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23AUG68

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

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SUPREME COURT U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

ALEX RYLE — PETITIONER

VS.

BRIAN EMIG, Warden, JTVCC, et al. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT APPEALS  
FOR THE THIRD CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Alex Ryle

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Smyrna, DE 19977

QUESTION PRESENTED

Was Petitioner's Fifth Amendment protections against multiple punishments for the same offense violated by several convictions and sentences for possessing one-loaded firearm?

## **PARTIES TO THE PROCEEDING**

All parties appear in the caption of the case on the cover page.

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IN THE SUPREME COURT OF THE UNITES STATES

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**ALEX RYLE, Petitioner**

v.

**BRIAN EMIG, Warden, James T. Vaughn Correctional Center, et al.,  
Respondents**

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**PETITIONER FOR WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT**

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Petitioner, Alex Ryle, proceeding Pro Se, respectfully request that a writ of certiorari be issued to review the judgment of the United States Court of Appeals for the Third Circuit filed on February 2, 2024. The appears at A1 – 2 and is reported as *Ryle v. Warden James T. Vaughn Corr. Ctr.*, 2024 U.S. App. LEXIS 8501 (3<sup>rd</sup> Cir. Feb. 2, 2024).

## OPINION BELOW

The Third Circuit Court of Appeals issued a judgment and opinion on February 2, 2024 denying Mr. Ryle's application for a certificate of appealability of the United States District Court for the District of Delaware's denial of Petitioner's petition for a writ of habeas corpus according to 28 U.S.C. § 2254. The Delaware District Court's order and memorandum opinion appears at A2 – 23 and is reported as *Ryle v. May*, 2023 U.S. Dist. LEXIS 162124 (D. Del. Sept. 13, 2023). The Third Circuit opined that Mr. Ryle's three weapon convictions and sentences for possession of one-loaded firearm did not violate the Double Jeopardy Clause because each offense had different elements.

## **JURISDICTION**

The jurisdiction of this Court is authorized by 28 U.S.C. § 1254(1). The decision of the Third Circuit Court of Appeals which Mr. Ryle seeks review was issued on February 2, 2024. This petition was filed within 60 days of Petitioner's extension of time in compliance with Supreme Court Rule 13.5.

## CONSTITUTIONAL PROVISION INVOLVED

*United States Constitution, Amendment 5* provides, in pertinent part:

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 offence to be 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. (U.S. Const. amend. V).

## STATEMENT OF THE CASE

On October 8, 2015, the Petitioner was sentenced to twenty-three years in prison by the Superior Court of the State of Delaware – 15 years for Possession of Firearm by Person Prohibited (“PFBPP”) & 8 years for Carrying Concealed Deadly Weapon (“CCDW”) and decreasing levels of supervision for Possession of Ammunition by Person Prohibited (“PABPP”). Petitioner filed a direct appeal on violations to his right to counsel claims. After oral arguments, the Supreme Court of Delaware affirmed the judgment below on October 11, 2016.

On August 16, 2017, the Petitioner submitted a motion for postconviction relief (“PCR”) in the Superior Court, asserting claims of ineffectiveness against pre-trial and appellate counsel(s), and an improper sentence enhancement. PCR motion was denied and the Delaware Supreme Court affirmed the lower court’s judgment on May 5, 2020.

On July 6, 2020, the Petitioner filed a 28 U.S.C. § 2254 Habeas Corpus petition in the United States District Court of the District of Delaware. The petition challenged the ineffectiveness of Ryle’s appellate counsel and the constitutionality of a Delaware Superior Court Criminal Rule change. Subsequently, Petitioner submitted a memorandum of law to his petition on August 7, 2020.

On February 3, 2021, Petitioner filed a Superior Court Criminal Rule 35(a) motion for correction of an illegal sentence (“Rule 35(a) motion”) in the Delaware

Superior Court. The motion argued that Petitioner's multiple punishments for possessing one loaded firearm abridged his state and federal double jeopardy protections. On June 2, 2021, the motion was denied. Petitioner appealed this denial.

On July 2, 2021, Petitioner filed his opening and appendix brief to the denial of his Rule 35(a) motion. On July 22, the State filed an untimely motion to affirm. On July 27, the Petitioner moved to strike the State's untimely motion. On September 21, the Delaware Supreme Court Justice Valihura issued an order which denied the motion to affirm because Petitioner's opening brief was not without merit; and Petitioner's motion to strike was denied as moot. The State submitted its Answer brief on \_\_\_. Then, on January 31, 2022, the state court of appeals affirmed the lower court's judgment of Petitioner's claims of double jeopardy violations.

On February 14, 2022, the habeas court allowed Petitioner to amend his double jeopardy issue to his original §2254 petition. The court also granted Petitioner's request to supplement the State Court's record in order to include relevant records to his double jeopardy claim. On September 12, 2023, the district court denied Petitioner's petition.

