specification (Count 5). See **State v. Tetak**, No CT2019-0052, 2020 WL 3057840, at *1 (Ohio Ct. App. June 8, 2020). In exchange for the dismissal of Counts 4 and 6, which the state was required to do, Tetak pleaded guilty to one count of assault, one count of aggravated assault, one count of kidnapping with a firearm specification, and one count of sexual battery with a firearm specification. *Id.* The trial court imposed sentences of 6-month jail term on misdemeanor assault, concurrent to a 18-month prison term for aggravated assault, concurrent to a 9-year prison term on kidnapping, and a consecutive 60-month prison term for sexual battery. *Id.* The aggregate total was 15 years, because the firearm specification was ordered prior to and consecutive with all other terms.

Tetak timely appealed and raised: (1) that the trial court's imposition of consecutive sentences was not supported by the record and (2) that counsel rendered ineffective assistance by failing to object to the imposition of costs. The state appellate court rejected these arguments. *Id.* at *4-5. Tetak then moved to reopen his appeal, contending that appellate counsel was ineffective for failing to argue that the trial court impermissibly imposed prison terms for allied offenses of similar import, in violation of state law and the Double Jeopardy Clause. Reopening was denied and the

Ohio Supreme Court declined jurisdiction. **State v. Tetak**, 168 N.E. 3d 521 (Ohio 2021)(table).

In 2021, Tetak filed a §2254 petition, raising the exhausted ineffective-assistance-of-appellate-counsel claim and the allied-offenses-of-similar-import claim. The magistrate judge recommended that the petition be denied because counsel could have reasonably concluded that there was no basis on which to challenge the sentencing court's conclusion that kidnapping and sexual battery were not allied offenses, eventhough the sentencing court was never presented with such an argument. The district court overruled the objections and adopted the magistrate judge's report and recommendations in full.

Tetak then sought a certificate of appealability with the 6th Circuit Court of Appeals. The court denied a COA and further denied rehearing. **Appx. A & B.**

This petition for certiorari follows.

REASONS FOR GRANTING THE PETITION

This Honorable Court ought to accept jurisdiction over this case to answer the three (3) questions presented. These queries are very important in discerning whether the state's highest court's ruling govern the deference due on federal habeas corpus or does the subjective opinion of a state appellate court govern.

This Court has held that stare decisis is at its weakest when courts interpret the United States Constitution, **Agostini v. Felton** 521 U.S. 203, 235 (1997), but is this not the same when a state's highest court has set forth the constitutional policy and a state appellate court fails to adhere to it based upon application of a generic analysis.

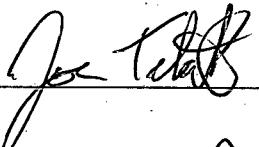
The Double Jeopardy Clause does no more than prevent the sentencing court from prescribing greater punishment than the legislature intended, **Missouri v. Hunter**, 459 U.S. 359, 366 (1983), but this is exactly what the Ohio Supreme Court concluded on the offenses concerned herein. The crime was a continuous one and was but a single crime until prosecuted, **In re Nielson**, 131 U.S. 176, 182-83 (1889), but the state appellate court, ironically, divided it into a series of temporal or spatial units, **Brown v. Ohio**, 432 U.S. 161, 169 (1977), to avoid the limitations of the Double Jeopardy Clause. **State v. Logan**, 60 Ohio St.2d 126 (1979) does not agree with the state appellate court's subjective analysis and, therefore, ought to have incited the Sixth Circuit to have found it debatable among reasonable minded jurists whether Petitioner did not state a denial of a constitutional right, **Welch v. United** 

States, 578 U.S. 120, 127 (2016), and whether it deserved to proceed further, *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 5-1-23