

No. _____

24-6237

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

FILED
OCT 16 2024
OFFICE OF THE CLERK
SUPREME COURT, U.S.

STATE OF ARKANSAS ex rel.
CHARLES EDWARD HARRIS JR — PETITIONER
(Your Name)

vs.
DEXTER PAYNE, Director
Arkansas Division of Correction et al RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

CHARLES EDWARD HARRIS, JR pro se
(Your Name)

320 HIGHWAY 388 EAST
(Address)

GOULD, ARKANSAS 71643
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

I.

The Double Jeopardy Clause of the Fifth Amendment of the United States Constitution prohibits multiple punishments for the same offense, without a clear expression of legislative intent. After firing a succession of bullets into a idle vehicle being occupied by Leannell Robinson and causing him serious physical injury, Harris was convicted under two separate statutes that punish the same conduct.¹ One of the convicted offenses does not require proof of an element or an additional fact that the other does not. Was Harris twice put in jeopardy for one uninterrupted criminal episode that was a violation of two distinct statutory provisions-without a clear expression of legislative intent?

II.

Arkansas Constitution Art. 19, § 20 mirrors U.S. C. A. Const. Art. VI cl. 3² that prohibits a judgment from being valid if the judge who pronounced the judgment did not take a lawfully prescribed oath of office. The regular judge vacated the bench and a special judge was allegedly elected to fill the vacancy. But he did not take a valid oath of office. Were the proceedings held by the special judge in that court null and void? And was Harris denied the equal protection of the law under U.S. C. A. Const. Amend. XIV, § 1-EQUAL PRO.?

III.

U.S. C. A. CONST. ART I § 9 states that the writ of habeas corpus shall not be suspended. Harris presented jurisdictional issues in Arkansas courts. But the State Trial Court and State Supreme Court refused to issue the writ. Has the State of Arkansas suspended the privilege of the writ?

¹ Appx. E. 145-146

² Appx. S

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:

DEXTER PAYNE, Director, Division of Correction; BOBBY GLOVER, Chairman of Arkansas Board of Corrections; JOHN DOE, Vice Chairman of Arkansas Board of Corrections; BUDDY CHADICK, Secretary of Arkansas Board of Corrections; TYRONNE BROOMFIELD, Member of Arkansas Board of Corrections; JOHN FELTS, Member of Arkansas Board of Corrections; WILLIAM BYERS, Member of Arkansas Board of Corrections; WHITNEY GASS, Member of Arkansas Board of Corrections; all in their official capacities.

RELATED CASES

- STATE OF ARKANSAS V. CHARLES EDWARD HARRIS JR, No. 60CR-2008-571, Circuit Court of Pulaski County, Arkansas- Fourth Division. Judgment entered April 21, 2009. "(Appx. F-129-132)"
- Harris v. State, 2010 Ark. App. 247, 2010 WL 816319, Court of Appeals of Arkansas, No. CACR-09-963. Judgment entered May 10, 2010. "(Appx. F. 183)"
- State of Arkansas ex rel. Charles Edward Harris, Jr., v. Dexter Payne, Division of Correction Director, et al, No. 40CV-23-34-5, Circuit Court of Lincoln County, Arkansas Eleventh Judicial District, West - Fifth Division. Judgment entered June 6, 2023. "(Appx. B., D, E, F)"
- CHARLES EDWARD HARRIS JR V. STATE OF ARKANSAS, No. 60CR-2008-571, Circuit Court of Pulaski County, Arkansas - THIRD DIVISION. Judgment entered October 25, 2023 "(Appx. D. 000003-000124, 000144-000145)"
- Harris v. State, No. CR-23-683, Supreme Court of Arkansas. Judgment entered Nov. 16, 2023 "(Appx. P.)"
- Harris v. Gass, 687 S.W.3d 794, 2024 Ark. 78, Supreme Court of Arkansas. Judgment entered May 9, 2024 "(Appx. A., J, K, L)"
- Harris v. State, No. CR-24-35, Supreme Court of Arkansas. Pending decision....

