No. 24-5350

In the Supreme Court of the United States

JAY SANDON COOPER — PETITIONER

vs.

STATE OF TEXAS — RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI

TO

THE COURT OF APPEALS FOR THE FIFTH DISTRICT OF TEXAS

PETITIONERS' PETITION FOR REHEARING

Jay Sandon Cooper
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PETITIONER, *Pro Se*

RULE 29.6 STATEMENT

The corporate disclosure statement in the petition for a writ of certiorari remains accurate.

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PETITION FOR REHEARING

Petitioner Jay Sandon Cooper respectfully petitions for rehearing of this Court's October 21, 2024, order denying his petition for a writ of certiorari.

REASONS FOR GRANTING REHEARING

Rehearing of the denial of certiorari is appropriate in situations involving "intervening circumstances of a substantial or controlling effect or ... other substantial grounds not previously presented." S. Ct. R. 44.2. This has included "when [the Court] has granted review of a related issue in another case." Stern & Gressman, *Supreme Court Practice* at Ch. 15.6.(B) (11th ed. 2019); *see also id.* at Ch. 15.5 (describing this as a "recognized categor[y]" supporting rehearing). Petitioner petitions this court on grounds of intervening circumstances and on other substantial grounds.

THE COURT OF APPEALS' OPINION (Appendix)

P.1: "On Appeal from the County Court at Law No. 6".

P.1: "[A] Collin County Deputy Constable attempted to serve appellant with a Writ of Possession. Appellant was arrested after he refused to

come out of the residence and denied the peace officer entry into the residence."

NOTE: As will be discussed below, a Writ of Possession is "process in a civil case". The Legislature SPECIALLY made prevention of execution of civil process punishable as a "Class C misdemeanor" under Tex. Penal Code §38,16. As will be shown, it was fundamental error for the county court at law to preside over the prosecution of this case that required evidence of execution of a Writ of Possession, making prevention of execution a Class C Misdemeanor. The County Court at Law had no jurisdiction of a Class C Misdemeanor, so Petitioner was sentenced under the GENERAL (broader) statute (Tex. Penal Code §38,15 – a Class B Misdemeanor) that is in *pari materia* to Tex. Penal Code §38,16. As will be shown, that is fundamental error, because the judiciary infringed upon the constitutional powers of the legislature (separation of powers) to set the punishment at a Class C Misdemeanor when civil process was being executed. The Information did not identify either section of the Penal Code.

P.2: "The jury found appellant guilty as charged in the information and assessed punishment at ten days' confinement and a $500.00 fine."

P.5: "TEX. R. APP. P. 38.8(b)(4); ...*Scwartzkopf v. State*, Nos. 05-21-00662-CR, 05-21-00663-CR, 2022 WL 3714518, at *1 (Tex. App.—Dallas Aug. 29, 2022, no pet.)... *Washington v. State*, No. 01-13-01038-CR, 2015 WL 7300511, at *2 (Tex. App.—Houston [1st Dist.] Nov. 19, 2015, no pet.) (mem. op., not designated for publication) ("When an appellant fails to file a brief, we may submit the case without briefs and review the entire record, **in the interest of justice**, to determine if the record reveals fundamental error.")." (emphasis added)

NOTE: The court of appeals identified a process that was due and weighs heavily against Petitioner's liberty interests.

Pp.5-6: "Fundamental errors include: ... (5) absence of subject-matter jurisdiction; (6) prosecution under a penal statute that does not comply with the Separation of Powers Section of the state constitution".

P.6: "In the interest of justice, we have reviewed the entire record for fundamental error and have found none."

NOTE: Petitioner was deprived of due process when the court of appeals failed to identify fundamental errors "in the interest of justice". Although written in the context of a death penalty case, this court has previously said, "[M]eaningful appellate review... promotes reliability and consistency." Clemons v. Mississippi, 494 U.S. 738, 749, 110 S. Ct. 1441, 1448, 108 L. Ed. 2d 725 (1990).

