

NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

MICHAEL LEE SHARPE,
PETITIONER

VS.

STATE OF TEXAS,
RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI TO THE
COURT OF APPEALS FOR THE SECOND APPELLATE
DISTRICT OF TEXAS AT FORT WORTH

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the Second Amendment guarantees an individual who has been convicted of a felony offense the unencumbered right to possess firearms, or on a case by case basis, or not at all, or does the language “the right of the people to keep and bear arms, shall not be infringed”, mean that the right itself is unequivocal and pre-existing for all persons, and the protection provided is not to guarantee the right, but to prevent infringement on that right.

LIST OF PARTIES

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

RELATED CASES

State of Texas vs. Michael Lee Sharpe, Cause No. 1769432, Criminal District Court Number Three, Tarrant County, Texas. This is the original criminal case for Unlawful Possession of a Firearm. This case was dismissed when it was re-indicted to change the underlying felony conviction from a drug charge to a violent offense conviction.

State of Texas vs. Michael Lee Sharpe, Cause No. 1836829, Criminal District Court Number Three, Tarrant County, Texas. This is the re-indicted criminal case for Unlawful Possession of a Firearm. This case is pending.

Ex Parte Michael Lee Sharpe, No. 02-24-00282-CR (Tex.App.-Fort Worth, December 19, 2024), (not designated for publication). No motion for rehearing was filed. This is the final disposition on the merits.

Ex Parte Michael Lee Sharpe, No. PD-0036-25 (Texas Court of Criminal Appeals, March 12, 2025) Petitionary Review Denied without opinion. No motion for rehearing was filed.

Ex Parte Michael Lee Sharpe, No. 02-24-00282-CR (Tex.App.-Fort Worth, March 21, 2025). Order Granting Motion to Stay Mandate.

Ex Parte Michael Lee Sharpe, Writ No. C0011658-1836829, Criminal District Court Number Three, Tarrant County, Texas (trial court). Petition for Pretrial Writ of Habeas Corpus Denied, August 15, 2024.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner, Michael Lee Sharpe petitions for a writ of certiorari to review the judgment of the Second Court of Appeals of Texas, in Fort Worth, Texas.

OPINIONS AND ORDERS BELOW

Ex Parte Michael Lee Sharpe, No. 02-24-00282-CR (Tex.App.–Fort Worth, December 19, 2024), (not designated for publication). No motion for rehearing was filed. This opinion is attached as Appendix A.

Ex Parte Michael Lee Sharpe, Writ No. C0011658-1836829, Criminal District Court Number Three, Tarrant County, Texas (trial court). Petition for Pretrial Writ of Habeas Corpus Denied, August 15, 2024. This order is attached as Appendix B.

Ex Parte Michael Lee Sharpe, No. PD-0036-25 (Texas Court of Criminal Appeals, March 12, 2025) Petitionary Review Denied without opinion. No motion for rehearing was filed. This notice is attached as Appendix C.

Ex Parte Michael Lee Sharpe, No. 02-24-00282-CR (Tex.App.–Fort Worth, December 19, 2024). The Court’s Order Granting Petitioner’s Motion to Stay Mandate is attached as Appendix D.

JURISDICTION

(i) The date of the opinion of the Second Court of Appeals at Fort Worth (intermediate State appellate court) is December 19, 2024.

(ii) No motion for rehearing was filed in the Second Court of Appeals. The Texas Court of Criminal Appeals denied Petitioner's Petition for Discretionary Review on March 12, 2025. The deadline to file this petition is June 10, 2025, per Supreme Court Rule 13. Therefore, this petition is timely filed.

(iii) There are no petitions for cross action involved in this petition.

(iv) This Court's jurisdiction is founded in 28 United States Code, Section 1257 (a).

(v) Pursuant to Supreme Court Rule 29.4 (c), the following statement is included. Neither the State of Texas, nor agency, officer, or employee thereof are a party to this suit. 28 United States Code, Section 2403 (b) may apply and service of this Petition for Certiorari is made upon the Texas Attorney General. Additionally, the Texas State Prosecuting Attorney and the Tarrant County Criminal District Attorney have been properly served as shown by the certificate of service.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Second Amendment:

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

Section 46.04, Texas Penal Code - Unlawful Possession of Firearm (in relevant part):

(a) A person who has been convicted of a felony commits an offense if he possesses a firearm:

(1) after conviction and before the fifth anniversary of the person's release from confinement following conviction of the felony or the person's release from supervision under community supervision, parole, or mandatory supervision, whichever date is later; or

(2) after the period described by Subdivision (1), at any location other than the premises at which the person lives.

STATEMENT OF THE CASE

The Burleson, Texas Police Department detained Petitioner for investigation of theft on February 8, 2023, in Tarrant County, Texas.

Petitioner was followed by police from an adjacent county based on surveillance for theft. Petitioner was detained while moving merchandise from the vehicle into a motel room. The vehicle was searched while another officer was speaking with Petitioner and a firearm was found.