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	9
CONCLUSION.....	20

INDEX TO APPENDICES

APPENDIX A Decision of State Supreme Court

APPENDIX B Decision of State Trial Court

APPENDIX C Order of State Supreme Court Denying Rehearing

APPENDIX D Habeas Corpus Petition In State Trial Court

APPENDIX E Memorandum In Support of Habeas Petition In State Trial Court

APPENDIX F Copy of Exhibits In State Trial Court

APPENDIX G NOTICE to State Trial Judge

APPENDIX H NOTICE to Chief Justice of State Supreme Court

APPENDIX I Petition To Chief Justice of the United States Supreme Court

APPENDIX J Copy of Brief In State Supreme Court

APPENDIX K Copy of State Brief In State Supreme Court

APPENDIX L Copy of Reply Brief In State Supreme Court

APPENDIX M Copy of Petition For Rehearing In State Supreme Court

APPENDIX N Copy of State Response To Petition For Rehearing

APPENDIX O Copy of Petition In State Trial Court, State's Response, Memorandum In Opposition, and Docket of State Trial Court

APPENDIX P Copy of Certiorari Petition In State Supreme Court, State's Response, Petitioner's Response

APPENDIX Q Order Granting Forma Pauperis In State Trial Court

APPENDIX R Copy of U.S.C.A. Const. Amend. V.

APPENDIX S Copy of U.S.C.A. Const. ^{Art.} Amend. VI. cl. 3

APPENDIX T Copy of U.S.C.A. Const. Amend. XIV, § 1

APPENDIX U Copy of Ark. Code Ann. § 5-13-201 and Ark. Code Ann. § 5-13-310

APPENDIX V Copy of Ark. Code Ann. § 5-13-202 and Ark. Code Ann. § 5-13-204

APPENDIX W Copy of Ark. Code Ann. § 5-1-110

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

STATUTES AND RULES

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 687 S.W.3d 794, 2024 WL 2066309; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the LINCOLN COUNTY CIRCUIT 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 May 9, 2024. A copy of that decision appears at Appendix A.

A timely petition for rehearing was thereafter denied on the following date: July 10, 2024, 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). See Also,

Duncan v. Tennessee, 405 U.S. 127, 92 S.Ct. 785, 31 L.Ed.2d 86 (1972) (Justice BRENNAN dissenting); Illinois v. Vitale, 447 U.S. 410, 421, 100 S.Ct. 2260, 65 L.Ed.2d 228 (1980)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- 1.) U.S.C.A. Const. Art. I, § 9 which states: The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Case of Rebellion or Invasion the public Safety may require it.
- 2.) U.S.C.A. Const. Amend. V " (Appx. R)"
- 3.) U.S.C.A. Const. Amend. XIV, § 1 " (Appx. T)"
- 4.) U.S.C.A. Const. Art. VI cl. 3 " (Appx. S)"

STATEMENT OF THE CASE

On 02/21/2008 Charles Edward Harris, Jr., was charged in the Fourth Division of the Circuit Court of Pulaski County, Arkansas (4th Div Cir. Ct.) "Appx. F-91)" with two counts of committing a terroristic act and one count of first degree battery in violation of Ark. Code Ann. § 5-13-310 and Ark. Code Ann. § 5-13-201 "(Appx. E. 145-146)"

Near the end of 2008 Circuit Judge John Langston retired from the office of 4th Div. Cir. Ct., and the Honorable Herbert T. Wright, Jr., was elected to a term of six years in his stead. The commencement of his term begin on 01/01/2009 "(Appx. D-16)" Mr. Harris jury trial was scheduled for 04/21/2009 "(Appx. F-81)"

On April 20-21, 2009 Circuit Judge Herbert T. Wright, Jr., was absent from his court "(Appx. D-27)" and a licensed attorney was allegedly elected as Special Judge of the Fourth Division of the Circuit Court of Pulaski County, Arkansas - under Arkansas law to fill the vacancy from 04/20/2009 - 04/24/2009 "(Appx. F-199-205)"

Undoubtedly there are documents on the face of the pulaski county circuit clerk's record showing that Mr. Dale E. Adams did not take the lawfully prescribed oath of office to discharge the duties of special judge "(Appx. F. 201)" because the deputy circuit clerk - without authority of law - changed the language of the constitution, and administered a oath of office foreign in word to the one mandated in AR CONST Art. 19, § 20 which mirrors USCA CONST Art. VI cl. 3 "(Appx. S)"