JURISDICTION OF THE COUNTY COURT AT LAW

> The trial court in this case, County Court at Law No. [6] of Collin County, is a statutory county court. Tex. Gov't Code § 25.0451(a)([6]). As a general rule, statutory county courts have "jurisdiction over all causes and proceedings, civil and criminal, original and appellate, prescribed by law for [constitutional] county courts." *See id.* § 25.0003(a).

Hizar v. Heflin, 672 S.W.3d 774, 805 (Tex. App.—Dallas 2023, pet. denied)

> **Constitutional county courts... have "exclusive original jurisdiction of misdemeanors other than** misdemeanors involving... **cases in which the highest fine that may be imposed is $500 or less."** Tex. Gov't Code § 26.045(a); Tex. Code Crim. Proc. art. 4.07 ("The county courts shall have original jurisdiction of all misdemeanors of which exclusive original jurisdiction is not given to the justice court, and when the fine to be imposed shall exceed five hundred dollars."); *see also* Tex. Const. art. V, § 16 ("The County Court has jurisdiction as provided by law."). Constitutional county courts have appellate jurisdiction "in criminal cases of which

> justice courts and other inferior courts have original jurisdiction." Tex. Gov't Code § 26.046; Tex. Code Crim. Proc. art. 4.08 ("The county courts shall have appellate jurisdiction in criminal cases of which justice courts and other inferior courts have original jurisdiction."). Justice of the peace courts have original jurisdiction "in criminal matters of misdemeanor cases punishable by fine only." Tex. Const. art. V, § 19...

Waggoner v. State, No. 01-20-00074-CR, 2021 WL 5828936, at *2 (Tex. App.—Houston [1st Dist.] Dec. 9, 2021, pet. ref'd)(emphasis added).

FUNDAMENTAL ERRORS WERE OBVIOUS IN THE RECORD

The fundamental errors herein discussed were brought to the trial court's attention and made part of the record on appeal in Petitioner's (defendant's) "Motion to Quash Information" (ICR (11/30/21) at 227, 231-238).

Fundamental error includes "a penal statute's being in compliance with the Separation of Powers Section of the state constitution." Saldano v. State, 70 S.W.3d 873, 888 (Tex. Crim. App. 2002).

The separation of powers clause is set forth at Texas Constitution, Article II, § 1. "The legislature is vested with the lawmaking power of the people in that it alone "may define crimes and prescribe penalties."" Matchett v. State, 941 S.W.2d 922, 932 (Tex. Crim. App. 1996); *citing*

State ex rel. Smith v. Blackwell, 500 S.W.2d 97, 104 (Tex.Crim.App.1973).

> A **defendant has a due process** and due course of law **right to be prosecuted under a special statute** that is in pari materia with a broader statute when the statutes irreconcilably conflict, as they do **when the special statute provides for a lesser punishment.**

State v. Wiesman, 269 S.W.3d 769, 774 (Tex. App.—Austin 2008, no pet.); (emphasis added) *citing* Mills v. State, 722 S.W.2d 411, 414 (Tex. Crim. App. 1986); U.S. Const. amend. XIV..

> Appellants were charged with the state criminal offense of interfering with the public duties of a peace officer. Tex. Penal Code § 38.15(a)(1) (Interference with Public Duties). That statute provides, in relevant part, that "[a] person commits an offense if the person with criminal negligence interrupts, disrupts, impedes, or otherwise interferes with: (1) a peace officer while the peace officer is performing a duty or exercising authority imposed or granted by law." *Id.*

Faust v. State, 491 S.W.3d 733, 754 (Tex. Crim. App. 2015). § 38.15 is punishable as a Class B Misdemeanor and, unlike the punishment for a Class C Misdemeanor, Class B includes confinement.

> An individual adjudged guilty of a Class B misdemeanor shall be punished by:
> (1) a fine not to exceed $2,000;
> (2) confinement in jail for a term not to exceed 180 days; or
> (3) both such fine and confinement.

Tex. Pen. Code Ann. § 12.22.

> Section 38.16 of the Penal Code (Preventing Execution of Civil Process) provides:
> (a) A person commits an offense if he intentionally or knowingly by words or physical action prevents the execution of any process in a civil case.
> (b) [...]
> (c) An offense under this section is a Class C misdemeanor.

