

IN THE
SUPREME COURT OF THE UNITED STATES

Joey Deal,

Petitioner, Pro se,

v.

State of New Mexico, and

Hector Rios, Warden,

Respondent.

On Petition For Writ Of Certiorari

To The State of New Mexico Supreme Court

Motion for Rehearing

Joey Deal
Petitioner, Pro se
NMCD # 57137
Otero County Prison Facility
10 McGregor Range Road
Chaparral, New Mexico 88081

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II. Question Presented

Should this Court reconsider Mr. Deal's petition for writ of certiorari in light of *Martin Gonzales v. State of New Mexico*, on petition for writ of certiorari No. 24-6176 and, given the extreme prejudicial nature of New Mexico's deliberate deprivation of their United States Constitutional Rights.

III. List of Parties

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

IV. Related Cases

There are no related case currently pending in this court. There is, however, a similar case presenting allegations of the quality and character against the same respondent. *Martin Gonzales v. State of New Mexico*, No. 24-6176.

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None.

VI. Table of Authorities

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VII. Petition for Rehearing

Joey Deal, Petitioner, Pro se, is an inmate currently incarcerated at the Otero County Prison Facility in Chaparral, New Mexico. Mr. Deal respectfully petitions this court to consider for rehearing this Court's summary denial of his petition for writ of certiorari, on January 13, 2025.

VIII. Opinions Below

The decision by the New Mexico Supreme Court denying Mr. Deal's State Petition for writ of certiorari is recorded under Cause No. S-1-SC-40353. (Denied July 12, 2024).

Subsequently, the New Mexico Supreme Court denied Mr. Deal's motion for reconsideration on the 29th day of July, 2024. Mr. Deal then filed a petition for writ of certiorari in this Court, which was denied on January 13, 2025.

IX. Jurisdiction

This Court, having original jurisdiction under 28 U.S.C. § 1257, now has jurisdiction under Rule 44 to consider Mr. Deal's petition for rehearing. Wherefore, under Rule 13, this petition is timely filed if received by the United States Supreme Court no later than the 7th day of February 2025, or under Rule 13.3 having been "sent to the Clerk by first-class United States Postal Service, including express and priority mail, postage prepaid, and bearing a postmark, . . . showing that the document was mailed on or before the last day for filing. . . ."

X. Constitutional Provision Involved

United States Constitution, Amendment V, VI, and IVX.

XI. Statement of Case

This case presents violations of three United States Constitutional Amendments. The state District Court's denial of Mr. Deal's State petition for a writ of habeas Corpus and the New Mexico Supreme Court's denial of his State Certiorari Petition "decided an important federal question in a way that conflicts with relevant decisions of this Court," and that conflicts with the Sixth Circuit Court of Appeals. Furthermore, it does not appear to Mr. Deal that the United States Supreme Court has ever ruled on the questions of law presented in the case at bar. See, Rule 10(c) of the USSCt Rules.

XII. Reason for Granting Petition for Rehearing

On January 13, 2025 this court summarily denied Mr. Deal's Petition for Writ of Certiorari. Mr. Deal again asserts that his State Court convictions are in violation of the United States Constitution. Based on the facts contained within the State Court record it is wholly irrational and illogical for this Court to condone the State of New Mexico's unfathomable constitutional violations. What'smore, Mr. Deal is not alone. This case represents one of many cases similar in nature that occur in New Mexico on a regular basis. Currently before this court is *Martin Gonzales v. State of New Mexico*, No. 24-6176. That case, like this one, demonstrates the State of New Mexico's systemic disdain for the constitutional rights of criminal defendants charged with sex offenses.

Mr. Deal presented facts, that taken as true, would require the State of New Mexico to grant him relief. From the record, there is a clear indication that the facts as represented are accurate, yet Mr. Deal was not granted an evidentiary hearing. Given the opportunity, he would have highlighted the State's constitutional trial violations and created an indelible record

substantiating his claims. The State of New Mexico intentionally withheld an evidentiary hearing from Mr. Deal to ensure that he would not be heard.

The New Mexico State District Court and the State Supreme Court both summarily dismissed Mr. Deal's State Petition for writ of habeas Corpus. Naturally, this Court would assume that the petition lacked merit. That should not be the rule of thumb in the case at bar. Notably, the New Mexico State Attorney General was not given an opportunity to respond during the state proceedings. Therefore, the fact that the New Mexico Attorney General chose not to respond to Mr. Deal's Petition for Writ of Certiorari in this Court indicates that he could not, in good conscious, oppose Mr. Deal's claims. The unopposed petition for writ of certiorari should be construed as having merit and deemed worthy of this Court's consideration.