In addition there is no evidence on the minutes of the clerk of the election proceedings empowering Mr. Dale E. Adams to act as special judge."(Appx. D-44)" No challenge to the power and authority of the special judge was made in the trial court nor the Court of Appeals of Arkansas on direct appeals "(Appx. F-187)". Conversely, April 21, 2009 was Harris first appearance back in the 4th Div Cir. Ct. since the retirement of Honorable John W. Langston "(Appx. D-49)" Harris had never been in the physical presence of Circuit Judge Herbert Wright and had no idea what he looked like "(Appx. D-49)" Harris did not have any proof that the incumbent was a special judge until he received the instruments from the circuit clerk on 09/22/20 and the record/transcript and case file from the Arkansas Supreme Court Clerk on April 27, 2021 "(Appx. J.-4-SC)"

Meanwhile, on 04/11/2009 the prosecutor filed a amended felony information "(Appx. F-124)" charging Harris with two counts of terroristic act and first-degree battery under §(a)(8) of the statute instead of §(a)(1)."(Appx. U)" Count II on the amended felony information was non pros before the trial begin"(Appx. F 130)" And the jury was impaneled only to find if Harris committed the offenses of a Class Y terroristic act and first-degree battery under §(a)(8) against Leannell Robinson "(Appx. J-5-SC)"

Mr. Dale E. Adams instructed the jury on both offenses"(Appx.F-248-250)" The jury returned guilty verdicts for both offenses"(Appx. F-178)" Mr. Dale E. Adams accepted the jury's verdict"(Appx. F-177-179)" and imposed judgment of convictions and sentences for both offenses"(Appx. F-177-179)." 5.

Mr. Harris was found guilty of firing shots into a conveyance that was being occupied by Leannell Robinson causing him serious physical injury" (Appx. D-77)" This one uninterrupted criminal episode was a violation of multiple offenses under Arkansas law all in the same assault and battery chapter¹. And, without clear legislative intent, Harris was punished twice for the same offense.²

Moreover, the unauthorized battery conviction caused Harris sentence to be enhanced beyond the statutory maximum in a unrelated case that was committed before the commission of the offenses in the present case."Appx. D-83)" Simply put, absent the unauthorized battery conviction Harris would not have met the criteria for a habitual offender under Ark. Code Ann. § 5-4-501(c) for the robbery and theft convictions imposed on 06/26/2009 in 6OCR-2008-1053 "(Appx. F-256-259)"

Through folly of appellant counsel none of the federal questions asserted herein were raised on direct appeal "(Appx. F-183)" or in a timely filed post conviction petition.

However, the respondent(s) attorney became aware that these restraint over Harris liberties is unlawful and in contravention of the federal constitution on July 17, 2020. And was asked to provide proof of claims in the nature of a bill of particulars regarding these

¹ See, Ark. Code Ann. § 5-13-201; § 5-13-202; § 5-13-204; § 5-13-310

² See, "(Appx. J. 156-171)"

matter " (Appx. F. 1-61) " " (Appx. F. 62-69) " " (Appx. F. 70-78) " . But after being duly served and put on notice, the respondents failed to respond, went into default, stipulated, and agreed by tacit procreation that Harris commitment is in contravention of the federal constitution. Having the power to order release - Respondents continued to restrain Harris without authority of law.

On 03/03/2023 Harris filed in the Circuit Court of Lincoln County, Arkansas a petition for writ of habeas corpus with affidavit, " (Appx. D) " memorandum of points and authorities, " (Appx. E) " exhibits " (Appx. F) " and appendix in support stating that he is being detained without lawful authority under federal law, " (Appx. D. 2,8) " because without a valid oath of office the proceedings held by the special judge on April 21, 2009 were null and void. " (Appx. E. 83-120) " And that his third protection double jeopardy rights under the rules mandated by this Court in Blockburger³ and Missouri⁴ are being violated " (Appx. D. 77-84, Appx. E. 143-171) " .

