

26-5785
No. _____

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

FILED

AUG 10 2026

OFFICE OF THE CLERK
SUPREME COURT, U.S.

Lamonte A. Ealy — PETITIONER
(Your Name)

vs.

Paula J. Stoudt — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. Eastern District court of wisconsin
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Lamonte A. Ealy
(Your Name)

1101 marrison drive, P.O. Box 1000
(Address)

Boscobel, wisconsin 53805-1000
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

1. Whether an additional element is contained in one offense not contained in the other offense charged?
If not Does twice invoked Sexual contact violate legislative intent?
WIS. E.D.C. Say, NO.
WIS. Ct. App. Say, NO.
2. Whether acquitted or convicted is equally put twice in jeopardy of the same offense?
WIS. E.D.C. Say, ~~did~~ not answer
WIS. Ct. App. Did not answer
3. Whether a Constitutional violation has probably resulted in the conviction of one who is actually innocent open the gateway for relief?
WIS. E.D.C. NO.
WIS. Ct. App. didnt answer
4. Does an acquittal bar the conviction of the same offense with the same statutory fact twice invoked in a separate cant?
WIS. E.D.C. NO.
WIS. Ct. App. NO.
5. Does a word or phrase on the same sentence of a statute has different meanings?
WIS. E.D.C. Didnt answer
WIS. Ct. App. Didnt answer
6. Does a District court abuse its discretion to reopen its own erroneous decision?

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:

Dylon Radtke (warden), time of initial filing

Paula J. Stoudt (warden), time of current filing

Petitioner, Lamonte A. Ealy

District court Judge Brett H. Ludwig Wisconsin Eastern District

Circuit Court Judge Nancy L. Dorado; Michael V. Schoder

Federal courts

RELATED CASES

1. Lamonte Ealy vs. Dylon Radtke Case Number 22-cv-0736
U.S. Eastern District Court of Wisconsin dated Judgment 08/29/22.
2. Lamonte Ealy vs Dylon Radtke case number 22-2622
U.S. Court of Appeals 7th circuit dated 03/24/23.
3. Lamonte Ealy vs. Paula J. Stoudt case No. 22-cv-0736
U.S. Eastern District court of Wisconsin order dated 01/26/26
And; Reconsideration dated 02/09/26
4. Lamonte Ealy vs. Paula J. Stoudt case No. 26-1326
U.S. Court of Appeals 7th circuit dated 05/18/26

State of Wisconsin courts

* Lamonte A. Ealy vs. State of Wisconsin

1. Ealy v. State of Wisconsin, Milwaukee County Case No. 2013CF005263
Judgment 08/04/2020.
2. Lamonte A. Ealy vs. State of Wisconsin, Court of Appeals Case No. 2020
AP001443 Judgment 03/16/2022.

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	11
CONCLUSION.....	12

INDEX TO APPENDICES

APPENDIX A	District order 01/26/26 (ECF NO. 28)
APPENDIX B	District order 02/9/26 (ECF NO. 30)
APPENDIX C	District order 02/23/26 (ECF NO. 37)
APPENDIX D	District order 03/10/26 (ECF NO. 40)
APPENDIX E	7th circuit order 05/18/26 (ECF NO. 41)
APPENDIX F	

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
United States v. Dixon, 504 U.S. 688, 113 S.Ct. 2849 (1993)	5, 6
State v. Eisch, 96 Wis. 2d 25, 291 N.W. 2d 800 (Wis. S.Ct. 1980)	5
Grady v. Corbin, 495 U.S. 508, 110 S.Ct. 2084	5, 6
Sanabria v. United States, 437 U.S. 54, 66 N. 20, 98 S.Ct. 2170	6
57 L.Ed. 2d 43 (1978)	
United States v. Conley, 291 F.3d 464, 470 (7th Cir. 2002) (citing	
Schiro v. Farley, 510 U.S. 222, 274, 114 S.Ct. 783, 127 L.Ed. 2d 47 (1994)	7
Murray v. Carrier, 477 U.S. 478, 106 S.Ct. 2639, 91 L.Ed. 2d 397	8
Schlup v. Delo, 115 S.Ct. 854, 513 U.S. 298 at 853	8
Bates v. United States, 552 U.S. 239 at 29, 118 S.Ct. 255, 139 L.Ed. 2d 212 (U.S. S.Ct. 1997)	9
State v. Dismuke, 244 Wis. 2d 457 at 21 (Wis. S.Ct. 2001)	9
Gonzalez v. Crosby at 553-536, HN 7-8	10
Miller - EL v. Cockrell, 537 U.S. 322, 327, 123 S.Ct. 1029, 154 L.Ed. 2d 931	10
Blockburger 284 U.S. at 304 52 S.Ct. 180	5

