

No. 24-6095

FILED
SEP 17 2024
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

William Lemmety — PETITIONER (Your Name)

VS.

State of Georgia — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Supreme Court of Georgia (NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

William Lemmety (Your Name)

GDC# 945213, P.O. Box 446 (Address)

Oglethorpe, Georgia 31068 (City, State, Zip Code)

N/A (Phone Number)

1. If a petitioner is serving a criminal sentence for an entire charge (malice murder) that he was acquitted on, is the sentence illegal?

2. For essential context, petitioner's appellate brief explicitly demonstrated how the fundamental principle of repugnant verdicts (mutually exclusive verdicts) in Georgia law applied to his case and if not applied would trigger U.S. Constitutional equal protection and due process violations.

a.: Is the Georgia Supreme Court denying and violating petitioner's right to and protection by U.S. Constitutional equal protection and due process clauses, by refusing to apply its repugnant verdict rule in petitioner's case while having applied it to other fundamentally similar and same cases?

3. If the answer is yes to questions 1 and a, and allowed by this Court from not granting certiorari, is this a precedent which could be used to deny other U.S. citizens in Georgia their U.S. Constitutional equal protections and due process rights?

4. If the answer is yes to questions 1-3, is this an approved method as precedent that is or could be used by other states and empowered if Georgia is permitted to continue violating the U.S. Constitution in this manner?

LIST OF PARTIES

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

N] 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:

1. Christopher M. Carr, Bar # 112505, Georgia Attorney General, Beth A. Burton # 027500, Dept. Attorney General, Megan H. Hill # 342572, Senior Assistant Attorney General: Office of the Attorney General, 40 Capitol Sq. S.W. Atl. Ga. 30334. (404) 458-3394
2. Lewis R. Lamb, Ga. P.A. # 431537, S.W. Judicial Circuit P.O. Box 1328, Americus, Ga. 31709. (229) 924-5411.

RELATED CASES

1. State v. Lematty, Case no. 97-R-100, trial July 22, 1997 Dougherty County Superior Court
2. Lematty v. State, 234 Ga. App. 889, 508 S.E.2d 215 (1998)
3. State v. Lematty, Case no. 97-R-41, trial May 17-June 4, 1999. Lee County Superior Court
4. Lematty v. Danforth, case no. 2012-cv443, habeas, Dec. 28, 2012. Telfair Superior Court. Illegally transferred to Lematty v. McLaughlin, case no. 2013-cv-314, Macon Superior Court and it's Georgia S.Ct. Certiorari denied on September 8, 2015, case no. S14 H0638.

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U.S. Supreme Court Rule 10 (b)(c)

OTHER

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 A 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 Georgia, Lee County Superior court appears at Appendix B 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 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. § 1254(1).

☒ For cases from state courts:

The date on which the highest state court decided my case was 9/4/2024. A copy of that decision appears at Appendix A.

☒ A timely petition for rehearing was thereafter denied on the following date: 9/23/24, and a copy of the order denying rehearing appears at Appendix C.

[] 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

This case appears to involve the U.S. Constitution and its Amendments 5 and 14. And 28 U.S. Code § 1257(b), an avenue for review of federal constitutional claims.

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After a non-violent domestic dispute in South Carolina in 1990, the Petitioner left, having resisted but then agreed for separation expediency, to take two teenage associates to Mexico to marry: Jeremy Brown and Karen Eckman.

While passing through Georgia, to increase money swiftly by pawn shop or street corner sales, the trio burglarized vacant homes for easy sale of valuables such as money, jewelry, guns, etc.

After eluding police, from a seemingly random pull-over, and ditching Petitioner's vehicle, the trio sought vehicles to continue fleeing to Mexico. After several failed attempts involving stolen guns, to diminish increased intense police attention statewide, the trio agreed to cease gun-usage encounters and hailed a cab from Dougherty County to Lee County.

Later, while in Lee County on foot, while trying to steal an empty 1990 Chevy King cab truck, the owners unexpectedly exited their home, causing Petitioner and Jeremy Brown to avoid detection by hiding in the King cab while dogs barking had, it was wrongly assumed, lured owners to investigate their yard. The owners were instead, according to trial court records, heading to a Christmas party, unknown to the Petitioner and Brown.