Carney v. State, 31 S.W.3d 392, 394, n.2 (Tex. App.—Austin 2000, no pet.); citing Tex.Penal Code Ann. § 38.16 (West Supp.2000). In *Carney*, the court noted that this conflict between Sec. 38.15 and 38.16 would likely occur. See Carney v. State, 31 S.W.3d at 396, n.11; *citing* Gerald S. Reamey.

"An individual adjudged guilty of a **Class C misdemeanor** shall be **punished by a fine not to exceed $500.**" Tex. Pen. Code Ann. § 12.23 (emphasis added).

The Information described Texas Penal Code Sec. 38.16 (ICR at 18), but Defendant was punished for a Class B Misdemeanor (ICR at 1146). The County Court at Law had no jurisdiction of a Class C Misdemeanor (Tex.Penal Code Ann. § 38.16).

In *Hamm v. Smith* (Case No. 23-167), this court stated:

> The Eleventh Circuit's opinion is unclear on this point, and this Court's ultimate assessment of any petition for certiorari by the State may depend on the basis for the Eleventh Circuit's decision. Therefore, we grant the petition for certiorari and Smith's motion for leave to proceed in forma pauperis, vacate the judgment of the Eleventh Circuit, and remand the case for further consideration consistent with this opinion.

604 U. S. ____ (Nov. 4, 2024)(Per Curiam).

In *Jones, Charles E. v. United States* (Case No. 23-7166), this court stated:

> The motion of petitioner for leave to proceed in forma pauperis and the petition for a writ of certiorari are granted. The judgment is vacated, and the case is remanded to the United States Court of Appeals for the Eleventh Circuit for further consideration in light of the brief for the United States before this Court filed on October 9, 2024.

604 U. S. ____ (Nov. 12, 2024). In relevant part, the referenced brief for the United States in Case No. 23-7166 provides:

> See Lawrence v. Chater, 516 U.S. 163, 167 (1996) (per curiam) (recognizing the Court's power to grant, vacate, and remand [...] in order to "assist[] the court below by flagging a particular issue that it does not appear to have fully considered"). [...] see Lawrence, 516 U.S. at 166 (recognizing the Court's power to grant, vacate, and remand in light of its "own decisions").

Jones, Charles E. v. United States; Case No. 23-7166; Brief of the United States at 16.

A remand would allow the court of appeals to reconsider these issues in light of this Court's intervening decisions in *Hamm* and *Jones*.

> Every procedure... which might lead ["the average man as a judge"] not to hold the balance nice, clear, and true between the state and the accused denies the latter due process of law.

Tumey v. State of Ohio, 273 U.S. 510, 532, 47 S. Ct. 437, 444, 71 L. Ed. 749 (1927). This court has previously given consideration to "the actual and perceived integrity of the judicial process." *Quoting* Dobbs v. Jackson Women's Health Org., 597 U.S. 215, 218, 142 S. Ct. 2228, 2237, 213 L. Ed. 2d 545 (2022); *citing* Payne v. Tennessee, 501 U.S. 808, 827, 111 S.Ct. 2597, 115 L.Ed.2d 720.

> This Court's precedents have recognized the "vital state interest" in safeguarding " 'public confidence in the fairness and integrity of the nation's elected judges,' "

Williams-Yulee v. Florida Bar, 575 U.S. 433, 433, 135 S. Ct. 1656, 1659, 191 L. Ed. 2d 570 (2015); *citing* Caperton v. A.T. Massey Coal Co., 556 U.S. 868, 889, 129 S.Ct. 2252, 173 L.Ed.2d 1208.

> [T]he judiciary['s] [...] authority depends in large measure on the public's willingness to respect and follow its decisions. Public perception of judicial integrity is accordingly " 'a state interest of the highest order.' "

Williams-Yulee v. Florida Bar, 575 U.S. at 433, 135 S. Ct. 1656; *citing* Caperton v. A.T. Massey Coal Co., 556 U.S. at 889, 129 S.Ct. 2252.

Petitioner was deprived of his due process rights twice:

(1) When Petitioner was not prosecuted under Tex.Penal Code Ann. § 38.16 (a Class C Misdemeanor) when he was accused of interference with execution of civil process (a writ of possession).