STATUTES AND RULES	PAGE NUMBER
Wis. Stat. Section 948.02(1)(e)	4, 7
Wis. Stat. Section 939.71	8
Fed. R. of Civil Procedure 60(b)(6)	10
2244 b	
Wis. Stat. Section 939.22	9

OTHER	PAGE NUMBER
WISCONSIN JURY INSTRUCTION 2102 introductory comment:	
§ 948.02 Sexual Assault of a child: AS Amended	7
By 2007 Wisconsin ACT 80	
Wis. JI-Criminal 2101-A	7
Wis. JI-Criminal 2102-E	5
Wis. JI-Criminal 2102 A-E	7

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 E 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 A-D 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 _____ 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 _____ 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.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was ~~05/28/26~~ May 18, 2026.

☒ 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 _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied 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. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. United States constitution Fifth Amendment provide "... Nor shall any person be subject for the same offense ~~to~~ be twice put in jeopardy of life and limb" page 5
2. Wisconsin constitution Article 1 § 8 provide "... No person may be held ... and no person for the same offense may be put twice in jeopardy of punishment ..." page 5
3. United States constitution Fourteenth Amend page 6
4. Article I, Section 1 of the Wisconsin constitution page 6
5. Wisconsin statute Section 948.02(1) pages 7, 9
6. Wisconsin Statute Section 939.71 page 8

STATEMENT OF THE CASE

71. Wisconsin last resort, Court of Appeals order and opinion is dated November 30, 2021 decision on the merit of issues presented 1.) U.S. Const., Sixth Amend., Effective assistance of post conviction counsel Esther Cohen Lee And same counsel on Appeal 2.) U.S. Const., Fifth Amend., multiplicity in the context of both Double Jeopardy And Legislative intent 3.) Acquittal bar conviction of same offense and same ultimate fact U.S. Const., Fifth Amend., And Due Process clause U.S. Const., Fourteenth Amend.,
72. Wisconsin Court of Appeals stated "Ealy claimed that his post conviction counsel was ineffective for failing to argue that the two allegations of sexual of a child charged in case no., 2013CF5263, were multiplicitious because they were identical in fact and law and therefore violated his constitutional right to be free from double jeopardy. The jury, however, acquitted Ealy of one of the two counts, rendering moot any multiplicity claims stemming from the two charges" (Order, State of Wisconsin v. Lamonte Alton Ealy, 2020AP001443)
73. Wisconsin District Court (Eastern) under Rule 4 (f)(4) decided that it appears from the face of Ealy's petition and attached exhibits that the petitioner is not entitled to relief in the District Court and dismissed the petition erroneously without the written reply. E.D.C. Order dated August 29th 2022 stated: "Ealy argues that prosecutors violated the constitutional prohibition on double jeopardy when they charged him with two counts of First-degree sexual assault under Wis. Stat. section 948.02(1)(e). (ECF No. 7 at 12) Section 948.02(1)(e) provides: 'whoever has sexual contact or sexual intercourse with a person who has not attained the age of 13 years is guilty of a Class B Felony.' The state twice invoked this statute - first, in count 1, as sexual contact with a child body and second, in count 3 as sexual alleging same child touched Ealy penis. (ECF No. 1-1 at 37) The jury found guilty on count 1 and not guilty on count 3 (id.)
- 4

Ealy assert because these counts were multiplicitious no rational jury could have convicted on count 1 while acquitting on count 3 (same offense Wis. Stat. Section 948.02(1)(e)) (ECF NO. 7 at 12-13) Thus he is in custody in violation of the double jeopardy clause for being twice in jeopardy of the same offense (§948.02(1)(e)) and same statutory fact (sexual contact) in his Amended information charging document. U. S. Const., Fifth Amend.; Wis. Const., Art., 1 § 8.

