

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 18-0664

CLARENCE EDWARD CHAMPAGNE,

Petitioner and Appellant,

v.

STATE OF MONTANA,

Respondent and Appellee.

BRIEF OF APPELLANT

On Appeal from the Montana Twelfth Judicial District Court, Hill
County, the Honorable Robert G. Olson, Presiding

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STATEMENT OF THE ISSUE

I. Did the District Court incorrectly conclude that Champagne was not prejudiced by his counsel's failure to strike a juror who stated under oath that he could not be impartial in a criminal case?

STATEMENT OF THE CASE AND FACTS

Petitioner Clarence Edward Champagne (hereafter "Champagne") appeals from the denial of his Amended Petition for Post-Conviction Relief (hereafter "Petition"). He respectfully requests this Court reverse the district court's decision and grant his Petition.

In August of 2011, Champagne was convicted by a jury of felony sexual assault. *State v. Champagne*, 2013 MT 190, ¶ 15, 371 Mont. 35, 305 P.3d 61. The District Court sentenced him to 40 years in the Montana State Prison. *Champagne*, ¶ 16. The underlying facts of the original offense are set forth in paragraphs eight to ten of this Court's decision in *State v. Champagne*. The following facts are relevant to the ineffective assistance of counsel claim raised in Champagne's Petition.

In preparation for Champagne's trial, the District Court sent prospective jurors a standard jury qualification questionnaire and a supplemental questionnaire. (D.C. Doc. 31 at 3–4.) Among the supplemental questions posed by the Court were "Have you or anyone

close to you ever had any legal or law enforcement training?; Do you belong to an organization involved in crime prevention or detection, law enforcement, . . . which is concerned with the courts or the criminal justice system?; [and] Is there any other reason you could not be a fair juror in a criminal case?” (D.C. Doc. 31 at 4.)

Prospective juror Andrew Herdina (hereafter “Herdina”) returned the standard juror qualification questionnaire in June, 2011. In it, Herdina stated that he was employed as a U.S. Border Patrol agent. (D.C. Doc. 31 at 6.) Herdina also completed the Affidavit for Excusal seeking permanent exclusion from jury duty on the grounds that “I am a federal law enforcement officer and I feel I may be biased in a criminal trial.” (D.C. Doc. 31 at 7.) Herdina was not excused from service. Herdina also completed the supplemental questionnaire and identified himself as a law enforcement officer. At the pre-trial conference, Champagne’s attorney, Daniel Minnis (hereafter “Minnis”), acknowledged that he had received the jury questionnaires. (D.C. Doc. 31 at 10.)

The case proceeded to trial on August 11, 2011. During voir dire, Minnis announced to the jury that he was going to ask some questions

about individuals' responses to the questionnaires. (D.C. Doc. 19.)

However, Minnis did not pose any questions to juror Herdina about his law enforcement background or his stated bias in criminal trials.

Minnis passed the jury for cause without speaking to juror Herdina at all. (D.C. Doc. 31 at 23.)

After the lunch recess, Minnis advised the Court that he had been informed that some of the prospective jurors were discussing the case and one of the jurors told several others, "It's this Clarence Champagne fellow and he's guilty of child molesting." (D.C. Doc. 31 at 28.) Based on this information, the Court allowed individual voir dire of the involved prospective jurors. Herdina was one of the prospective jurors brought into chambers for individual voir dire. (D.C. Doc. 31 at 29.) In response to the Court's inquiry, Herdina volunteered, "It was mentioned to me in passing over the lunch break, or whatever that somebody had checked on the internet and said that there might have possibly been a previous assault conviction." (D.C. Doc. 31 at 29.) Herdina denied having done any independent investigation of the case or the defendant. Herdina also stated that what he had overheard would not affect his ability to remain fair and impartial because the information about

Champagne's prior conviction "was just mentioned to [him] in passing during lunch" and he "didn't know whether it's true or not." (D.C. Doc. 31 at 30.) Minnis passed Herdina for cause. (D.C. Doc. 31 at 30.)