> A defendant has a due process and due course of law right to be prosecuted under a special statute that is in pari materia with a broader statute when the statutes irreconcilably conflict, as they do when the special statute provides for a lesser punishment.

State v. Wiesman, 269 S.W.3d 769, 774 (Tex. App.—Austin 2008, no pet.); *citing* Mills v. State, 722 S.W.2d 411, 414 (Tex. Crim. App. 1986); and

(2) When Petitioner was deprived of a meaningful appellate review of the record to identify fundamental errors. The Court of Appeals' review of the record did not identify the fundamental error described above, in which the prosecutor (executive branch) and the County Court (judicial

branch) both infringed on the exclusive power of the legislature. "The legislature is vested with the lawmaking power of the people in that it alone "may define crimes and prescribe penalties."" Matchett v. State, 941 S.W.2d 922, 932 (Tex. Crim. App. 1996); *citing* State ex rel. Smith v. Blackwell, 500 S.W.2d 97, 104 (Tex.Crim.App.1973).

A remand would allow the court of appeals to reconsider these issues in light of this Court's recent decisions in *Hamm* and *Jones*. As the United States wrote in its Brief in Case No. 23-7166:

> See Lawrence v. Chater, 516 U.S. 163, 167 (1996) (per curiam) (recognizing the Court's power to grant, vacate, and remand [...] in order to "assist[] the court below by flagging a particular issue that it does not appear to have fully considered"). [...] see Lawrence, 516 U.S. at 166 (recognizing the Court's power to grant, vacate, and remand in light of its "own decisions").

CONCLUSION

The petition for rehearing should be granted.

This court should declare that the Texas court of appeals' opinion is unclear on the points of due process and fundamental errors, and this Court's ultimate assessment of any petition for certiorari by Petitioner may depend on the basis for the Texas court of appeals' decision.

Therefore, this court should grant the petition for certiorari and Petitioner's motion for leave to proceed in forma pauperis, vacate the judgment of the Texas court of appeals for the Fifth District, and remand the case for further consideration consistent with this motion for rehearing and any opinion by this court.

Respectfully submitted,

November 15, 2024

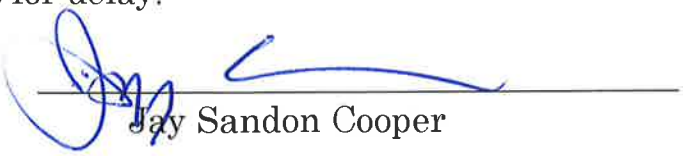
Jay Sandon Cooper

Petitioner, Pro Se

CERTIFICATE

Pursuant to Rule 44.2, I, Jay Sandon Cooper, Petitioner, hereby certify that the petition for rehearing is restricted to the grounds specified in Rule 44.2. I further certify that the petition for rehearing is presented in good faith and not for delay.

November 15, 2024



Jay Sandon Cooper

APPENDIX

A. Court of Appeals' Opinion.

Affirmed and Opinion Filed October 5, 2023

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-21-01002-CR

JAY SANDON COOPER, Appellant
V.
THE STATE OF TEXAS, Appellee

On Appeal from the County Court at Law No. 6
Collin County, Texas
Trial Court Cause No. 006-86065-2019

MEMORANDUM OPINION

Before Justices Partida-Kipness, Reichek, and Breedlove
Opinion by Justice Partida-Kipness

Jay Sandon Cooper appeals from a judgment adjudicating him guilty of the misdemeanor offense of interference with the duties of a peace officer. Appellant, proceeding pro se, failed to file an appellant's brief. We affirm.

BACKGROUND

On June 3, 2019, a Collin County Deputy Constable attempted to serve appellant with a Writ of Possession. Appellant was arrested after he refused to come out of the residence and denied the peace officer entry into the residence. The State charged appellant by information with the misdemeanor offense of interference with

the duties of a peace officer. The case was tried to a jury in October 2021. The jury found appellant guilty as charged in the information and assessed punishment at ten days' confinement and a $500.00 fine. The jury also recommended the sentence and fine be suspended. The trial court signed a judgment on October 29, 2021, and Appellant timely appealed.