Instead the owners Timothy and Maria Giles entered their 1990 Chevy truck. From a confrontation between Jeremy

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Brown and Timothy Giles from inside to outside truck, using the stolen .357 Jeremy fatally shot Timothy Giles, then immediately fatally shot Maria Giles claiming she witnessed Jeremy murder Timothy Giles. Jeremy demanded they hide the bodies by dragging them from beneath the garage lighting area into darkness of the yard.

Beforehand, Karen Eckman was yards away as head-start run capability, and to alert Brown and LeMatty for anyone driving to the home by long driveway to fill the empty and open garage port side. After the murders, Karen reunited with Jeremy and the trio fearfully and hurriedly decided to take the truck as swiftest way to escape capture.

The Petitioner meanwhile fearing not only

potentially being shot but alternatively Eckman and Brown misrepresenting facts against LeMatty if police-caught, the Petitioner sought another witness to the events which occurred.

The Petitioner subverted plans to Mexico, to seek his extrication from the dilemma by family members' help, specifically Michael Hicks Sr., in Safford Arizona. The trio was forced into high speed pursuit before and into Safford and arrested before LeMatty could acquire additional witness, (other than Eckman/Brown's)

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to his innocence of the unexpected murders.

After the trio wrecked from pursuit in Stafford,

upon attempt arrest, having run blocks away from Karen and LeMatty, Jeremy Brown fatally shot himself.

Over 20 spent. 357 rounds were recovered from

his possession. No finger prints from LeMatty were

lifted from the recovered. 357 murder weapon/bullets.

Petitioners attorneys obtained Karen Eckman's

handwritten, Dougherty County, jail-intercepted,

letters stating she intended to tell her attorney

that she knew Jeremy Brown murdered the victims

and knew LeMatty did not murder anyone. See

Appendix D.

Georgia was unable to prosecute Jeremy Brown

appropriately. That deficiency prevented a commonly

achieved negotiated lesser sentence for LeMatty more

proportional to his later evidence supported claims

of actual innocence for malice murder in exchange

for trial testimony against Jeremy Brown. For

LeMatty, this, too, was unforeseen.

CASE PRECEDENTS

On June 2, 1999 a Lee County jury verdict was rendered finding Petitioner not guilty for the malice murders of Timothy Giles and Maria Giles by not guilty for the felony murder of Timothy Giles, predicated on malice murder of Maria Giles, not guilty of malice murder of Timothy Giles,

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and not guilty for aggravated assault. The same jury found the Petitioner guilty of all counts in the Special Presentment and the trial court sentenced the Petitioner to life without parole on June 4, 1999. No additional separate evidence for malice murder of Maria Giles was submitted than was submitted for Timothy Giles, including finger prints, ballistic results, witnesses, and involuntary statement from Petitioner admitting no malice murder of anyone by his hands or plans.

Around February 26, 2008 Mr. Tim Lewis was appointed to Petitioner's case as appellate counsel.

Around January 20, 2009 trial transcripts were made available to Mr. Tim Lewis.

Around August 2011 Petitioner released Mr. Lewis for multiple reasons, including Mr. Lewis' verbal and written belief a direct appeal in Georgia would not provide justice to Petitioner by retrial when innocent of actual murder while under felony murder laws supported correct by examples such as the 2011 Vernon Forest trial with surveillance video of the nonmurderer convicted of murder, and would by retrial only cause pointless grief to the victims' surviving family and friends. This contributed to an allegedly and debatable ill-advised direct appeal waiver by Mr. Lewis on November 3, 2011.

On December 26, 2012, after reuniting with Petitioner's daughter [since 1999] and her mother, encouraging him, Petitioner properly and timely filed

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a state Habeas Corpus in Telfair Superior Court comprising a 37 page petition (approximately 230 total pages with exhibits). Among several grounds, it demonstrated Detecives perjury that a voluntary statement was given by Petitioner which Detecives admit Petitioner refused to sign, record, did request an attorney before, during, and after taking notes that were proffered as the complete voluntary statement. notes shortly afterward destroyed and not available for two separate county trials, using both trial transcripts (one of which, Lee County murder trial of Timothy and Maria Giles).