When the parties returned to the courtroom, Minnis exercised Champagne's peremptory challenges on other prospective jurors. Herdina was seated as juror number two. (D.C. Doc. 31 at 34.) The jury ultimately convicted Champagne after six minutes of deliberation. (D.C. Doc. 31 at 50.)

Champagne appealed his conviction, raising five issues. Among them were whether his trial counsel provided ineffective assistance for failing to question juror Herdina about the affidavit he submitted in which he attested that his employment as a law enforcement officer may affect his ability to remain impartial in a criminal case.

Champagne, ¶ 28. In assessing Champagne's ineffective assistance of counsel claim, this Court observed that,

[t]he record provides no explanation as to 'why' Champagne's counsel failed to inquire about Herdina's affidavit. . . . The record does not establish whether Champagne's counsel even knew of the existence of Herdina's affidavit. . . . Champagne's counsel's possible lack of knowledge regarding the affidavit creates a potential plausible justification for Champagne's counsel's failure to ask Herdina about his employment related bias.

Champagne, ¶¶ 30–31. This Court concluded that a post-conviction proceeding was the appropriate avenue for Champagne to bring his ineffective assistance of counsel claim because this Court could not “say that ‘no plausible justification’ exists for Champagne’s counsel not to have questioned Herdina regarding his affidavit.” *Champagne*, ¶ 31. This Court affirmed Champagne’s conviction, but remanded for re-sentencing to correct a restitution issue. *Champagne*, ¶ 51.

On December 6, 2013, Champagne filed a pro se Petition for Post-Conviction Relief. (D.C. Doc. 1.) The District Court reviewed Champagne’s petition and found that one of the issues raised—his counsel’s failure to question Herdina about the affidavit in which he expressed an inability to be impartial in a criminal case because of his employment as a law enforcement officer—merited a response from the State. (D.C. Doc. 8 at 6.) The District Court also ordered Champagne’s two trial attorneys to respond to the allegations of ineffective assistance. (D.C. Docs. 13, 14.) Minnis filed an affidavit in response, but the other attorney, James Spangelo, failed to respond. In his affidavit, Minnis stated,

I do recall hearing after trial that a law enforcement officer sat on the jury, and I remember feeling that I had made a mistake. I do not recall whether or not that law enforcement officer was Juror Herdina. Nor do I recall whether I had a strategic reason for not questioning jurors about law enforcement involvement. I cannot imagine that since I believed I had made a mistake, that I would have had a strategic reason for not questioning Juror Herdina. If I did not question him, it would have been a mistake.

(D.C. Doc. 17 at 2.)

The District Court appointed Champagne new counsel to assist him in pursuing postconviction relief. (D.C. Doc. 22.) On December 29, 2017, Champagne's PCR counsel filed an Amended Petition for Post-Conviction Relief and Brief in Support. (D.C. Docs. 31, 33.) The Petition raised several ineffective assistance of counsel claims, including trial counsel's failure to ensure Champagne was tried by an impartial jury. (D.C. Doc. 31 at 53–54.) In its response, the State argued that Minnis was not ineffective for failing to strike juror Herdina because “[t]he mere fact that a juror is connected to law enforcement through employment or a personal relationship does not, without more, necessitate a finding that the juror would not be impartial.” (D.C. Doc. 39 at 3.) The State also argued that even if Minnis had made a mistake by leaving Herdina on the jury,

Champagne was not prejudiced by the mistake because the result of the trial would likely have been the same with a different juror. (D.C. Doc. 39 at 6–7.)

The District Court denied Champagne’s Petition. (D.C. Doc. 41.) The District Court found Champagne’s trial counsel was not ineffective because “taking voir dire as a whole, Herdina objectively showed his ability and willingness to be fair and impartial in the case at issue.” (D.C. Doc. 41 at 5.) Champagne timely appealed the denial of his Petition. (D.C. Doc. 42.)