On February 2, 2024, the Third Circuit Court of Appeals denied Petitioner's request for a certificate of appealability ("COA") for double jeopardy violations, *inter alia*.

## REASONS FOR GRANTING THE WRIT

Supreme Court Rule 10 provides guidance to the character of decisions this Court will consider. A writ of certiorari may issue where “*a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter*; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or *sanctioned such a departure by a lower court, as to call for an exercise of this Courts supervisory power*;” additionally, “*a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court*.” *Id. see* Rule 10(a)(c)(emphasis added). In deciding that Mr. Ryle failed to make a substantial showing of the denial of a constitutional right, the Third Circuit has sanctioned Petitioner’s convictions and sentences notwithstanding other circuits and this Court’s holdings evincing the constitutional infirmity of multiple convictions for possession of a single-loaded firearm. Accordingly, Mr. Ryle prays that this Court use its supervisory power and grant this petition for a writ of certiorari.

**1. The Third Circuit improperly found that Mr. Ryle failed to make a substantial showing of the denial of a constitutional right.**

In regards to his double jeopardy abridgment claim, the Court of Appeals for the Third Circuit denied Petitioner's request for a certificate of appealability. Pursuant to *Ball v. United States*<sup>1</sup>, Mr. Ryle essentially argued that he could only be convicted for one weapon offense. Limiting its analysis to only the same-elements test of *Blockburger v. United States*<sup>2</sup>, the Third Circuit explained that Mr. Ryle's multiple weapon convictions and sentences were **not** in violation of the Double Jeopardy Clause due to each offense containing different elements. That conclusion is wrong, respectfully.

Although, it is well-establish that “[t]he traditional test for double jeopardy claims involving the charging of multiple offenses under separate statutes is the same-elements test [,]” (citing *Blockburger v. United States*, 284 U.S. 299, 52 S. Ct. 180, 76 L. Ed. 306 (1932)); the *Blockburger* “rule is “not controlling when the legislative intent is clear from the face of the statute or the legislative history.” Dist. ct. \_\_ (citing *Garrett v. United States*, 471 U.S. 773, 778-79, 105 S. Ct. 2407, 85 L. Ed. 2d 764 (1985)). And, it is momentous to note that Delaware has codified the protections of the Double Jeopardy Clause in 11 Del. C. § 206(b)(3).

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<sup>1</sup> 470 U.S. 856 (1985).

<sup>2</sup> 284 U.S. 299, 52 S. Ct. 180, 76 L. Ed. 306 (1932).

First, the Third Circuit's conclusion is inconsistent with its own precedence. In *United States v. Hodge*, the Third Circuit vacated two of three firearm convictions "where there was one firearm used in a continuous act." 870 F.3d 184, 198 (3<sup>rd</sup> Cir. 2017) *See also, United States v. Tann*, 577 F.3d 533 (3<sup>rd</sup> Cir. 2009) (convictions for simultaneous possession of firearm and ammunition held improper).

Several Circuit Courts also agree, notwithstanding offenses having dissimilarity in elements, that multiple convictions and sentences resulting from one continuous criminal act are constitutionally forbidden. *United States v. Ayala*, 493 Fed. Appx. 120 (1<sup>st</sup> Cir. 2012) (using multiple weapons during a single predicate crime impinged upon fundamental double jeopardy principles); *Jackson v. Leonardo*, 162 F.3d 81 (2<sup>nd</sup> Cir. 1998) (vacated firearm on double jeopardy grounds); *United States v. Hinson*, 1987 U.S. App. LEXIS 19510 (citing *Ball*, remand with instructions to vacate duplicitous weapon offenses); *United States v. Wilson*, 721 F.2d 967 (4<sup>th</sup> Cir. 1983) (double jeopardy found where proof of all the elements of one offense automatically proved the other violation); *United States v. Medellin-Torres*, 293 Fed. Appx. 354 (5<sup>th</sup> Cir. 2008) (two firearm convictions and sentences for possession of same weapon violated rights against double jeopardy); *United States v. Barth*, 150 Fed. Appx. 386 (5<sup>th</sup> Cir. 2007) (simultaneous convictions and sentences for the same criminal act involving possession of a firearm and possession of ammunition violated double jeopardy); *see also United States v. Fields*, 225 Fed.

Appx. 292 (5<sup>th</sup> Cir. 2007); *United States v. Saldua*, 120 Fed. Appx. 553 (5<sup>th</sup> Cir. 2005); *United States v. Greer*, 2002 U.S. App. LEXIS 29315 (quoting *Ball*, “Congress did not intend the simultaneous possession of ammunition to stand as a distinct unit of prosecution from the possession of a firearm.”); *United States v. Gilley*, 319 F.3d 177 (5<sup>th</sup> Cir. 2003) (statute did not unambiguously authorize multiple convictions for a single use of a single firearm during multiple predicate offenses, rule of lenity applied, vacating multiple firearm sentences); *United States v. Richardson*, 439 F.3d 421 (8<sup>th</sup> Cir. 2006) (defendant’s single act of possession did not support a separate conviction for each firearm offense); *United States v. Keen*, 104 F.3d 1111 (9<sup>th</sup> Cir. 1996) (court erred when it sentenced defendant twice for simultaneously possessing a firearm and ammunition).

