

Supreme Court agrees to take up double jeopardy issue

Jun.28.2018

The high court has previously ruled that being prosecuted twice — once by a state and again in federal court — doesn't violate the Fifth Amendment.

WASHINGTON — The U.S. Supreme Court agreed Thursday to reconsider its long-standing view that putting someone on trial more than once for the same crime does not violate the Constitution's protection against double jeopardy.

Among the provisions of the Fifth Amendment is that no person shall be "subject for the same offence to be twice put in jeopardy of life or limb." That's popularly understood to mean that nobody can be put on trial twice for the same crime.

But in a line of cases stretching back more than 150 years, the Supreme Court has ruled that being prosecuted twice — once by a state and again in federal court — doesn't violate the clause because the states and the federal government are "separate sovereigns."

The court has held that when a defendant in a single act breaks both a federal and a state law, that amounts to two distinct offenses and can result in two separate prosecutions. Barring states from prosecuting someone already tried in federal court "would be a shocking and untoward deprivation of the historic right and obligation of the states to maintain peace and order within their confines," the court has said.

Lawyers for an Alabama man, Terance Gamble, urged the justices to consider overturning those earlier decisions.

Convicted of robbery in 2008, Gamble was pulled over seven years later for a traffic violation. Police found a handgun in his car, so he was charged with violating Alabama's law barring felons from possessing firearms. The local U.S. attorney charged him with violating a similar federal law. Because of the added federal conviction, his prison sentence was extended by three years.

Gamble's lawyers said the foundations for those earlier rulings began to crumble in 1969 when the Supreme Court ruled that the double jeopardy provision, originally meant to be a check on federal power, also applied to the states. It is inconsistent, they said, to let parallel actions of state and federal officials produce a result that would be impermissible if done by either jurisdiction alone.

And his lawyers said Congress has dramatically expanded the number and scope of federal laws in recent years, creating more duplications with state laws, a problem the earlier Supreme Court decisions never envisioned.

The court will hear Gamble's appeal in the fall. He is set to be released from federal prison in 2020.