The Habeas was there answered by the state and and afterward illegally transferred to the Southwestern (Lee County) Judicial Circuit, Macon Superior Court, thus default denied at Telfair; it was re-started by a states second submission of the initial Answer revised and again denied without a due hearing in Macon Superior Court, after the Petitioner was also subsequently transferred to Macon State Prison. The GDC had a policy, according to Telfair State Prison counselors, against transferring prisoners before a year expired, suggesting Petitioner's transfer from Telfair while there a leading Faith and Character Based Program mentor and facilitator was not internally initiated by the Georgia Dept. of corrections (GDC).

Petitioner waited over 10 years for a transfer

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from beneath the Southwestern Judicial Circuit to try to refute his State Habeas Corpus again before an impartial judge based on state impediment grounds. This effort was abandoned.

This void repugnant verdict is inherently preserved for appeal in that it can not be waived and is trial court error. *Funderburk v. State*, 276 Ga. 554 (2), 580 S.E. 2d 234 (2003).

On April 4, 2024, Petitioner filed his motion to correct and Reduce an Illegal, Void, and Excessive sentence (MCRIVES) in Lee County Superior Court, the U.S. Constitution's equal protection and due process applying to Petitioner were raised here the first time regarding just the illegal sentence, which was denied on May 17, 2024.

On June 19, 2024, an application to appeal was timely mailed and later redocketed as a direct appeal.

On July 7, 2024 Petitioner mailed his timely Appellate Brief to appeal his illegal sentence at which time the U.S. Constitution's equal protection and due process was again raised.

On September 4, 2024 the Georgia Supreme Court issued an order denying Petitioner's direct appeal of his illegal sentence. Afterward, this Petition for Certiorari arises timely by mail per Rule of Service herewith and post mark date.

REASONS FOR GRANTING THE PETITION (pg 1 of 6)

The Error: Petitioner has been sentenced to life without parole on a count (#3, and 6) containing "malice murder" of Timothy Giles while acquitted for that same malice murder charge in a separate count (#1). See Appendix E.

Petitioner has been sentenced to life without parole on a count (#2, and 4) containing "malice murder" of Maria Giles while acquitted for that same malice murder charge in a separate count (#5). See Appendix E.

Petitioner's appellate brief to the Georgia Supreme Court demonstrated how this mutually exclusive verdict, thus repugnancy, is different from Georgia cases that are reconcilable inconsistent having a greater or "lesser offense" element(s) in separate counts in superficial conflict. cf. Jackson v. State, 276 Ga. 408, 577 S.E. 2d 570 (2003) [Cited United States v. Russell, 419 U.S. 57, 105 S.Ct. 471, 83 L. Ed. 2d 461 (1984)].

U.S. CITIZENS' CONSTITUTIONAL VIOLATION AND THEIR INTEREST IN JUSTICE

By refusing to acknowledge this repugnancy and thereby its illegal sentence based on acquitted malice murders, while granting sentence relief to other fundamentally mutually exclusive/repugnant verdict cases, the Georgia Supreme Court is denying and violating Petitioners equal protection and

REASONS FOR GRANTING THE PETITION (pg 2 of 6)

due process rights, privileges, and protections afforded by the U.S. Constitution. See as follows.

"The [U.S.] Supreme Court's holding that juries verdict of not guilty by reason of insanity was an acquittal for purposes of applying the Federal Double Jeopardy clause does not in itself change Georgia Law on repugnant verdicts... All the Justices concur."

McElrath v. State, case No. S22A 0005 (8/13/24).

"As to repugnancy, inconsistency and the verdicts being self-contradictory, the acquittals must necessarily include a finding against a fact that is essential to conviction for the other charges." Hamilton v. State, 167 Ga. App. 370, 371, 306 S.E. 2d 673 (1983) - From Petitioner's

Appellant Brief filed in the Georgia Supreme Court.

"Though they do not involve two guilty convictions, repugnant verdicts suffer from a similar infirmity as mutually exclusive verdicts; they occur when, in order to find the defendant not guilty on one count and guilty on another, the jury must make affirmative findings shown on the record that cannot logically or legally exist at the same time." McElrath v. State 308 Ga. 111(2), 839 S.E. 2d, 573(2020).

See relief given for example in Dumas v. State, 266 Ga. 797, 471 S.E. 2d 508 (1996) "the court told the jury that it had rendered inconsistent guilty verdicts on the malice murder... and sent the jury back for further deliberation, over Dumas' objection... because it involves two verdicts... that not only were

REASONS FOR GRANTING THE PETITION (pg 3 of 6)

inconsistent, but also were mutually exclusive (intent/guilty versus no intent/not guilty)... (Thereby holding) the trial court was absolutely correct when it refused to accept the verdicts and sent the jury back to continue its deliberations". [Content in parenthesis is supplied for clarity].