On 06/06/2023 the habeas court entered a order denying and dismissing Harris petition " (Appx. B) " . On 08/23/2023 Harris sent a NOTICE to Circuit Judge Jodi Raines Dennis of Lincoln County, Arkansas stating that she is suspending the privilege of the writ of habeas corpus in violation of Ark. Const. Art. 2, § 11 which mirrors U.S. C.A. Const. Art. 1 § 9, cl. 2 . Also included with the NOTICE was the actual order for the writ in proper

³ 284 U.S. 299, 52 S.Ct. 180, 76 L.Ed 306 (1932)

⁴ 459 U.S. 359, 103 S.Ct. 673, 74 L.Ed 2d 535 (1983)

form pursuant to Ark. Code Ann. § 16-112-105 for Judge Dennis to sign and direct to any of the officers listed in Ark. Code Ann. § 16-112-106 to serve the writ. But Judge Dennis refused to sign the order for the writ. "(Appx. G)" On 09/26/2023 Harris sent NOTICE to Arkansas Supreme Court Chief Justice John Dan Kemp stating that Circuit Judge Jodi Raines Dennis is suspending the privilege of the writ of habeas corpus in violation of the Federal Constitution. (Appx. H)"

On 11/17/2023 Harris sent notice to this Court stating that the State of Arkansas is suspending the privilege of the writ of habeas corpus in violation of U.S. C.A. Const. Art. I § 9, cl. 2. "(Appx. I)" But it was sent back with instructions for proper filing in this Court.

On 01/02/2024 Harris filed brief in the Arkansas Supreme Court.⁵ On 01/31/2024 the Respondents filed a brief.⁶ On 02/15/2024 Harris filed a reply/brief.⁷ On 05/09/2024 the Arkansas Supreme Court entered a order denying Harris appeal without acknowledging his 14th Amendment equal protection of the law claims⁸ and without applying the Blockburger test to his third protection double jeopardy claims. On 05/28/2024 Harris filed a timely petition for rehearing.⁹ On 06/03/2024 the Respondents filed a response.¹⁰ On 07/18/2024 the Arkansas Supreme

⁵ See, "Appx. J"

⁶ See, "Appx. K"

⁷ See, "Appx. L"

⁸ See, "Appx. A"

⁹ See, "Appx. M"

¹⁰ See, "Appx. N"

Court entered a order denying Harris petition for rehearing.
(Appx. C)"

REASONS FOR GRANTING THE PETITION

ISSUE I

THE ARKANSAS SUPREME COURT ERRED WHEN IT REFUSED TO APPLY THE "BLOCKBURGER TEST" TO PETITIONER'S THIRD PROTECTION DOUBLE JEOPARDY CLAIMS AS GUARANTEED BY THE 5TH AND 14TH AMENDMENTS TO THE UNITED STATES CONSTITUTION

It is beyond dispute that the guarantee against Double Jeopardy is fundamental to the American scheme of justice. And the Supreme law prohibiting a state from imposing multiple punishment for the same (or lesser-included) offense is firmly established in the Fifth Amendment to the United States Constitution which states that: "[N]o person shall be subject for the same offense to be twice put in jeopardy of life or limb."¹ This constitutional guarantee is applicable to the states through the Due Process Clause of the Fourteenth Amendment. Benton v. Maryland, 395 U.S. 784, 89 S.Ct. 8056, 2062, 23 L.Ed. 2d 707.

The appropriate inquiry under Blockburger v. U.S., 284 U.S. 299, 304, 52 S.Ct. 180, 76 L.Ed. 306 (1932) is "[w]hether each provision requires proof of an additional fact that the other does not".² And the assumption underlying the Blockburger rule is that Congress ordinarily does not intend to punish the same offense under two different statutes. See, Missouri v. Hunter, 459 U.S. 359, 366-67, 103 S.Ct. 673, 74 L.Ed. 2d 535 (1983).³ In addition, the Arkansas General Assembly codified this constitutional protection in Ark. Code Ann. § 5-1-110 (Repl. 2007)⁴ mandating that five tests are to be applied before imposing multiple punishment for ~~the~~ same or a lesser-included offense. [I]f an offense... meets[s] one of the three

¹ See, Appx. R.

² See, Appx. E p. 143.

³ See, Appx. E. p. 154

⁴ See, Appx. W

statutory tests [it is] a lesser-included offense. Davis v. State, 365 Ark. 634, 232 S.W.3d 476 (2006). It is important to note that said statute was enacted shortly after the decision of this Court in Missouri, supra to comply with the constitutional command.

