

**ORIGINAL**

**FILED**

02/01/2019

IN THE SUPREME COURT OF THE STATE OF MONTANA

Bowen Greenwood  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

No. DA 18-0404

Case Number: DA 18-0404

**ROBERT S. PIERCE**

Petitioner and Appellant,

**FILED**

**FEB 01 2019**

vs.

**STATE OF MONTANA**

Respondent and Appellee.

Bowen Greenwood  
Clerk of Supreme Court  
State of Montana

**REQUEST TO FILE SECOND SEPERATE APPENDIX  
PURSUANT TO RULE 12(5)**

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Comes now Robert S Pierce, Pro Se Petitioner and Appellant in this Cause No: DA 18-0404 with this Second Request to file a separate and additional APPENDIX. This filing is pursuant to Rule 12(5) of the Montana Rules of Appellate Procedure.

Rule 12(5) states in part: If desired and in addition to the documents required under subsection (1)(i) of this rule, the Appellant or the Appellee may file a separate appendix containing additional documents of material that are in the brief or may, otherwise be of assistance to the Supreme Court in the review of the brief.

The Appellant believes that the information provided in this Second Appendix is vital to the Supreme Courts decision in this matter.

The enclosed information supplants the information provided in the post conviction, ground 3, the Appeal Brief claim 4, as well as the denied Motion for Release on an OR pending the outcome of the Appeal, that the state failed to respond to. These reference ground and claims show that the State, in determining that only forensic evidence in Cause DC 12-29 was inadmissible, thereby violating the Appellant's due process rights under the United States Constitution, Amendment 14, and created a manifest injustice.

The attached information is record based information that was missed by appellant's counsel in State v Pierce 2016 Mt 308, 385 Mont 439, 384 P.3d 1042 and supports the Appellant's claim of ineffective assistance of appeal counsel claim in claim 3 of Appellant brief.

The facts involved in this APPENDIX are typed in a monospace format that summarizes the relevant facts, with supporting documents.

This Second Appendix clearly shows the State continued, with District Court assistance, to violate the right to a fair trial, by not only suppressing prior statements used to charge the Appellant but continued to rely on inadmissible statements for probable cause in subsequent amended informations, thereby failing to prove every aspect of the charging documents granted by the courts.

Based on Recent District Court and Supreme Court decisions, the Appellant believe this Second Appendix supports the contention that the charge against the Appellant should be dismissed by the Montana Supreme Court or remanded back to the District Court for dismissal of all charges. By the State suppressing the statements used for charging, then continueing to file amended informations using the suppressed facts in the original affidavit in support of probable cause, the state failed to prove every aspect of the charging documents.

For the reasons and facts provided in this Second Appendix, the Appellant believes at this court will see the merits to the attached Appendix, and the relevancy of the documents that can assist this Supreme Court in review of the issues and merits of the Appellants brief.

The facts suppressed that were used for charging were addressed in the the postconviction petition ground~~3~~4 and the Appellant Brief Claim 4.

In State v Quen, prosecutors moved to dismiss charges for lack of forensic evidence as well as questionable witness testimony. (See attached January 1, 2019 attached clippings)(DC-18-171(C))

In State v Holt, the Montana Supreme Court held that (p29) <sup>2006 M+151, 332 Mont 420:139 P.30819 009</sup> it is not required that information in the affidavit supporting a charge, which might later be found inadmissible at trial, be excised before a determination of probable cause is made. If at trial, because of the requirements of 46-16-215, MCA, the State could not prove it's case against Holt with admissible evidence, Holt could move to dismiss at the close of the state's case in chief, and such motion would have to be granted.

In Russell v United States 369 US 749, 82 S.Ct 1038(1962) it states: Noone can be convicted on the basis of facts different from those facts on which the charges were based.

And in a more recent case: Due process clause forbids a state from convicting a person of crime without proving the elements of that crime beyond a reasonable doubt. Bunkley v Florida 538 US 835, 155 L.Ed.2d 1046, 123 S.ct 2020(2003).

For the reasons above and the documents within, the Appellant believes that this court will see the merits to the attached Second Appendix, and the relevancy of the documentation that can assist this Supreme Court in review of the merits of the Appellant's brief.

The Montana Supreme Court ordered in a filing, filed January 14, 2019, that the State's Motion to supplement the Record on Appeal be granted. That order, ordered that the Motion is granted and the records on appeal shall be supplemented with the district court record in Montana Third Judicial District, Deer Lodge County, Cause No. DC 12-29, including the transcripts from that case that were filed in the direct appeal, DA 14-0071.

Also on January 14, 2019, Transcripts from District Court proceedings dated April 22, 23, 24 & 25, 2013 Trial and December 10, 2013 Sentencing, transferred from DA 14-0071 were received and filed on January 14, 2009.

Therefore, because these records are ordered and available to the Supreme Court, the referenced documents are not attached to this secondary supplemental appendix. Copies of Documents 14 and 15 of DV 15-99 were included as exhibits Tab A: 3-6, Tab C: 3 and Tab E: 1 of the Brief of Appellant. All other referenced documents are in the Court filing ordered by this Court.

Dated this 20 day of JANUARY, 2019.

  
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Robert S Pierce

CERTIFICATE OF COMPLIANCE(written)

I, Robert S. Pierce do hereby certify that this supplement is of monospace typeface or type written pursuant to Rule 16(3) and of dual page format pursuant to rule 11(3)(b).

Dated this 25 day of January, 2019

Robert S. Pierce



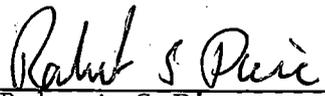
CERTIFICATE OF SERVICE

I, Robert S Pierce, hereby certify that I have served a true and accurate copy of the foregoing REQUEST TO FILE SECOND SEPERATE APPENDIX pursuean to Rule 12(5) of the MT.R.App.P. by first class pre-paid United States Postal Service postage and through the Montana State Prison mail system, to the following Counsel of Record. The Appellant is a Pro Se incarcerated litigent, and as such, can not contact the opposing Counsel to inquire on any objections to the filing of this Second Supplemental Appendix;

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Dayed the 25 day of JANUARY, 2019

  
\_\_\_\_\_  
Robert S Pierce