"Does equal protection mean the same rule and protection (illegal sentence defense) should be afforded to the Appellant (Le Matty)?

Absolutely. "Though the law itself be fair on its face and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution." *Yick Wo v. Hopkins*, 118 U.S. 356, 6 S. Ct. 1064, 30 L. Ed. 220 (1886)" - Petitioner's Appellant Brief filed in Georgia Supreme Court.

Georgia's cases on repugnancy follow the reasoning of other Supreme Courts but was not applied in Petitioner's case. See following examples.

"In support of this determination is an application of the test to determine whether apparently contradictory verdicts in the same trial on two different counts of an indictment are merely inconsistent, and can stand, or are repugnant and cannot (*People v. Speech*, 49 A.D. 2d. 210, 213; *People v. Bullis*, 30 A.D. 2d. 470). That test states that

REASON FOR GRANTING THE PETITION (pg 4 of 6)

'[C]ontradictory verdicts are merely inconsistent [and can stand] if the counts upon which they are returned, although related to one another by the facts of the case, have different basic elements (Dunn v. United States, 284 U.S. 390). However, if the two counts have the same basic elements, and a verdict of guilty is returned in one and a verdict of not guilty is returned as to the other, the verdicts are repugnant and the count upon which a conviction is returned must be dismissed.'" (People v. Speuch, supra). — People v. Smith, 61 A.D. 2d. 91, 401 N.Y. S. 2d. 353 (N.Y. App. Div. 1978).

"The Second Department in a case involving different facts has recently held that "[b]asic logic mandates that where a jury acquits a defendant of robbery he cannot at the same time be found guilty of felony murder predicated upon the identical robbery." (People v. Mitchell, 64 A.D. 2d. 119, 128). — People v. Gibson, 65 A.D. 2d. 235, 239 (N.Y. App. Div. 1978).

"Georgia represents that, outside of this (McElrath) case, the Georgia Supreme Court has applied the repugnancy rule... in Turner v. State 283 Ga. 17, 656 S.E. 2d. 589 (2008). See... the court in Turner vacated only the guilty verdicts, leaving the jury's verdict of acquittal intact." — footnote 3, McElrath v. Georgia, No. ~~22-721~~, Feb. 21, 2024, Certiorari to the Supreme Court of Georgia, 601 U.S. — (2024).

ADDITIONAL REASONS (pg 5 of 6)

Per U.S. Supreme Court Rule 10

(b) A state court of last resort has decided an important federal question in a way that conflicts with the decision ... of a United States court of appeals.

(c) A state court ... has decided an important question of federal law that has not been, but should be, settled by this court, and has decided an important federal question in a way that conflicts with relevant decisions of this court. (E.g. *Yick Wo v. Hopkins*, id.)

It is important nationally for states to be directed and reminded "the denial of equal justice is still within the prohibition of the Constitution." *Yick Wo v. Hopkins*, id. This is how the moral legal infrastructure is maintained, from repair.

The Court's ruling on this matter will encourage courts to remedy such defects appropriately at trial level. It is important to others serving illegal sentences to obtain legal authority for correction. It is important to all U.S. Citizens who hear, that their confidence in the judicial system is not misplaced, especially where a person who is not the actual murder has his sentence modified according to the acquittals.

SUMMARY

Given the U.S. Constitution is being violated, and

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The highest State Court of last resort has not corrected itself to support it accordingly; This honorable Court is the only last remaining authority to uphold this value for our Country, which often is accomplished by upholding it also for the least esteemed among its U.S. citizens.

Petitioner has been asking only his sentence be recognized illegal and removed for all verdicts/counts including, built on, or dependant upon the acquitted malice murder verdicts. The contrary verdicts were rendered null and void per Georgia law by trial judge accepting the repugnant verdicts.

This is accomplished from granting petitioner's certiorari proceeding for argument to declare the Georgia Supreme Court has violated the U.S. Constitution's equal protection and due process clauses, clauses intended to defend U.S. citizens from unequal application of law and to maintain their rights to due process by equal protection.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted, William LeMatty, GDC# 945213

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31068

Date: November 4, 2024