In view of this principle and the promise it guarantees to all criminal defendants across the nation. Arkansas breaks that promise, disregard the constitutional question, and ignore all efforts by this petitioner to have his double jeopardy claim reviewed under the appropriate tests. The Arkansas Supreme Court's refusal to address the issue presented is not in favor but against the rights claimed under the constitution, laws, and treatises of the United States. Without adequate review petitioner may be subject for the same offense to be twice put in jeopardy of life or limb. Absent a clear expression of legislative intent.

Based on holdings from a majority of the federal circuits and several states upon the issue there is no doubt that all will concede that the decision of the Arkansas Supreme Court is not in favor but against the rights and laws guaranteed by the United States. The treatment given multiple punishment and lesser-included offense double jeopardy claims in a majority of the federal circuits and several states of the Union is universal and consistent:

See, e.g., U.S. v. Baird, 63 F.3d 1213, 1216 (3rd Cir. 1995) (noting that the prohibition against multiple punishment for the same offense has deep roots in our history and our jurisprudence) (citations omitted); U.S. v. Fina 220, 704 F.2d 300, 305 (6th Cir. 1983); noting the tool for determining Congressional intent in this area is the test articulated by the Supreme Court in Blockburger) (citations omitted); U.S. v. Gonzales, 40 F.3d 735 (5th Cir. 1994) (holding that cumulative

convictions and punishments may [not] be imposed without Double Jeopardy violation when legislature [does not clearly] authorizes cumulative punishment under separate statute); Johnson v. Young, 779 F.3d 495, 496 (8th Cir. 2015) (holding that the Double Jeopardy Clause protects a criminal defendant from multiple punishments for the same offense imposed in a single proceeding) (citations omitted); U.S. v. Hollingsworth, 81 F.3d 171 a 4 (9th Cir. 1996) (holding that [w]ith respect to cumulative sentences imposed in a single trial [under separate statutes] the Double Jeopardy Clause does no more then prevent the sentencing court from prescribing greater punishment then the legislature intended) (citations omitted); Dennis v. Poppe, 222 F.3d 1245, 1251 (10th Cir. 2000) (holding that the Double Jeopardy Clause provides constitutional protection against multiple punishments for the same offense.) (citations omitted).

Furthermore, in Tennessee, State v. Pelayo, 881 S.W.2d 7, 12-13 (Tenn. Crim. App. 1994) it was held that "[a] single assault involving two separate stab wounds could not support two separate assault convictions."

In Alabama, Judge WISE writing for the court in Banks v. State, 1919 So.2d 1223, 1228 (No. CR-03-1966, Mar. 2005) (Tenn. Crim. App. 2005), made over twenty citations in its opinion consistent with the decisions of other jurisdictions that have addressed the issue as the one presented here.

This Court has never neglected to answer the question appropriately when properly presented. See, Ball v. United States, 470 U.S. 856, 105

S. Ct. 1668, 84 L.Ed. 2d 740 (1985). Although not precisely parallel, Ball presents features in all respects similar to those of Petitioner's case.

Ball, a previously convicted felon was indicted and convicted on charges of receiving a firearm shipped in interstate commerce 18 U.S.C. § 922(h)(1) and § 924(a) and possessing a firearm 18 U.S.C. App. § 1202(a)(1). Id. at 857. After being convicted on both counts and sentenced to consecutive terms of three years imprisonment on the receipt count and two years on the possession count, the latter ~~sentence~~ suspended with two years probation. He appealed.

Although the Ball Court dealt with firearm statutes instead of assault and battery provisions, ~~the similarity~~ here is that both Petitioner and Ball contended that each offense rest on the same ~~criminal episode~~ criminal conduct (or episode) ~~or~~ that one offense is a lesser-included offense of the other requiring proof of the same evidence to establish both offenses.

Meanwhile ~~on appeal~~ the validity of the consecutive sentences were challenged. And the government conceded stating that "consecutive sentences could not be imposed for unlawful receipt and unlawful possession of the same firearm when the unlawful possession was incident to its unlawful receipt." Id. at 858. The Court of Appeals remanded with instructions for the District Court to modify the sentence to make them concurrent. Id. Certiorari was granted and the Blockburger test was applied to § 922(h) and 1202(a). And this Court was persuaded that Congress had no intention of creating duplicative punishment. Id. at 862-865. Holding that proof of illegal receipt of firearm necessarily includes proof of illegal possession of that weapon. Id.