STANDARD OF REVIEW

“The standard of review of a district court’s denial of a petition for postconviction relief is whether the district court’s findings of fact are clearly erroneous and whether its conclusions of law are correct. Ineffective assistance of counsel claims constitute mixed questions of law and fact which are reviewed *de novo*.” *Heavygun v. State*, 2016 MT 66, ¶ 8, 383 Mont. 28, 368 P.3d 707 (internal quotations and citations omitted). “A finding of fact is clearly erroneous if it is not supported by substantial evidence, if the district court misapprehended the effect of the evidence or if [this Court’s] review of the record convinces [it] that

the district court made a mistake.” *Brock v. Smith*, 2005 MT 40, ¶ 14, 326 Mont. 123, 107 P.3d 488.

SUMMARY OF THE ARGUMENT

Champagne received ineffective assistance of counsel because his trial attorney allowed a law enforcement officer with a self-proclaimed bias against criminal defendants to sit on Champagne’s jury without even questioning the officer about his stated bias. When asked to defend this tactic, Champagne’s attorney acknowledged he had made a mistake by failing to question or strike that juror. Champagne was prejudiced by this mistake because he was deprived of an impartial jury. The District Court’s finding that the juror “objectively showed his ability and willingness to be fair and impartial in the case at issue,” is clearly erroneous given the juror’s statement under oath that he could not be impartial in a criminal case. (D.C. Doc. 41 at 5.) Based on this erroneous factual finding, the District Court incorrectly concluded that Champagne’s attorney’s failure to strike the juror did not constitute ineffective assistance of counsel. This Court should remedy the District Court’s and the trial attorney’s errors by granting Champagne’s Petition and remanding for a new trial.

ARGUMENT

I. The District Court incorrectly concluded that Champagne was not prejudiced by his counsel's failure to strike a juror who stated under oath that he could not be impartial in a criminal case.

Petitions for postconviction relief exist to enable a person who has been “adjudged guilty of an offense in a court of record [and] who has no adequate remedy of appeal and who claims that a sentence was imposed in violation of the constitution of the laws of this state or the constitution of the United States” to seek redress for the errors that sent him or her to prison. Section 46-21-101, MCA. It is vitally important to the functioning and legitimacy of our criminal justice system that this Court exercise its power to grant postconviction relief when the facts of a case warrant it. This is such a case.

The jury trial is the heart of Montana's criminal justice system. That is why allegations regarding a tainted juror implicate not only the defendant's constitutional right to a fair trial, but also the credibility of the criminal justice system as a whole. *See State v. Herrman*, 2003 MT 149, ¶ 22, 316 Mont. 198, 70 P.3d 738. This Court has on multiple occasions established that jurors with a stated bias should be excused for cause. *See, e.g., State v. Freshment*, 2002 MT 61, ¶ 18, 309 Mont.

154, 43 P.3d 968; *Herrman*, ¶ 22; *State v. Good*, 2002 MT 59, ¶ 62, 309 Mont. 113, 43 P.3d 948. This Court has also demonstrated its willingness to reverse convictions when a biased juror was “rehabilitated” by the court or the prosecutor. *See, e.g., Freshment*, ¶ 12; *State v. Kebble*, 2015 MT 195, ¶ 38, 380 Mont. 69, 353 P.3d 1175. This Court has overturned convictions for either reason, but juror taint is never tolerated given the central role the jury occupies in our criminal justice system.