Mr. Deal raised federal constitutional claims that when juxtaposed against this Court's case law irrefutably warrant relief. Furthermore, the claims raised by Mr. Deal are firmly buttressed by the United States Constitution.

Issue I.

Petitioner raises this claim under the **Fifth and Fourteenth Amendments to the United States Constitution**, and *art. II, sec. 14* of the New Mexico Constitution. Mr. Deal's Constitutional right to due process and to be free from double jeopardy were violated when the State charged, prosecuted, and convicted Petitioner of the following crimes.

- A) Eighteen (18) **identically worded, (I.e., carbon-copy, cookie-cutter) counts** of Criminal Sexual Penetration of a Minor (CSPM), a second degree felony, contrary to NMSA 1978, § 30-9-11(D)(1);
- B) Eighteen (18) **identically worded, (I.e., carbon-copy, cookie-cutter) counts** of Criminal Sexual Penetration of a Minor, a third degree felony (CSPM), contrary to NMSA 1978, § 30-9-11(E);
- C) Ten (10) **identically worded, (I.e., carbon-copy, cookie-cutter) counts** of Criminal Sexual Contact of a Minor (CSCM), a third degree felony, contrary to NMSA 1978, § 30-9-13(E);
- D) Thirty-six (36) **identically worded, (I.e., carbon-copy, cookie-cutter) counts** of Incest, a third degree felony, contrary to NMSA 1978, § 30-10-03.

Mr. Deal invokes the Fifth Amendment, made applicable to state defendants through the Fourteenth Amendment, and its protections from double jeopardy as depicted in the seminal Supreme Court case interpreting the Double Jeopardy Clause, *Blockburger v. United States*, 284 U.S. 299, 304, 52 S. Ct. 180, 76 L. Ed. 306 (1932). The Supreme Court reiterated that the Double Jeopardy Clause "protects against multiple punishments for the same offense" in *North Carolina v. Pearce*, 395 U.S. 711, 717, 89 S. Ct. 2072, 23 L. Ed. 2d 656 (1969).

The petition for writ of certiorari noted that Mr. Deal's case is materially indistinguishable from the Sixth Circuit case *Valentine v. Konteh*, 395 F.3d 626 (2005). In its decision, the Sixth Circuit relied on the same United States Supreme Court precedents that Mr. Deal now relies upon. The Sixth Circuit wrote, "[W]e cannot be sure what double jeopardy would prohibit because we cannot be sure what factual incidents were presented and decided by th[e] jury." 395 F.3d at 635. The Sixth Circuit vacated all but one of the defendant's multiple convictions for child rape and all but one of the multiple convictions for sexual penetration because "[d]ue process [] requires that criminal charges provide criminal defendants with the ability to protect themselves from double jeopardy." Id. at 634. The Sixth Circuit found that the identically-worded counts, combined with the victim's testimony, posed two related problems: "First, there was insufficient specificity in the indictment or in the trial record to enable Valentine to plead convictions or acquittals as a bar to future prosecutions. Second, the undifferentiated counts introduced the very real possibility that Valentine would be subject to double jeopardy in his initial trial by being punished multiple times for what may have been the same offense." Id. at 634-35.

Likewise, the charging scheme used by the State violated Mr. Deal's Sixth Amendment

protection "to be informed of the nature and cause of the accusation." *Argersinger v. Hamlin*, 407 U.S. 25, 27-28, 92 S. Ct. 2006, 32 L. Ed. 2d 530, ... (1972). This Court resoundingly held that "[n]o principle of procedural due process is more clearly established than that notice of the specific charge, and a chance to be heard in a trial of the issues raised by the charged ... are among the constitutional rights of every accused in a criminal proceeding in all courts, state or federal." *Cole v. Arkansas*, 333 U.S. 196, 201, 68 S. Ct. 514, 92 L. Ed. 644, ... (1948). Neither the indictment nor the jury instructions informed the jury which factual incidents were connected to which charges. In other words, the charges were not linked to differentiated incidents, and therefore, there is resulting uncertainty as to what the trial jury actually found. To be sure, Mr. Deal was unable to specifically and individually defend against each identically worded count, prohibiting his ability to protect himself from double jeopardy.

