

No. 17-8043

IN THE
SUPREME COURT OF THE UNITED STATES

Ramona Morgan — PETITIONER
(Your Name)

U.S. Court of Appeals vs.
et al State of Kansas
Attorney General- KS — RESPONDENT(S)

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

The petitioner asks leave to file the attached petition for a writ of certiorari without prepayment of costs and to proceed *in forma pauperis*.

Please check the appropriate boxes: "Petition FOR REHEARING"

☒ Petitioner has previously been granted leave to proceed *in forma pauperis* in the following court(s):

District Court, Douglas County, Kansas
Division 5

☐ Petitioner has **not** previously been granted leave to proceed *in forma pauperis* in any other court.

☐ Petitioner's affidavit or declaration in support of this motion is attached hereto.

☐ Petitioner's affidavit or declaration is **not** attached because the court below appointed counsel in the current proceeding, and:

☐ The appointment was made under the following provision of law: _____, or

☐ . copy of the order of appointment is appended.

Ramona Morgan
(Signature)

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(Your Name)

U.S. Court of Appeals vs.
et. al State of Kansas — RESPONDENT(S)
Attorney General of Ks.

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. Court of Appeals 10th Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI
"Petition FOR REHEARING"

Ramona Morgan
(Your Name)

815 SE. Rice Rd. T.C.F.
(Address)

Topeka, Kansas 66607
(City, State, Zip Code)

785-296-3432
(Phone Number)

Substantial grounds not previously presented were found by the petitioner as follows:

Ground One

A violation of the Fifth Amendment of The United States for Double Jeopardy.

The double jeopardy clause of the fifth amendment protects against:

- 1.) A second prosecution for the same offense after acquittal.
- 2.) A second prosecution for the same offense after conviction.
- 3.) Multiple punishments for the same offense.

Petitioner was charged with two counts of second degree murder and one count of aggravated battery. The sentences are consecutive sentences. The convictions are from the same offense. Case. No. 07-cr-1481.

Ground Two

Multiplicity-Multiplicity in a criminal pleading is the charging of a single offense in several counts. The general principles for determining whether charges are multiplicitious are these.

- 1.) A single offense may not be divided into several parts. Generally, a single wrongful act may not furnish the basis for more than one criminal prosecution.
- 2.) If each offense charged requires proof of a fact not required in proving the other the offenses do not merge.
- 3.) Where offenses are committed separately or severally, at different times and at different places they cannot be said to arise out of the single wrongful act.

An example of a Multiplicity case is State v Pham 281 Kan 1227 (2006).

Defective Joinder and Severance, Multiplicity

Multiplicity is the charging of a single offense in separate counts of a complaint or information. The principal danger of multiplicity is that it creates the potential for multiple punishments for a single offense. Multiple punishments for a single offense are prohibited by the double jeopardy clause of the fifth amendment and by Kansas Constitution Bill of Rights 10.

Criminal Offenses, Crimes Against Persons

Where the legislative intent is unclear, a court applies the rule of lenity. In the absence of clear legislative intent, the rule of lenity presumes a single physical action harming multiple victims is only one offense.

In State v. Pham-The Schoonover stair step analysis is applied.

- 1.) Do the charges arise from the same conduct?
- 2.) Do the convictions arise from the same offense?

The court found that five of the six convictions for aggravated robbery were multiplicitous in State v. Pham and his sentence was vacated and remanded for resentencing.

In another example of multiplicity there is State v Carr, 136, S.Ct. 633-(2016).

The Kansas courts have continued to utilize the Schoonover analysis. (281 Kan. 453. 133 13d)

In State v Carr; two defendants sought to overturn their four capital murder convictions for a quadruple homicide in Dec. 2000. Although the defendants did not object at trial to the state pursuing four convictions. In deciding the issue, the Kansas Court reiterated its prior precedent that it could consider a multiplicity claim for the first time on appeal because not reaching the issue might deny fundamental human rights. Since all four capital murder convictions rested on the same element the defendant killing multiple victims. The Kansas Supreme Court held only one conviction would stand under the statute without violating multiplicity.

Petitioner believes there is a multiplicity issue in her case.

Ground Three

Petitioner was charged with fleeing and eluding in connection with the present case 07-cr-1481. It was an element of that charge. The fleeing and eluding charge in Lyndon Ks 07-cr-207 held the petitioner in Lyndon Ks on a one-million-dollar bond which prevented the petitioner from appearing in Lawrence Ks. for the more serious charges. Petitioner went on trial in Lyndon, Ks. and received a felony fleeing and eluding charge. This put the petitioner in a higher sentencing grid. The same evidence and testimony was given in the Lyndon, Ks. case as the Lawrence Ks. case.

When sentenced petitioner's criminal history was elevated by the felony in Lyndon Ks 07-cr-207. Which put her in a higher sentencing grid. Combined with the higher sentencing grid Petitioner was sentenced to consecutive sentences 190 months for count 1 of unintentional second degree murder and count two of unintentional murder of 117 months and 8 months for aggravated battery.

Petitioner believes that this is a violation of her fifth amendment rights and double-jeopardy and multiplicity and there is an issue with her sentence.

In Kansas V Vontress, 266 Kan 248

Hn 14 prior convictions of any crime shall not be counted in determining the criminal history category if they enhance the severity level or applicable penalties, elevate the classification from a misdemeanor to felony, or are elements of the present crime of conviction. Except as otherwise provided, all other prior convictions will be considered and scored.

Petitioner is not guilty of the charges in the cr-07-1481 case. It was an accident.

Petitioner asks the court to please reconsider her Writ of Certiorari. Or resentence her in the proper sentencing grid to 1 count of unintentional second degree murder and run the other two counts concurrently.

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DECLARATION

ON MAY 10th 2018, Petitioner Ramona Morgan submitted a Petition For Rehearing to the SUPREME COURT. The Supreme Court clerk Scott Harris received it and sent it back to Petitioner because the Post Office did not postmark it.

Petitioner resent the Petition for Rehearing on May 29, 2018 along with a declaration stating the Petition was mailed eight days before the 25 day time limit.

On June 21, 2018 Petitioner wrote the SUPREME COURT asking if the Petition was received. There was no response.

In July 2018 Petitioner wrote another letter asking if the Petition was received. No response.

In August 2018 Petitioner's daughter Sabrina Sauer called the Court to see if the Petition was received. The Petition was not.

On August 17th 2018 Petitioner resent the Petition along with a declaration. The Petition was mailed certified mail and a copy was sent to the Attorney General. The Petition was received by the Court on August 23, 2018. There is an enclosed copy of the certified stub postmarked and stamped by the Court.

Petitioner's daughter Sabrina called the SUPREME COURT on September 19, 2018 to see if the Petition was docketed and spoke to Mr. Barnes who stated it was not docketed and he couldn't find it. He stated to resend the Petition. This is the 4th time Petitioner is resending the Petition.

I declare under penalty of perjury
that the foregoing is true and correct
and the Petition for Rehearing was
placed in the prison mailing system,
certified prepaid postage on

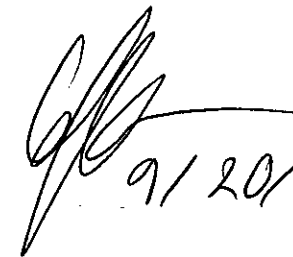
September 20 2018.

EXECUTED AND SIGNED ON

September 20 2018

Ramona Morgan

Signature of Petitioner

  9/20/18

(3.)