The Third Circuit’s ruling also conflicts with this Court’s holding in *Ball v. United States*, a case which is materially indistinguishable from Petitioner’s case. In *Ball*, this Court held that a previously convicted felon may be tried under two different statutes “for violations involving the same firearm, he may not be convicted of both offenses; and that if the defendant in such a case is found guilty on both counts,” the sentencing court shall enter judgment on only one count. *Id.* Mr. Ryle’s case presents the same issues as *Ball*.

Moreover, as in *Ball*, Petitioner’s multiple weapon offenses each have different elements. For unlawfully possessing one-loaded handgun, Mr. Ryle was

convicted of two counts of *11 Del. C. § 1448(c) (Possession of Firearm/Ammunition by Person Prohibited)* (three elements: 1) possessed firearm/ammunition; 2) was person prohibited while in possession; & 3) knowingly did so) and one count of *11 Del. C. § 1442 (Carrying Concealed Deadly Weapon)* (four elements: 1) there was a deadly weapon; 2) Mr. Ryle carried the weapon; 3) it was concealed; & 4) he knowingly did so); juxtapose to the weapon to the weapon offenses in *Ball*, 18 U.S.C. § 922(h)(1) (four elements: 1) defendant was employed by a person prohibited; 2) knew employer was a person prohibited; 3) defendant received, transported, or possessed firearm in interstate commerce; & 4) this receipt, transportation, or possession was during employment) and 18 U.S.C. § 1202(a)(1) (three elements: 1) knowingly and willingly; 2) possessed firearm; & 3) was a previously convicted felon). Simply put, Petitioner's case is materially indistinguishable from *Ball*, so the Third Circuit's COA request denial is erroneous whereby sanctioning the lower courts departure from the protections against double jeopardy.

**2. This Court can expand its holding in *Ball v. United States* to require sentencing courts to not enter convictions, nor impose sentences which stem from one criminal act of possessing one-loaded firearm in order to safeguard the protections of the Double Jeopardy Clause.**

In 1985, this Court opined that it was "clear that a convicted felon may be prosecuted simultaneously" for different weapon violations "involving the same firearm." *Ball*, 470 U.S. 859. The Supreme Court further explained, via application

the rule set in *Blockburger*, “that Congress did not intend to subject felons to two convictions; proof of illegal receipt of a firearm necessarily includes proof of illegal possession of that weapon. “[W]hen received, a firearm is necessarily possessed.”” *Id.* at 862 (citing United States v. Martin, 732 F.2d 591, 592 (CA 7 1984)).

Again, Petitioner’s case is extremely identical to *Ball*. Just like the defendant in the *Ball* case, the elements of Mr. Ryle’s convictions overlap. As earlier illustrated, Carrying a Concealed Deadly Weapon has four elements: deadly weapon; possessed deadly weapon; it was concealed; and he knowingly did so; whereas the Possessing Firearm by Person Prohibited/Possession Ammunition by Person Prohibited have three elements: possession; person prohibited while possessing; and knowingly did so. And, all three weapon offenses stem from Mr. Ryle possessing one-loaded firearm. It is fair to say that CCDW and PFBPP/PABPP are not aimed at two different evils because if you are not licensed to carry a deadly weapon, then you are also a person prohibited from carrying a firearm, or ammunition; vice versa. Additionally, Delaware’s Person Prohibited offenses has less elements so if anything it would be a lesser included offense of CCDW.

In all, Mr. Ryle prays that this Court address this issue so that defendants are protected from violations of this sort.

## **CONCLUSION**

For the foregoing reasons, petitioner requests that this Court grant the petition for certiorari.

Dated: August 22, 2024

Respectfully submitted,

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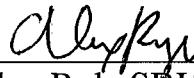
Alex Ryle SBI#00463547  
James T. Vaughn Corr. Ctr.  
1181 Paddock Road  
Smyrna, DE 19977

I, Alex O. Ryle, swear or affirm under penalty of perjury, in accordance with 28 U.S.C. §1746, that the foregoing is true and correct. That on the 18<sup>th</sup> day of September, 2024, I placed two (1) Petition for a Writ of Certiorari and (1) Affidavit or Declaration in Support of Motion for Leave to Proceed *In Forma Pauperis* in the prison's mail system and that first-class postage, via prison's pay-to system, has been prepaid. I sent these motions to:

Emily Walker  
Supreme Court of the United States  
Office of the Clerk  
Washington, DC 20543-0001

Elizabeth R. McFarlan  
Office of Attorney General of Delaware  
Delaware Department of Justice  
820 N. French Street  
Carvel Office Building  
Wilmington, DE 19801

Date: September 18, 2024

  
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