Petitioner told the police he was in possession of the firearm for protection due to him being old. Petitioner was 64 years old at the time of his arrest. Petitioner had not re-entered the vehicle prior to the search by police. The police determined that Petitioner had been convicted of the felony offense of Possession of a Controlled Substance PG1 < 1G on June 21, 2010. The firearm was found in the glove box of the vehicle. Petitioner had exited the car prior to the arrival by police. Appendix E.

Petitioner was indicted in state court in Fort Worth, Texas for the offense of Unlawful Possession of a Firearm, Tex. Penal Code, Section 46.04, which alleged that he had been previously convicted of a felony offense, specifically, Possession of a Controlled Substance Under One

Gram: Namely Heroin, on June 21, 2010. Additionally, the indictment alleged, per Texas law, that Petitioner had been convicted of two felony offenses in succession. Specifically, the two felony convictions were Aggravated Assault with a Deadly Weapon on March 14, 2005, and Possession of a Firearm by a Felon on June 5, 2000. The additional allegations, if proven, change the punishment range under Texas law from 2-10 years in prison to 25-99 years or Life in prison. Appendix E.

On May 8, 2023, Petitioner filed an Application for Writ of Habeas Corpus (Pretrial), and on May 22, 2023, an Amended Application for Writ of Habeas Corpus (Pretrial)¹ brought pursuant to the Second Amendment, and Due Process Clause of the Fourteenth Amendment, Article 1, Section 12, Texas Constitution, and Articles 1.08. 11.08, and 11.23 of the Texas Code of Criminal Procedure. This application alleged, as required by Texas law, that Petitioner was illegally restrained and continued to be restrained based on the prosecution for possession of a handgun as a convicted felon. Petitioner cited this Court's decision in *New York State Rifle and Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022) as authority

¹Original application did not notify the Texas Attorney General.

that the Second Amendment, applicable to the States by the Due Process Clause of the 14th Amendment, protected him against infringement by Section 46.04, Texas Penal Code. Section 46.04 prohibits possession of a firearm if a person outside his home if a person has any felony conviction.

Appendix E.

On June, 22, 2023, the trial court heard testimony and reviewed the evidence on Petitioner's pretrial habeas corpus alleging protection from prosecution by the Second Amendment. At the conclusion of the hearing, the parties and judge agreed to postpone any decision based on the pending outcome in *United States v. Rahimi*, 602 U.S. 680 (2024).

On August 12, 2024, the State obtained a re-indictment, which moved the aggravated assault with a deadly weapon conviction from the enhancement portion of the indictment to the underlying felony, and the range of punishment became 2-20 years in prison under Texas law.

On August 15, 2024, the trial court denied relief. Petitioner appealed pretrial to the Second Court of Appeals of Texas. On December 19, 2024, the Second Court of Appeals affirmed the trial court's decision. Discretionary Review was denied without opinion on March 12, 2025.

REASONS FOR GRANTING THE WRIT

This case presents an issue of national importance of the need to resolve one of this country's most basic constitutional rights – the Second Amendment. The decision concerning possession of firearms by a person who has been convicted of a felony, and the protections afforded by the Second Amendment, if any, is a matter that needs clarification due to numerous lower court decisions which are inconsistent and fact specific.

In *Bruen*, this Court noted that the Petitioners were adult, law abiding residents of New York and were impermissibly denied a firearm permit, based on the protections of the Second and Fourteenth Amendments. This Court held:

“When the Second Amendment’s plain text covers an individuals’ conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation’s historical tradition of firearm regulation. Only then may a court conclude that the individual’s conduct falls outside the Second Amendment’s “unqualified command”, citing *Konigsberg v. State Bar of Cal.*, 366 U.S. 36, 50 n. 10 (1961). *Bruen*, at 15.

In *United States v. Cruikshank*, 92 U.S. 542, 553 (1875), this Court held: “[t]his is not a right granted by the Constitution. Neither is it in

any manner dependent upon that instrument for its existence. The Second amendment declares that it shall not be infringed” This holding was followed in *District of Columbia et al. v. Heller*, 554 U.S. 570, 592 (2008).

The State’s original argument against relief is that since Petitioner is a convicted felon, and as such is not an ordinary law abiding citizen, his conduct is not covered and thus, not protected by the Second Amendment. See State’s Opposition to Defendant’s Application for Writ of Habeas Corpus (Pretrial) and State’s Amended Opposition to Defendant’s Application for Writ of Habeas Corpus (Pretrial). The State’s fallback position is that history supports the regulation, and gives a history of disarming citizens back to the 14th century. Appendix E.

Bruen’s reference to the Petitioners as ordinary, law abiding citizens should not be the standard as to which persons, convicted felons or those without criminal history should have the benefit of its holding. Petitioner submits that the Second Amendment’s plain text covers all persons because there is no limitation as written. Any assertion that *Bruen* only applies to law abiding persons only is dicta as possession of

a firearm by a felon, a crime under Texas Penal Code, Sec. 46.04, was not before this Court in *Bruen*. Petitioner has been convicted of a felony, and the records of this case indicate a conviction for a crime of violence in 2004. There is no evidence Petitioner was violent when arrested.

It is important for this Court to establish a clear rule of law to either allow continued prosecution for firearm possession, or recognize in clear language that our constitution recognizes this right as inalienable and free from infringement as is it was written.