Appellant proceeded pro se in this Court. The record in this appeal was complete on January 5, 2023, and appellant's brief was originally due Monday, February 6, 2023. *See* TEX. R. APP. P. 4.1(a). No brief was filed, and on February 8, 2023, this Court directed appellant to file his brief by February 21. 2023.[1] Over the next five months, appellant sought multiple extensions of time to file his brief and to supplement the record:

- On February 21, 2023, appellant filed his "Motion to Extend Time" to file the brief seeking "an extension of time to file his Brief."
- On March 8, 2023, we granted the motion for extension of time to file the brief and ordered appellant to file his brief by April 7, 2023.
- On April 7, 2023, appellant filed his "Motion for Order to Clerk; and Motion to Extend Time" seeking supplementation of the clerk's record and an extension of time to file appellant's brief.
- On May 4, 2023, this Court denied appellant's request for supplementation of the clerk's record but granted the request for extension of time to file brief, ordering appellant to file his brief by June 5, 2023. The May 4, 2023 order cautioned appellant: "In

[1] The Court ordered appellant to file his brief within ten days. The tenth day, February 18, 2023, was a Saturday, and Monday February 20, 2023, was a legal holiday, so appellant's brief was due February 21, 2023. *See* TEX. R. APP. P. 4.1(a).

view of the extensions granted, the Court is unlikely to grant any further extensions on appellant's brief."

- On May 8, 2023, appellant filed "Appellant's Request for Ruling on Previously Filed 'Motion for Order to Clerk; and Motion to Extend Time'; and Motion to Extend Time or Reset the Briefing Period."

- On May 10, 2023, this Court denied the May 8, 2023 motion in part, but we granted the request for extension of time to file the brief, and ordered appellant to file his brief on or before June 5, 2023. We again cautioned appellant: "In view of the extensions granted, the Court is unlikely to grant any further extensions on appellant's brief."

- Appellant filed an additional motion regarding the record on May 17, 2023, which this Court denied on May 26, 2023. Our May 26, 2023 order also ordered appellant to file his brief by June 5, 2023, and again cautioned appellant: "In view of the extensions granted, the Court is unlikely to grant any further extensions on appellant's brief."

Despite four extensions of time to file his brief, Appellant failed to file a brief by June 5, 2023. Instead, he filed a motion to abate the appeal and remand to the trial court for issuance of additional findings of fact and conclusions of law. In a June 6, 2023 Order, we denied the motion and ordered appellant to file his brief by June 16, 2023. We also noted "[a]ppellant has had over five months to prepare his brief since the record was complete, and the time is now four months past the original date the brief was due." We informed appellant if his brief was not filed by June 16, 2023, "the Court will submit this appeal on the record and without appellant's brief." *See* TEX. R. APP. P. 39.1(4).

Appellant failed to file a brief by June 16, 2023. We notified appellant on August 4, 2023, the case would be submitted without oral argument on October 3, 2023. On August 12, 2023, appellant filed a letter requesting an electronic copy of the appellate record. The Court sent him a copy of the appellate record on August 14, 2023.

We submitted the appeal without briefs on October 3, 2023. *See* TEX. R. APP. P. 38.8(b)(4). Appellant failed to file a brief prior to submission. Instead, on October 3, 2023, appellant filed an "emergency" motion to abate the submission date and a motion for extension of time to file his brief. We denied the motions.

FUNDAMENTAL ERROR

The failure of an appellant to file an appellant's brief in a criminal case does not authorize the dismissal of a case. TEX. R. APP. P. 38.8(b)(1); *see also* TEX. CODE CRIM. PROC. art. 44.33(b) (stating appellant's failure to file his brief in the time prescribed shall not authorize dismissal of appeal by court of appeals). Generally, when an appellant has not filed a brief in a criminal case, Rule 38.8(b) requires the appellate court to remand the case to the trial court to conduct a hearing and "determine whether the appellant desires to prosecute his appeal, whether the appellant is indigent, or, if not indigent, whether retained counsel has abandoned the appeal, and to make appropriate findings and recommendations." TEX. R. APP. P. 38.8(b)(2); *see also Burton v. State*, 267 S.W.3d 101, 103 (Tex. App.—Corpus Christi–Edinburg 2008, no pet.). But when an appellant has chosen to represent

himself on appeal and has already been warned of the dangers of pro se representation, there is no need to remand for such a hearing. *Burton*, 267 S.W.3d at 103; *see also Lott v. State*, 874 S.W.2d 687, 688 n.2 (Tex. Crim. App. 1994).