The State of New Mexico either unreasonably applied Supreme Court precedent regarding the due process requirements for charging instruments or, outright ignored them. The multiple, undifferentiated charges in the indictment violated Mr. Deal's rights to notice and his right to be protected from double jeopardy. The failure of the New Mexico Courts to rectify these violations constitutes an unreasonable application of well-established constitutional law as announced by this Court.

Issue II.

Petitioner raises these claims under the **fifth and fourteenth Amendments of the United States Constitution**, and *art. II, sec. 14* of the New Mexico Constitution. Petitioner contends that the evidence at trial was insufficient to support multiple convictions for:

- A) Thirteen (13) counts of Criminal Sexual Penetration of a Minor, contrary to NMSA 1978, § 30-9-11(D)(1);
- B) Eighteen (18) counts of Criminal Sexual Penetration of a Minor, contrary to NMSA 1978, § 30-9-11(E);
- C) Ten (10) counts of Criminal Sexual Contact of a Minor, contrary to NMSA 1978, § 30-9-13(E);

- D) Thirty-six (36) counts of Incest, a third degree felony, contrary to NMSA 1978, § 30-10-03;
- E) Any crime alleged to have occurred within the time frame of "on or between November 2000 and March 2001."

There is no greater hope for state criminal defendants than the Fourteenth Amendment. Under which, the state prosecutor must produce substantial evidence supporting each element of each crime charged. This Court plainly stated that "The relevant question is whether ... any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2789, 61 L. Ed.2d 560 (1979). The evidence presented at Mr. Deal's trial was generic, non-specific, and vague. To be sure, the prosecution did not attempt to lay out the factual basis for each of the individual counts charged.

In re Winship, 397 US 358, 25 L Ed 2d 368, 90 S Ct 1068, 51 Ohio Ops 2d 323, presupposes as an essential component of the due process guaranteed by the Fourteenth Amendment that *no person shall be made to suffer the onus of a criminal conviction except upon sufficient proof - defined as evidence necessary to convince a trier of fact beyond a reasonable doubt of the existence of every element of the offense*. This Court has a duty to assess the historic facts when it is called upon to apply a constitutional standard to a conviction obtained in a state court. It is true that most meritorious challenges to constitutional sufficiency of the evidence undoubtedly will be recognized in the state courts, and, if the state courts have fully considered the issue of sufficiency, the task of a federal []court should not be difficult. Cf. *Brown v. Allen*, 344 US, at 463, 97 L Ed 469, 73 S Ct 397. It is the occasional abuse that a federal court should stand ready to correct. *Id.* at 498-501. Critically, it cannot be presumed that state proceedings will always be without error in the constitutional sense.

In the interest of judicial economy, Mr. Deal puts forth that Issue IV, his unlawful

convictions for five counts of incest, are supported by the arguments presented within Issue II. In short, the incest convictions were not supported by CSPM convictions due to an acquittal on counts one (1) through five (5) by directed verdict.

Wherefore, Mr. Deals convictions are contrary to the Fifth and Fourteenth Amendments of the United States Constitution, as well as this Court's prior rulings regarding the sufficiency of the evidence.

Issue III.

In the interest of judicial economy, Mr. Deal withdraws Issue III from the Court's consideration for rehearing. Relief under Issues I and II render any relief under Issue III moot.

Issue V.

In the interest of judicial economy, Mr. Deal withdraws Issue V from the Court's consideration for rehearing. Relief under Issues I and II render any relief under Issue V moot.

Issue VI.

If any of the errors being aggregated are constitutional in nature, the cumulative error must be harmless beyond a reasonable doubt. Mr. Deal asserts that the errors in the case were not harmless. See, *Chapman v. California*, 386 U.S. 18, 87 S. Ct. 824, 17 L. Ed. 2d 705 (1967).

XIII. Conclusion

The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) prohibits Mr. Deal from filing a federal habeas petition under 28 U.S.C. § 2254. That fact makes this Petition for Rehearing the most important pleading of Mr. Deals criminal proceedings. Without this Court's intervention, it will condone the State of New Mexico's blatant disregard for the individual protections defined and secured within the United States Constitution. It is unquestionably this Court's duty and obligation to safeguard the federal Constitutional Rights of every United States citizen. The citizens of this country believe that this Court is a champion of the oppressed and the guardians of justice. Every American resolutely anchors themselves in this Court's commitment to the United States Constitution. Knowing, with unshakable faith, that in the most

dire of circumstances and the darkest of times, this Court will hold every State accountable for the unconstitutional deprivations of freedom.