Because the assistance of competent counsel helps criminal defendants secure all their constitutional rights, including the right to an impartial jury, the Sixth and Fourteenth Amendments of the United States Constitution and Article II, § 24 of the Montana Constitution guarantee the right to effective assistance of counsel. This Court analyzes ineffective assistance of counsel claims using the two-pronged test from *Strickland v. Washington*, 466 U.S. 668 (1984). *State v. Koughl*, 2004 MT 243, ¶ 11, 323 Mont. 6, 97 P.3d 1095. To prevail on an ineffective assistance of counsel claim, a defendant must (1) demonstrate “counsel’s performance was deficient or fell below an objective standard of reasonableness” and (2) “establish prejudice by

demonstrating that there was a reasonable probability that, but for counsel's errors, the result of the proceeding would have been different."

Kougl, ¶ 11 (internal citations omitted).

This Court will decline to review ineffective assistance of counsel claims on direct appeal when the claim is based on matters outside the record. *Kougl*, ¶ 14. In such cases, this Court will "allow the defendant to file a postconviction proceeding where he/she can develop a record as to 'why' counsel acted as alleged, thus allowing the court to determine whether counsel's performance was ineffective or merely a tactical decision." *Kougl*, ¶ 14. This Court did precisely that when it declined to review Champagne's ineffective assistance of counsel claim on direct appeal but encouraged him to raise the claim in a petition for postconviction relief. *Champagne*, ¶ 31. Champagne did so, and as a result, this Court now has before it his counsel's affidavit regarding the decision to leave Herdina on the jury. (D.C. Doc. 17 at 2.)

A. Champagne's counsel was deficient because he had no tactical reason for failing to strike a juror who stated under oath that he could not be impartial in a criminal case.

In determining whether counsel's performance was deficient, a reviewing court must ask "whether counsel's conduct fell below an

objective standard of reasonableness measured under prevailing professional norms and in light of the surrounding circumstances.”

Whitlow v. State, 2008 MT 140, ¶ 20, 343 Mont. 90, 183 P.3d 861. Of particular relevance to this case, defense attorneys have a “clear duty to ensure [their client’s] right to a fair trial by a panel of impartial jurors.”

State v. Chastain, 285 Mont. 61, 65, 947 P.2d 57, 60 (1997), *overruled in part on other grounds by State v. Herrman*, 2003 MT 149, ¶ 33, 316 Mont. 198, 70 P.3d 738. Attorneys fulfill this duty by conducting voir dire: “The purpose of voir dire in a criminal proceeding is to determine the existence of a prospective juror’s partiality, that is, his or her bias and prejudice. This enables counsel to intelligently exercise their peremptory challenges.” *Herrman*, ¶ 23. A criminal defendant may strike a prospective juror for cause if the juror has “a state of mind in reference to the case or to either of the parties that would prevent the juror from acting with entire impartiality and without prejudice to the substantial rights of either party.” Section 46-16-115(2)(j), MCA. In addition to challenges for cause, a criminal defendant is also entitled to six peremptory challenges. Section 46-16-116, MCA. The voir dire process and the exercise of peremptory challenges and challenges for

cause enable a defense attorney to ensure that his client is tried by jurors who are not biased or prejudiced against the client.

In this case, Champagne's attorney's failure to question Herdina during voir dire and his failure to strike Herdina from the jury fell well below an objective standard of reasonableness and well outside prevailing professional norms. *See Whitlow*, ¶ 20. Although Herdina submitted an affidavit notifying the Court and all parties that as a law enforcement officer, he could not be impartial in a criminal case, (D.C. Doc. 31 at 7), Minnis failed to question Herdina during voir dire, (D.C. Doc. 31 at 23), failed to exercise a peremptory challenge to remove Herdina from the jury panel, (D.C. Doc. 31 at 34), and passed Herdina for cause, even after learning that Herdina had heard from another juror that Champagne had a prior sexual assault conviction, (D.C. Doc. 31 at 30). In response to Champagne's Petition, Minnis stated in his affidavit that he did not have a tactical reason for failing to question or strike Herdina: "I cannot imagine that since I believed I had made a mistake, that I would have had a strategic reason for not questioning Juror Herdina. If I did not question him, it would have been a mistake."

