

FILED

09/15/2020

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: OP 20-0436

ORIGINAL

IN THE SUPREME COURT OF THE STATE OF MONTANA

OP 20-0436

ALBERT E. INSUA,

Petitioner,

v.

STATE OF MONTANA,
JIM SALMONSEN, Warden,

Respondents.

FILED

SEP 15 2020

Bowen Greenwood
Clerk of Supreme Court
State of Montana
ORDER

We amend the caption to include the Warden's name of the Montana State Prison. Representing himself, Albert E. Insua, has filed a Petition for a Writ of Habeas Corpus and raises at least four issues concerning his conviction and sentence. He indicates his incarceration is illegal because of the State's errors, such as an illegal search and seizure, suppression of evidence, and constitutional and *Brady* violations. Insua requests his immediate release from prison.

In 1999, the State charged Insua with criminal production or manufacture of dangerous drugs and with sexual intercourse without consent in the Ravalli County District Court. The charging documents were amended three times to include three counts of sexual assault. The drug case was severed from the sexual offense case and two trials were held. Juries found Insua guilty of all charges in both cases. This Court affirmed Insua's convictions on appeal. *State v. Insua*, 2004 MT 14, 319 Mont. 254, 84 P.3d 11 (*Insua I*). Later, Insua represented himself in three separate appeals of the District Court's denials of his various petitions for postconviction relief. We affirmed the District Court on all. *See Insua v. State*, No. DA 06-0177, 2006 MT 288N, 2006 Mont. LEXIS 599; *Insua v. State*, No. DA 08-0427, 2009 MT 157N, 2009 Mont. LEXIS 170; and *Insua v. State*, No. DA 12-0658, 2013 MT 181N, 2013 Mont. LEXIS 231.

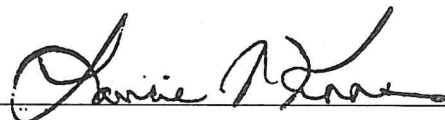
Challenge now to any of his convictions comes two decades too late. While Insua represented himself during his criminal trial, he had full opportunity to consult with stand-by counsel. *Insua I*, ¶ 7. On appeal, he was represented by counsel, who raised three other issues and asked for reversal and a new trial. *Insua I*, ¶ 11. The challenges Insua now asserts should have been brought through a timely appeal. *State v. Wright*, 2001 MT 282, ¶ 13, 307 Mont. 349, 42 P.3d 753. Insua exhausted the remedy of appeal through his appeal in 2000. As such, Insua is precluded now from raising search and seizure, suppression of evidence, constitutional and *Brady* violation issues, which could have been presented on appeal, in a petition for a writ of habeas corpus. Section 46-22-101(2), MCA. He is not entitled to habeas corpus relief or his release. Therefore,

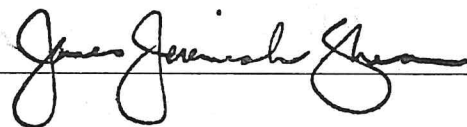
IT IS ORDERED that Insua's Petition for a Writ of Habeas Corpus is DENIED.

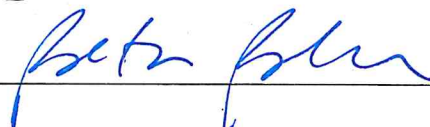
The Clerk of the Supreme Court is directed to provide a copy of this Order to counsel of record and to Albert E. Insua personally.

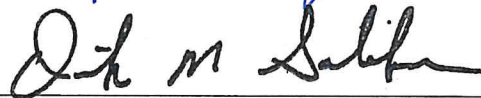
DATED this 15th day of September, 2020.











Justices