A. MULTIPLICIOUS - DOUBLE JEOPARDY

14. Ealy contention is that State of Wisconsin v. Robert Fisch, 96 Wis. 2d 25, 291 N.W. 2d 800 (Wis. S. Ct. 1980) is unsound and contrary to U.S. Supreme Court Blockburger 'same elements' test Blockburger, 284 U.S. at 304. Reiterated in United States v. Dixon, 509 U.S. 688, 113 S. Ct. 2849 (1993). The Fisch court concluded "it is logically erroneous to assume the converse that only the charging of an unrelated element will satisfy the test" id at 31, 4 N.W. 2d 800. "the mere fact that factual elements are somewhat different does not, however resolve the question or terminate our inquiry in determination of the question of multiplicity" Fisch, 96 Wis. 2d at 32, 291 N.W. 2d 800 (For counts of sexual assaults) Also Ziegler court stated "are significantly different in nature involving different methods of intrusion and context" Ziegler, 342 Wis. 2d 356, 773, 816 N.W. 2d 338 (Wis. S. Ct. 7/3/12) Ealy ask this court for clarification and/or certification to Wisconsin Supreme court to develop Wisconsin law involving sex cases common issues suprious distinctions between counts of the same sexual assault offense.

15. In Ealy's case counts 1, 3 are the same elements, asserts "1. The Defendant had sexual contact with B.G. And; 2. B.G. was under the age of 13 years at the time of the alleged sexual contact" (ECF NO. 7 at 12)

The analysis is a side-by-side comparison of both offense charged see Blockburger, 284 U.S. at 304, 52 S. Ct. 180. This court overruled "same conduct"

test of Grady v. Corbin, 495 U.S. 508, 110 S.Ct. 2084 and revived Blockburger see United States v. Dixon, 509 U.S. 688, 113 S.Ct. 2849 (1993) "A subsequent prosecution avoid the double jeopardy bar by satisfying the Blockburger, same elements test, each offense must contain an element not contained in the other if not, they are the same offense and bar a subsequent punishment or prosecution" id at 688, 113 S.Ct. 2849.

76. District court and Wisconsin Court of Appeal both unreasonably applied and misinterpreted Blockburger test. District court said "The state twice invoked this statute - First, in count 1, where it argued that Ealy had sexual contact with a child's breasts, buttocks, and/or vagina; and Second, in count 3, where it argued that Ealy placed the child's hand on his penis (ECF NO. 1-1 at 37) (citing ECF NO. 8) Now the District dismissed the Petition and dated 8/29/22. Recently the District Refuse to reopen its erroneous order, dismissing Ealy Filings 01/26/26 (ECF. NO. 28) Federal court nor state court may allow the government to focus on different means to commit one sexual contact, statutory element in separate counts see Sanabria v. United States, 437 U.S. 54, 66 n. 20, 98 S.Ct. 2170, 57 L. Ed. 2d 43 (1978) ("A single offense should normally be brought in one count rather than several even if different means of committing the offense are charged. In determining whether a course of conduct constitute one or more separate crime is guided by legislative intent") see Sanabria, 437 at 70, 98 S.Ct. 2170 Also see Albernaz v. United States, 450 U.S. 333, 338 (1981) the focus "on the Statutory elements of the charged offense not the overlap, in the proof offered to established them.

B. MULTIPLICIOUS - Due Process Clause Violation

7. Neither Federal District court complete the multiplicity test second inquiry, Legislative intent (ECF NO. 8) And recent (ECF NO. 28) see Sanabria, 437 at 70, 98 S.Ct. 2170; Missouri

V. Hunter, supra at 366, 103 S. Ct. at 678; U.S. Const. Amend. 14, WSA 181

18. Wis. Stat. § 948.02(1) clearly and specifically identify 5 (Five) separate offenses as:

1. "(a)" see also Wisconsin Jury instruction-criminal 2102 A
2. "(b)" see also Wis. JI-Criminal 2102 B
3. "(c)" see also Wis. JI-Criminal 2102 C
4. "(d)" see also Wis. JI-Criminal 2102 D
5. "(e)" see also Wis. JI-Criminal 2102 E

To support Ealy demonstration and conclusion he contend that S.S. (e) is one offense out of the five separate offenses that twice invoke the same Statutory fact of sexual contact under Wis. Stat. § 948.02(1)(e) is contrary to legislative intent see 'WISCONSIN JURY INSTRUCTION 2102 INTRODUCTORY COMMENT: § 948.02 SEXUAL ASSAULT OF A CHILD: AS AMENDED BY 2007 WISCONSIN ACT 80' clearly defines "5" (five) "types of first degree sexual assault of a child see Wis. JI-Criminal 2102 A-E"

19. The government is authorized to "select ONE alternative of sexual contact" see Wis. JI-Criminal 2101-A. To support ONE sexual contact statutory fact into ONE Wis. JI-Criminal 2102 E elements of the crime to support ONE offense of Wis. Stat. § 948.02(1)(e). For any additional sexual contact under the statute is S.S. (a); (d) both are different elements to each other and section (e) that has been twice invoked against Ealy (ECF No. 7 at 12)