(D.C. Doc. 17 at 2.) By counsel’s own admission, his performance was deficient.

Although “self-proclaimed inadequacies on the part of trial counsel in aid of a client on appeal do not hold great persuasive value with this Court,” *State v. Trull*, 2006 MT 119, ¶ 22, 332 Mont. 233, 136 P.3d 551, they nonetheless provide a record that this Court may use to assess the reasonableness of counsel’s conduct. In this case, it is the only record. Minnis did not simply accuse himself of inadequate representation of Champagne, he affirmatively stated that he had no tactical reason for failing to question or strike Herdina. (D.C. Doc. 17 at 2.) The utter lack of any tactical or strategic explanation for this conduct distinguishes this case from other cases in which trial counsel could articulate a reason for a decision, even if the decision ultimately was a poor or unsuccessful one. *See, e.g., Trull*, ¶ 27; *Hartinger v. State*, 2007 MT 141, ¶¶ 44–45, 337 Mont. 432, 162 P.3d 95. This Court should find that the first prong of the *Strickland* test has been satisfied. *Kougl*, ¶ 11.

B. Champagne's counsel's deficient performance prejudiced Champagne by depriving him of an impartial jury.

The prejudice prong of the *Strickland* test requires the defendant to demonstrate

a reasonable probability that, but for counsel's unprofessional conduct, the result of the proceedings would have been different. The prejudice inquiry focuses on whether counsel's deficient performance renders the trial result unreliable or the proceeding fundamentally unfair. The ultimate inquiry is concerned with the fundamental fairness of the proceeding.

State v. Jefferson, 2003 MT 90, ¶ 53, 315 Mont. 146, 69 P.3d 641 (citing *Strickland*, 466 U.S. at 694, 696). "A reasonable probability is a probability sufficient to undermine confidence in the outcome, but does not require that a defendant demonstrate that he would have been acquitted." *Kougl*, ¶ 25. Here, the District Court's conclusion that Champagne was not prejudiced by his counsel's deficient performance was based upon an incorrect legal standard and erroneous factual findings.

1. The district court's conclusion that Champagne was not prejudiced was based upon an incorrect legal standard.

The District Court relied upon an incorrect legal standard when it concluded that "[t]here are no facts indicating a reasonable probability

that but-for Minnis' failure to remove Herdina, the outcome of this case would have been different.” (D.C. Doc. 41 at 5.) Champagne need not show that he would have been acquitted absent counsel's deficient performance in order to satisfy the prejudice prong of the *Strickland* test. Rather, it is sufficient if counsel's deficient performance undermines this Court's confidence in the outcome of Champagne's trial. *Kougl*, ¶ 25.

2. The district court's conclusion that Champagne was not prejudiced was based upon erroneous factual findings.

The fact that Herdina was permitted to be a juror in Champagne's trial should undermine confidence in the outcome of his trial. This Court has observed before that,

the purpose of § 46–16–115, MCA, is to eliminate from the jury pool for cause someone who, due to an employment relationship or a personal relationship, past experience, or direct personal knowledge of the crime or the defendant, cannot logically be expected to set aside [his] resulting state of mind and act with entire impartiality. As both a statutory and practical matter, the question of bias underlies the entire voir dire process.

Kebble, ¶ 32. “It is incontrovertible that jury impartiality goes to the very integrity of our justice system. . . . The presence on the jury of even one juror who could not fairly assess the credibility of the witnesses

must be presumed prejudicial and will result in the reversal of the conviction.” *Herrman*, ¶ 22 (citing *State v. LaMere*, 2000 MT 45, ¶ 50, 298 Mont. 358, 2 P.3d 204, and *Chastain*, 285 Mont. at 65, 947 P.2d at 60).