In sum, the decision of the Court of Appeals was vacated and remanded with instructions to have the District Court vacate one of the convictions. Further holding that [t]he remedy of ordering one of the offenses to be served concurrently with the other cannot be squared with Congressional intent. One of the convictions, as well as its concurrent sentence is unauthorized punishment for a separate offense. Id. at 1673.

The Ball Court stated that Congress clearly seems to have ~~that a felon~~ recognized that a felon who receives a firearm must also possess it. And thus had no intention of subjecting that person to two convictions for the same criminal act. Id. ~~Here~~ It must also be conceded that the Arkansas General Assembly knew ~~that~~ that proof of a Class Y terroristic would ultimately violate other lesser assault and battery offenses under its statutes. And the intent on cumulative convictions for separate offenses on the same criminal episode is not clear. See, Brown v. State, 74 Ark. App. 281, 97 S.W.3d 314 (2001) (J. Griffin, dissenting).

The decision by the Arkansas Supreme Court that each pull of the trigger constitutes a separate ~~offense~~ impulse punishable as a separate offense was a mistreatment of the constitutional question and not clearly expressed by the legislature (Appx. A)

Simply put, the offenses of a Class Y terroristic act

requires proof that Petitioner shoots into a vehicle being occupied by a person with the purpose to cause physical injury and did cause serious physical injury. The offense of battery-in-the-first-degree as charged in the amended information requires proof that Petitioner cause physical injury to a person by means of a firearm. (Appx. U)

The battery offense is a lesser offense because it is a Class B felony which carries a less severe penalty than a Class Y felony under Arkansas law. In Petitioner's case the same evidence submitted to prove the terroristic act charge by necessity established the charge of causing physical injury to a person by means of a firearm. The two convictions cannot survive double jeopardy scrutiny.

Moreover, the evil at which the offenses are directed is the same. Both first-degree-battery and terroristic act are intended to deter assaultive-style type conduct or define alternative ways of committing assault and battery against persons. Both offenses are in the same assault and battery chapter and can be said as a structure that suggest that the offenses are regarded as offenses on the same spectrum - the latter being worst than the former. More importantly the legislative intent is not clear. Therefore the Blockburger test should have been applied and the lesser-included offense test mandated by the Arkansas General Assembly in A.C.A. § 5-1-10

to protect this specific constitutional guarantee of criminal defendants. The legislature may punish the same conduct under two or more statutory provisions, but its intent to do so must be clear. Missouri v. Hunter, 459 U.S. at 367, 103 S.Ct. 673

Petitioner had a right under the Fifth and Fourteenth Amendments to the United States Constitution to have his double jeopardy reviewed under the Blockburger test. The authorities relied on ~~the~~ the Arkansas Supreme Court to justify their refusal not to apply the Blockburger test or determine if the charges overlap, or even apply their own legislative mandate. Is not in favor ~~of~~ such right but against the ~~to~~ rights claimed under the constitution, laws, and treaties of the United States. Therefore revision by this Court is necessary to protect the national government in the exercise of its rightful powers. To ensure that Petitioner is not being denied the constitutional protection he is entitled to as a matter of right.

ISSUE III

THE STATE OF ARKANSAS HAS SUSPENDED THE PRIVILEGE OF THE WRIT OF HABEAS CORPUS

The long-established law of the land that prohibits a state from suspending the privilege of the writ of habeas corpus is mandated

in U.S.C.A. Const. Art. I, § 9 which states in part: "The writ of habeas corpus shall not be suspended." See, Nielsen, 131 U.S. 170, 9 S.Ct. 672 (1889). Petitioner presented jurisdictional

issues to the State Trial Judge and the State Supreme Court Justice and neither court issued the writ.

The State of Arkansas has denied Petitioner the privilege of the Great Writ in violation of the Constitution, laws, and treaties of the United States. And this Court should mandate that Arkansas issue the writ to make a determination as to if he is restrained of his liberties in violation of the law.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Charles Edward Davis Jr.

Date: October 14, 2024