C. WHETHER ACQUITTED OR CONVICTED IS EQUALLY PUT TWICE IN JEOPARDY OF THE SAME OFFENSE

20. Ealy contention is the District Court did err by not ^{13,6} consider or deciding whether Ealy was "put twice in jeopardy of punishment" for the same offense Wis. Stat. § 948.02(1)(e) sexual contact Berry v. State, 90 Wis. 2d 316, 322, 280 W. 2d 204, 207 (1979) (quoting Green v. United States 355 U.S. 184, 187-88, 78 S. Ct. 221, 223-24, 21 L. Ed. 2d 199 (1957); United States v. Conley 291 F.3d 464, 470 (7th Cir. 2002) (citing Schiro v. Farley, 510 U.S. 222, 274

114 S.Ct. 783, 127 L.Ed.2d 47 (1994)

D. WHETHER A CONSTITUTIONAL VIOLATION HAS PROBABLY RESULTED IN THE CONVICTION OF ONE WHO IS ACTUALLY INNOCENT OPEN THE GATEWAY FOR RELIEF

? 11. Ealy filed for counsel seeking to reopen his case (ECF No. 27) Dismissal 08/29th/2022 (ECF NO. 8) The District court Dismissed without reopening its erroneous decision initially (ECF No. 28) furthering a miscarriage of justice impeaching Ealy from marshalling a defense pursuant to Murray v. Carrier 477 U.S. 478, 106 S.Ct. 2639, 91 L.Ed. 2d 397 a 'constitutional violation has probably resulted in the conviction of one who is actually innocent' id at 496, 106 S.Ct. at 2649 (U.S. S.Ct. Jan 23, 1995) (citing Schlup v. Delo, 115 S.Ct. 851, 513 U.S. 298 at 853. This court may use its power/authority of certification to Wisconsin Supreme Court to adopt the gateway inquiry of Carrier, Schlup Since Wisconsin does not have any Actual Innocence legal principles such as standard, doctrine, test.

E. DOES AN ACQUITTAL BAR THE CONVICTION OF THE SAME OFFENSE WITH THE SAME STATUTORY FACT TWICE INVOKED IN A SEPARATE COUNT

? 12. Wis. Stat. § 939.71 provide: IF an act forms the basis for a crime punishable under more than one statutory provision of this state or under a statutory provision of this state and the laws of another jurisdiction, a conviction or acquittal on the merits under one provision bars a subsequent prosecution under the other provision requires proof of a fact for conviction which the other does not requires.

This statutorily adopted Blockburger test for double jeopardy. The jury acquittal of cant 3 bar cant 1 same offense for sexual contact (ECF NO. 1-1 at 37) Wis. Stat. § 948.02 (1)(e) - sexual contact does constitute an "acquittal on the merits" as required for § 939.71

F. DOES A WORD OR PHRASE ON THE SAME SENTENCE OF A STATUTE HAS DIFFERENT MEANINGS

13. Wis. Stat. § 948.02(1)(e) specifically state "sexual contact or sexual intercourse" as the two statutory facts. By their definition sexual contact and sexual intercourse are different facts see Wis. Stat. §§ 939.22(34), (36) See also Wis. Stat. 939.22 words and phrases defined. the District court said sexual contact was different by their means of commission (ECF NO. 8) and failed to correct its ruling (ECF NO. 28). U.S. Supreme court has stated "words or phrase appearing in the same statute are given the same meaning" Bates v. United States 552 U.S. 23 at 29, 118 S.Ct. 255, 139 L.Ed. 2d 212 (U.S. S.Ct. 1997); State v. Dismuke, 244 Wis. 2d 457 721 (Wis. S.Ct. 2001); Hall v. United States 566 U.S. 506, 519, 132 S.Ct. 1882, 182 L.Ed. 2d 840 (U.S. S.Ct. 2013) (Citing Federal Trade Commission v. Credit Bureau Center LLC 937 F.3d 164 HN10 (U.S. S.Ct. 2019)). Also see General Casting Corp. v. Winsted, 156 Wis. 2d 752, 759, 457 N.W. 2d 557 (Ct. App. 1990) (Citing Planned Parenthood of Wisconsin Inc. v. Schimel, 367 Wis. 2d 712, 877 N.W. 2d 604 912 (2010)