Seventy years ago on February 20, 1955 Dwight D. Eisenhower wrote, "The founding fathers . . . recognizing God as the author of individual rights, declared that the purpose of the government is to secure those right . . ." The duty of a court to appraise a claim that constitutional error did occur--is not one that can be lightly abjured. If ever there is a time where that duty is infinitely more burdensome, it must be in this instance where a state court's glaring defiance of constitutional authority unjustly deprives a citizen of the freedom bestowed by God. Injustice should not be overlooked for want of expediency, indifference, fear of consequence or legal reprisal.

XIV. Appendices

None.

Date this 7th day of February, 2025.

Respectfully Submitted,



Joey Deal

Petitioner, Pro se
NMCD # 57137
Otero County Prison Facility
10 McGregor Range Road
Chaparral, New Mexico 88081

CERTIFICATE OF COMPLIANCE

No. 24-5966

Joey Deal,

Petitioner, Pro se,

v.

State of New Mexico, and

Hector Rios, Warden,

Respondent.

As required by Supreme Court Rule 33.1(h), I certify that the petition for a writ of certiorari contains 2303 words.

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

Executed on February 7, 2024



Joey Deal, Petitioner.

CERTIFICATE OF COMPLIANCE

NO. 24-5966

JOEY DEAL

PETITIONER, PRO SE

v.

STATE OF NEW MEXICO, AND

HECTOR RIOS, WARDEN,

RESPONDENTS.

AS REQUIRED BY SUPREME COURT RULE 44. REHEARING, I CERTIFY THAT THE PETITION FOR REHEARING IS BASED ON GROUNDS LIMITED TO INTERVENING CIRCUMSTANCES OF SUBSTANTIAL OR CONTROLLING EFFECT OR ON SUBSTANTIAL GROUNDS NOT PREVIOUSLY PRESENTED. THIS PETITION FOR REHEARING IS PRESENTED IN GOOD FAITH AND NOT FOR DELAY.

SINCERELY,

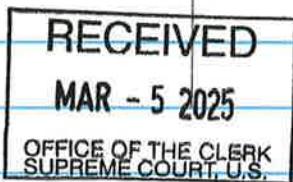
Joey Deal

JOEY DEAL

OCPF NMCO # 59137

10 MCGREGOR RANGE RD
CHAMARRAL, NM 88081

25 February, 2025



NO: 24-5966

IN THE
SUPREME COURT OF THE UNITED STATES

JOEY DEAL,
PETITIONER, PRO SE

v.

STATE OF NEW MEXICO, AND
HECTOR RIOS, WARDEN,
RESPONDENTS.

PROOF OF SERVICE

I, JOEY DEAL, DO SWEAR OR DECLARE THAT ON THIS DATE,
FEBRUARY 25, 2025, AS REQUIRED BY SUPREME COURT RULE 29
I HAVE RE-SERVED THE ENCLOSED MOTION FOR REHEARING ON
PAUL TORREZ, NEW MEXICO ATTORNEY GENERAL, AT 408 GALISTED ST.
SANTA FE, NM 87501 BY DEPOSITING THE ABOVE DOCUMENT IN
THE UNITED STATES MAIL PROPERLY ADDRESSED WITH FIRST-CLASS POSTAGE
PREPAID.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING
IS TRUE AND CORRECT. EXECUTED ON 25 FEBRUARY, 2025.

Joey Deal

IN THE
SUPREME COURT OF THE UNITED STATES

JOEY DEAL,
PETITIONER, PRO SE

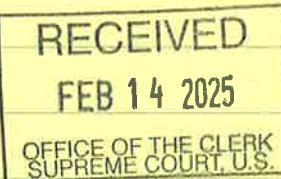
v.

STATE OF NEW MEXICO, AND
HECTOR RIOS, WARDEN,
RESIDENTS.

PROOF OF SERVICE

I, JOEY DEAL, DO SWEAR OR DECLARE THAT ON THIS DATE,
FEBRUARY 7, 2025, AS REQUIRED BY SUPREME COURT RULE 29
I HAVE SERVED THE ENCLOSED MOTION FOR REHEARING ON RUAL
TORREZ, NEW MEXICO ATTORNEY GENERAL, AT 408 GALISTEGO ST.
SANTA FE, NM 87501 BY DEPOSITING THE ABOVE DOCUMENT IN THE
UNITED STATES MAIL PROPERLY ADDRESSED WITH FIRST-CLASS POSTAGE
PREPAID.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING
IS TRUE AND CORRECT. EXECUTED ON FEBRUARY 7, 2025.



Joey Deal