Moreover, Rule 38.8(b)(4) states an "appellate court may consider [an] appeal without briefs, as justice may require." TEX. R. APP. P. 38.8(b)(4); *see also Scwartzkopf v. State*, Nos. 05-21-00662-CR, 05-21-00663-CR, 2022 WL 3714518, at *1 (Tex. App.—Dallas Aug. 29, 2022, no pet.) (mem. op., not designated for publication) (submitting case without briefs and reviewing record for fundamental error where pro se appellant failed to file brief). In doing so, we review the record for fundamental error. *Id.*; *Seay v. State*, Nos. 05-18-00362-CR to 05-18-00364-CR, 2019 WL 3886652, at *1–2 (Tex. App.—Dallas Aug. 19, 2019, no pet.) (mem. op., not designated for publication); *Cooper v. State*, No. 05-14-00089-CR, 2015 WL 150081, at *1 (Tex. App.—Dallas Jan. 8, 2015, pet. ref'd) (mem. op., not designated for publication); *Washington v. State*, No. 01-13-01038-CR, 2015 WL 7300511, at *2 (Tex. App.—Houston [1st Dist.] Nov. 19, 2015, no pet.) (mem. op., not designated for publication) ("When an appellant fails to file a brief, we may submit the case without briefs and review the entire record, in the interest of justice, to determine if the record reveals fundamental error.").

Fundamental errors include: (1) denial of the right to counsel; (2) denial of the right to a jury trial; (3) denial of ten days' preparation before trial for appointed counsel; (4) absence of jurisdiction over the defendant; (5) absence of subject-matter

jurisdiction; (6) prosecution under a penal statute that does not comply with the Separation of Powers Section of the state constitution; (7) jury charge errors resulting in egregious harm; (8) holding trials at a location other than the county seat; (9) prosecution under an ex post facto law; and (10) comments by a trial judge which taint the presumption of innocence. *See Saldano v. State*, 70 S.W.3d 873, 888–89 (Tex. Crim. App. 2002); *Burton*, 267 S.W.3d at 103.

In the interest of justice, we have reviewed the entire record for fundamental error and have found none. *See Burton*, 267 S.W.3d at 103; *see also Schwartzkopf*, 2022 WL 3714518, at *1. We, therefore, affirm the trial court's judgment.

CONCLUSION

Without a brief, no issues are before us. Finding no fundamental error, we affirm the trial court's judgment.

/Robbie Partida-Kipness/
ROBBIE PARTIDA-KIPNESS
JUSTICE

Do Not Publish
TEX. R. APP. P. 47.2(b)

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Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

JAY SANDON COOPER, Appellant	On Appeal from the County Court at Law No. 6, Collin County, Texas
No. 05-21-01002-CR V.	Trial Court Cause No. 006-86065-2019.
THE STATE OF TEXAS, Appellee	Opinion delivered by Justice Partida-Kipness. Justices Reichek and Breedlove participating.

Based on the Court's opinion of this date, the judgment of the trial court is **AFFIRMED**.

Judgment entered this 5th day of October 2023.

No. 24-5350

In the Supreme Court of the United States

JAY SANDON COOPER — PETITIONER

vs.

STATE OF TEXAS — RESPONDENT

PROOF OF SERVICE

I, Jay Sandon Cooper, do swear or declare that on this date, November 15, 2024, as required by Supreme Court Rule 29 I have served the enclosed PETITIONER'S PETITION FOR REHEARING on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days. The names and addresses of those served are as follows:

State's Attorney Greg Willis, 2100 Bloomdale Road, Suite 100 McKinney, TX 75071; and

State Prosecuting Attorney, Stacey Soule, P. 0. Box 13046 Austin, Texas 78711-3046.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 15, 2024.

Jay Sandon Cooper