G. Does A DISTRICT COURT ABUSE ITS DISCRETION TO REOPEN ITS OWN ERRONEOUS DECISION

14. Recently the District court refuse to reopen Ealy case (ECF NO. 28) to revisit its court erroneous order (ECF NO. 8) Rule 60 motion is to reopen 2254 Habeas proceeding under Fed. R. of Civil procedure 60 (b)(6) for "any other relief under Rule 60 (b)(6) to reopen a final judgment see Ackermann v. United States, 340 U.S. 193, 199, 71 S.Ct. 209, 95 L.Ed. 207 (1950); accord id at 202, 71 S.Ct. 209; Liljeberg 486 U.S. at 864, 108 S.Ct. 2194; id at 873, 108 S.Ct. 2194. the District court departed from judicial proceeding (ECF NO. 8) and again (ECF NO. 28) Denying appropriate relief and review this court may exercise supervisory authority to issue writ for relief. Rule 10 (a). It is clear and obvious Courts 1, 3 are the same offense in law and fact to warrant review for relief. (ECF NO. 7, 12-13)

Continued 'Statement of the case' - 9

¶15. The District court (ECF NO. 28) Dismissal to revisit its Initial order (ECF NO. 8) abused its discretion to revisit its Previous ruling in the First petition therefore isn't a Second or successive petition Gonzalez v. Crosby, at 533-536, HN 7-8. Rule 60 (b)(6) applies any time a party alleges that a judge has made an "Obvious" legal error "Failure to apply unambiguous law to record facts." Also to bring a "claim" if it seeks to add a new ground for relief from the state conviction or attacks the federal courts previous resolution of a claim & 525 on the merits, through not if it merely attacks a defect in the federal habeas proceedings integrity P.P. 2645-2648. Ealy ask this court whether a Rule 60 (b) motion filed by a habeas petitioner is a habeas corpus application as the statute uses that term at 2647. "As a textual matter, § 2244 (b) applies only where the courts acts pursuant to a prisoners application" for a writ of habeas corpus Calderon v. Thompson, 523 U.S. 538, 554, 118 S.Ct. 1489, 140, L.Ed. 2d 728 (1998). Wisconsin District court denial of Ealy Rule 60 (b)(6) was an abuse of discretion P.P. 777-780 citing Buck v. Davis 580 U.S. 100, 137 S.Ct. 759, 197 L.Ed. 2d 1 (U.S. S.Ct. 2/22/17).

¶16. Ealy contend the 7th circuit order dated may 18, 2026 (ECF NO. 34) exceeded the limited scope of COA Analysis. The COA statute sets forth a two-step process an initial determination whether a claim is reasonably debatable, and if so, an appeal in the normal course 28 U.S.C. § 2253. After the First stage, the only question Ealy ask now is "whether the applicant has shown that, jurists of reason could disagree with the district courts resolution of his constitutional claims or... could conclude the issues presented are adequate to deserve encouragement to proceed further" Miller-EL v. Cockrell, 537 U.S. 322, 327, 123 S.Ct. 1029, 154 L.Ed. 2d 931.

REASONS FOR GRANTING THE PETITION

This Supreme Court should grant review for the issues that are significant questions of federal or state constitutional law to clarify and or develop Wisconsin law via this court supervisory power and certification authority. Satisfy Rule 10 (a); wis. stat. § 821.01 Resolution by this court is necessary to provide to both federal courts and Wisconsin State court a clear path on the issues. Especially sex cases while addressing overzealous prosecutors seeking multiple convictions based on a spurious distinctions between separate counts of an offense. Satisfy Rule 10 (c) to decide an important federal question in a way that conflicts with relevant decisions of this court, in which has occurred State v. Eisch, 96 wis. 2d 25, 291 N.W. 2d 800 (wis. s. ct. 1980) is unsound and contrary to United States v. Dixon 509 U.S. 688, 113 S. Ct. 2849 (1993). Also see Blockburger, 284 U.S. at 304.

Lower courts orders in this case is contrary to this Supreme court decisions and has departed from the accepted and usual course of judicial proceedings for relief based on liberal construed filing, require this court supervisory power.

U.S. E.D.C. order is contrary to Albernaz v. United States 450 U.S. 333, 338 (1981), Sanabria v. United States 437 U.S. 54, 66 n. 20, 98 S. Ct. 2170, 57 L. Ed

2d 43 (1978) The District Court should ~~Focus on~~ some element comparison and not different means of

Commission of material fact sexual contact. This Court may certify to Wisconsin Supreme Court "Does a word or phrase on the same sentence of a statute has different meanings" See wis. stat. § 821.01

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Lamont's Easy

Date: May 27, 2024