Concerning whether the State's historical treatment of felons supports his position, Petitioner would point out to the Court that the State of Texas has had one Declaration of Independence, eight constitutions (two while a part of Mexico, one while a republic, and six as a state, with the last one enacted in 1876), six penal codes, and the legislature meets in odd years. The current Texas Constitution of 1876 has been amended 528 times.

Until 1974, with the latest penal code, there was no law prohibiting the possession of a firearm by a felon in Texas. Prior laws, such as Texas Revised Statutes of 1911, Art. 858, contained prohibitions against the

firing of fire-crackers, guns and pistols, use of velocipedes, or any pyrotechnic or other amusements or practices tending to annoy persons passing in the streets or sidewalks, or to frighten horses or teams; to restrain and prohibit the ringing of bells, blowing of horns and bugles, crying of goods, and all other noises, practices and performances tending to the collection of persons on the streets and sidewalks, by auctioneers and others, for the purpose of business, amusement or otherwise was the sum of the history. Mere possession as a felon was not against the law.

The United States federal laws on firearms date to 1938 with the enactment of the Federal Firearms Act of 1938.

The cases that have been filed since the decision in *Bruen* are various in their holdings, which supports the necessity of a bright line rule to settle this matter in the entire United States.

In *Heller*, at 581, this Court held, “We start therefore with a strong presumption that the Second Amendment right is exercised individually and belongs to all Americans.”

In *Range v. Attorney General United States*, 69 F.4th. 96 (3d Cir. 2023), the Fourth Circuit held that a federal statute that prohibited

possession of firearms by someone who has been convicted of a crime punishable by imprisonment for a term exceeding one year, was unconstitutional as applied to someone with a false statement conviction.

In *Firearms Policy Coalition Inc. v. McCraw*, 623 F. Supp. 3d 740 (N.D.Tex, 2022), the district court for the Northern District of Texas, in Fort Worth, held that Texas' age restriction prohibiting 18-20 year olds from carrying handguns for self-defense outside the home based solely on their age violates the Second Amendment.

In *United States vs. Daniels*, No. 22-60596 (5th Cir. January 6, 2025), the Fifth Circuit, upon remand from this Court for consideration in light of *Rahimi*, held that a conviction under 18 U.S.C. Sec. 922 (g)(3) (possession of a firearm by an unlawful drug user) was not valid when the government did not show that the defendant was intoxicated at the time of the offense, nor identify the last time the defendant used an unlawful substance. Petitioner's case is similar to *Daniels*, because although Petitioner has been convicted of a violent felony (not alleged in the original indictment as an underlying offense and almost 18 years prior to the instant offense), there was no showing by the State in either the

hearing or subsequent filings that Petitioner was violent at the time of his arrest, or had been at any time after his conviction in 2005.

In *United States vs. Bartucci*, 658 F. Supp 3d 794 (E.D.Cal. 2023), the district court, in discussing *Bruen*, noted that this Court only considered that conduct of the individuals challenging the law, which was to carry firearms outside the home, which the New York statute prohibited.

While Petitioner has been convicted of a violent crime, there is nothing that indicates he was violent at the time of his arrest for possession of a firearm, or even in proximity to the gun. The police searched a car that Petitioner was not inside at the time of the police's arrival. Second, Petitioner's violent offense occurred almost two decades prior to the instant offense.

Should this Court grant this Petition, and issue an opinion, the courts, prosecutors, and defense counsel across the nation have some guidance as to who can and cannot possess a firearm. In short, the legal system and courts need a final definitive answer on whether the Second Amendment protects a convicted felon, if the felony was violent, and if

the violence is somehow attenuated over time. *Rahimi* sustained the government's argument that a judicial determination of clear threat of violence to another, the threatening individual may be disarmed. The key phrase in *Rahimi* was that there was a judicial determination and an existing restraining order. Alternatively, the judgment of the Second Court of Appeals of Texas could be vacated and remanded for consideration in light of *Rahimi*. See *Morrissette v. United States*, No. 24-6415, March 31, 2025.

The Second Court of Appeals rejected a previous argument, also filed by the undersigned counsel in *Ex Parte Huell*, 704 S.W.3d 246 (Tex.App.–Fort Worth, 2024, no pet.) The Second Court concluded that it's the controlling United States Supreme Court case law did not hold that the Second Amendment prohibited the government's restriction of firearm possession by convicted felons. The Second Court of Appeals determined that this Court "has left generally undisturbed the regulatory framework that keeps firearms out of the hands of dangerous felons", citing *Swindle vs. State*, No. 08-23-00057-CR, (Tex.App.– El Paso, October 31, 2023, pet.ref'd)(mem. Op., not designated for publication).

PRAYER

Appellant Prays that this Court grant his Petition for Certiorari in this case, and upon final review, reverse the decision of the Texas Second Court of Appeals, and declare Sec. 46.04, Texas Penal Code in violation of the Second Amendment for infringing on Petitioner's right to possess a firearm and is therefore unconstitutional.

RESPECTFULLY SUBMITTED,


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