

[CAPTION]

**MOTION TO DISMISS (BARRED BY PRIOR PROSECUTION IN
ANOTHER JURISDICTION)**

The Defendant, by counsel, respectfully requests this Court, pursuant to Ind. Code 35-34-1-4, to dismiss the [indictment/information]. In support of this Motion, the Defendant states the following:

1. On [inset date], an [indictment/information] was filed charging the Defendant with [insert offense(s)].

2. The Defendant was previously prosecuted in [insert county court, state or federal court] in [insert cause number] for [insert offense(s)]. *See copy of the [indictment/information] herein incorporated and referenced as Exhibit A.*

3. The prosecution in [insert other jurisdiction] was for the same offense for which the Defendant is charged herein.

4. The prosecution herein is barred by Ind. Code 35-41-4-5 in that the prosecution in [insert county court, state or federal court] in [insert cause number] resulted in an [acquittal/conviction/or improper termination as defined by Ind. Code 35-41-4-3] after jeopardy had attached.

5. Pursuant to Criminal Rule 3, a memorandum stating specifically the grounds for dismissal is filed with this Motion.

WHEREFORE, the Defendant, by counsel, respectfully requests this Court to dismiss the [indictment/information], and for all other relief just and proper in the premises.

(Signature)

REFERENCES

CASEBANK B.10.b; D.6.b

Ind. Code 35-34-1-8 (motion to dismiss by defendant; requisites; affidavits; documentary evidence; hearing; disposition; procedures)

Ind. Code 35-34-1-4(a)(7) (motion to dismiss by defendant on grounds that the prosecution is barred by reason of a previous prosecution)

Ind. Code 35-34-1-4(b) (a motion to dismiss based upon Ind. Code 35-34-1-4(a)(7) may be made or renewed at any time before or during trial)

Ind. Code 35-41-4-5 (former prosecution in another jurisdiction a bar)

Ind. Code 35-41-4-3 (bars to subsequent prosecution based on former prosecution in this jurisdiction)

Indiana Rules of Criminal Procedure, Rule 3 (memorandum to be filed with Motion to Dismiss)

CASE LAW

Heath v. Alabama, 474 U.S. 82, 106 S.Ct. 433, 88 L.Ed.2d 387 (1985) (Double Jeopardy Clause does not prohibit successive prosecutions by different states for identical offense where criminal conduct violates laws of both states; dual sovereignty doctrine is founded on common law conception of crime as offense against sovereignty of government).

State v. Allen, 646 N.E.2d 965 (Ind.Ct.App. 1995) (the Indiana and U.S. Constitution provide no protection from double jeopardy between federal and state prosecutions, but Indiana has provided statutory protection against double jeopardy in that circumstance, such that former conviction in any other jurisdiction, including federal, bars subsequent prosecution by Indiana for “same conduct”).

Fadell v. State, 450 N.E.2d 109 (Ind.Ct.App. 1983) (because federal prosecution of the Defendant for conspiracy to commit perjury did not result in judgment or an improper termination, it was not a bar to State prosecution for the same conduct).

Brewer v. State, 35 N.E.3d 284 (Ind.Ct.App. 2015) (Defendant’s Kentucky conviction for receiving stolen property based on his conduct in stealing vehicle prohibited Indiana’s prosecution of him for auto theft based on the same conduct; however, his conviction for fleeing/evading police did not prohibit Indiana from prosecuting him for resisting law enforcement because Kentucky did not prosecute Defendant for his act of resisting law enforcement within Indiana).

Smith v. State, 993 N.E.2d 1185 (Ind.Ct.App. 2013) (statutory double jeopardy shields Defendant from subsequent prosecution for the same conduct that resulted in acquittal or conviction in the former prosecution, and does not require application of the statutory elements test or the actual evidence test employed in analyzing double jeopardy claims under the state constitution; Defendant’s guilty plea conviction on multiple federal counts of wire fraud and mail fraud raised statutory double jeopardy bar to subsequent prosecution in state court based upon same conduct).