In this case, Herdina was a law enforcement officer who asked to be permanently removed from service as a juror in criminal trials because “I am a federal law enforcement officer and I feel I may be biased in a criminal trial.” (D.C. Doc. 31 at 7.) Section 46-16-115, MCA, authorizes the removal of a juror who cannot “logically be expected to set aside [his] resulting state of mind and act with entire impartiality,” *Kebble*, ¶ 32, but this case does not even require the application of logical expectations. Herdina stated under oath that he could not be impartial. (D.C. Doc. 31 at 7.) The fact that a member of Champagne’s jury had declared himself not to be impartial, was not questioned about this declaration, and was nevertheless permitted to remain on the jury, fundamentally undermines confidence in the outcome of Champagne’s trial.

The existence of prejudice here is bolstered by this Court’s prior rulings in juror impartiality cases. For instance, in *State v. Freshment*,

two jurors indicated their reluctance to acquit a defendant charged with sexual intercourse without consent whose defense was that he reasonably believed the victim was 16 years old and therefore of legal age to give consent. *Freshment*, ¶¶ 8–9. The district court denied Freshment’s challenges for cause, forcing Freshment to use peremptory strikes to remove the jurors. *Freshment*, ¶ 19. This Court reversed the district court’s denial of Freshment’s challenges for cause because “[b]oth jurors stated an actual bias directly related to an issue critical to the outcome of the case,” and cautioned that “[c]oaxed recantations in which jurors state they will merely follow the law, whether prompted by the trial court, the prosecution, or the defense, do not cure or erase a clearly stated bias which demonstrates actual prejudice against the substantial rights of a party.” *Freshment*, ¶¶ 16, 18. This Court also reiterated its holding from *State v. Good*, that

when a trial court fails to dismiss a biased juror, such an error is structural, as described in *State v. Van Kirk*, 2001 MT 184, 306 Mont. 215, 32 P.3d 735, because the error precedes the presentation of evidence, affects the framework of the trial, and the error cannot be qualitatively or quantitatively weighed against the evidence. Therefore, [...] such an abuse of discretion is conclusively prejudicial and requires automatic reversal if: (1) a district court abuses its discretion by denying a challenge for cause to a prospective juror; (2) the objecting party uses one of his or her peremptory challenges

to remove the disputed juror; and (3) the objecting party exhausts all of his or her peremptory challenges.

Freshment, ¶ 14 (citing *Good*, ¶ 62).

In Champagne's case, as in Freshment's, a juror stated an actual inability to be impartial in a criminal case. (D.C. Doc. 31 at 7.) But in Champagne's case, the biased juror was never questioned about his statement that he could not be impartial, even when the juror was questioned individually in chambers. During voir dire in chambers, the questions put to Herdina focused on his ability to remain impartial given the information he had overheard at lunch that Champagne had a prior sexual assault conviction. Herdina attempted to reassure the Court that that information would not affect his ability to remain fair and impartial because the information about Champagne's prior conviction "was just mentioned to [him] in passing during lunch" and he "didn't know whether it's true or not." (D.C. Doc. 31 at 30.) The State uses this response to insist that Herdina demonstrated an ability to be impartial notwithstanding his prior statement that he could not be impartial in a criminal case. (D.C. Doc. 39 at 5.) But this assurance that Herdina's knowledge of Champagne's prior conviction would not

affect his ability to be impartial does not cure or erase Herdina's clearly stated bias against criminal defendants generally.

Even more importantly, Herdina actually sat on Champagne's jury. This fact distinguishes Champagne's case from *Freshment* and *Good* because in those cases the defense attorney used a peremptory strike to remove the biased juror. *Freshment*, ¶ 19; *Good*, ¶ 66. The prejudice suffered in *Freshment* and *Good* was that the Court compelled the defendants' attorneys to use peremptory strikes they otherwise could have used on other prospective jurors. Even though the biased jurors in *Freshment* and *Good* were not actually seated on the jury, this Court still remanded those cases for new trials because the structural error of not having an impartial jury was "clearly prejudicial and require[d] automatic reversal." *Freshment*, ¶ 19; *Good*, ¶ 69.

Unfortunately for Champagne, Minnis did not "waste" a peremptory strike on a prospective juror that should have been stricken for cause. Instead, the prospective juror who should have been stricken for cause was allowed to sit on the jury.

Had Minnis been forced to use a peremptory strike to remove Herdina, this Court's precedent in *Freshment* and *Good* would compel it

to reverse a resulting conviction and remand for a new trial. But because Minnis failed to strike Herdina, this Court is presented with the juror bias issue via an ineffective assistance of counsel claim. However, it is the resulting prejudice and not the vehicle by which the prejudicial error is presented for review that should dictate this Court's ruling. This Court should conclude that Champagne was prejudiced by his counsel's failure strike Herdina because Herdina's presence on the jury undermines confidence in the outcome of the trial. *See Freshment*, ¶ 19; *Good*, ¶ 69.

The District Court's contrary conclusion—that Champagne was not prejudiced because “Herdina objectively showed his ability and willingness to be fair and impartial” (D.C. Doc. 41 at 5)—is erroneous because it required the District Court to ignore Herdina's own assessment of his impartiality and because Herdina's statement that he could be impartial was made in reference to his preexisting knowledge of Champagne's criminal history, not in reference to his ability to be impartial to criminal defendants generally.

Both prongs of the *Strickland* test are satisfied in this case. Minnis had two opportunities to interview Herdina regarding his bias,

and he did not take advantage of either. (D.C. Doc. 31 at 23, 30.) There are no tactical or strategic reasons that can explain that decision.

Indeed, Minnis acknowledged his mistake: “I cannot imagine that . . . I would have had a strategic reason for not questioning Juror Herdina. If I did not question him, it would have been a mistake.” (D.C. Doc. 17 at 2.) Although a juror’s association with or membership in a law enforcement organization is insufficient to prove juror bias, *State. v. Dewitz*, 2009 MT 202, ¶ 33, 351 Mont. 182, 212 P.3d 1040, juror bias is established when a law enforcement officer swears under oath that he is biased, and then moments before he is impaneled learns that the defendant has a similar prior conviction. Herdina should have been excused for cause; if he had not been, that would be reversible error. *Freshment*, ¶ 19; *Good*, ¶ 69. But Minnis neither moved to have Herdina stricken for cause nor used a peremptory strike to remove him. Instead, Minnis allowed Herdina to sit on Champagne’s jury, thereby inflicting one of the greatest prejudices a criminal defendant could suffer: the lack of an impartial jury.

CONCLUSION

This Court should reverse the District Court's conclusion that Champagne was not prejudiced by his counsel's deficient performance because that conclusion was based upon the application of an incorrect legal standard and erroneous factual findings. For the foregoing reasons, this Court should conclude that Champagne received ineffective assistance of counsel in violation of the Sixth and Fourteenth Amendments to the United States Constitution and Article II, Section 24 of the Montana Constitution, reverse the district court's decision, and grant Champagne's Petition.

Respectfully submitted this 15th day of May, 2019.

By: /s/ Samir F. Aarab
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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this principal brief is printed with a proportionally-spaced roman text, Century Schoolbook, and a typeface of 14 points, and is double-spaced except for footnotes and quoted, indented material. This brief contains 4,661 words, as calculated by Microsoft Word for Windows, excluding the Cover, Table of Contents, Table of Authorities, Certificate of Compliance, Certificate of Service, and Appendix.

By: /s/ Samir F. Aarab
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CERTIFICATE OF SERVICE

I hereby certify that I caused a true and accurate copy of the foregoing Brief of Appellant to be mailed or electronically served to:

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APPENDIX

Order Denying Petition for Post-Conviction Relief (November 5, 2018)	App. A
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CERTIFICATE OF SERVICE

I, Samir F. Aarab, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant's Opening to the following on 05-16-2019:

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