

ORIGINAL

FILED

02/21/2021

Bowen Greenwood  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

Case Number: DA 21-0024

Koby Martell, AO#3025198  
Montana State Prison  
700 Conley Lake Road  
Deer Lodge, MT. 59722

IN THE SUPREME COURT OF  
THE STATE OF MONTANA.

CAUSE NO: ~~DA 21-24~~.

DA 21-0024

Koby Martell, Pro Se;

Petitioner and Appellant,

vs.,

STATE OF MONTANA,

Respondent and Appellee.

FILED

FEB 26 2021

Bowen Greenwood  
Clerk of Supreme Court  
State of Montana

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APPELLANT'S OPENING BRIEF ON APPEAL  
FROM THE DENIAL OF THE SEVENTH JUDICIAL  
DISTRICT COURT'S ORDER DENYING  
APPELLANT TO FILE HIS POSTCONVICTION .

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Petitioner and Appellant, PRO SE;  
Appearing In Propria Persona-Sui Jurist.

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## QUESTIONS PRESENTED

- 1) Did Brandon (Hartford's) Failure to Timely Respond or Lack of Corresponding with Martell, In which to Send or Release All Martell's Case Files, Discovery and all and any Other Pertnent Inforamtion...; HINDER Martell's Meaningful Access to Properly and Timely File His Petition for his Post-Conviction Releif?
- 2) Has the State Prosecutors' (Rice's) Failure to Fully Turn over and Release Martell's Case Files, Discovery and all and any Other Pertnenet Information Per the Seventh Judicial District Court's December 3, 2020 ORDER Violated Martell's Due Process Rights in which to Properly Defend His Post-Conviction, AND DEFEND HIMSELF Throughout the Per-Trial Phases of the Entirity of his Case?
- 3) Did Hartford's Performance Throughout the Pre-trail Phases; (i.e.: Threats, Acts of Intimidating Martell's Parents, etc.) Fall well below the Standards Meeting the Two-Prong test in Strickland; Giving Sufficient Grounds that Jeopardized Martell to His ACTUAL INNOCENCE CLAIMS?
- 4) Did the Seventh Judcial District Court (Judge: Reiger) Violate Martell's Rights to Due Process and the Rights to Redress by Prematurely DENYING Martell's Post Conviction Relief Petition?
- 5) Does Martell Have Judicial Grounds and Standing to Adequately Challenge The Mamifest Miscarriage Of Justice in and throughout the Entirity of His Case?
- 6) Does Martell have Judicial grounds and Standing for the Complete DISMISSAL And Exonoration of All Charges and For his IMMEDIATE RELEASE FROM THE UNLAWFUL and ILLEGAL incarceration?

## STANDARDS FOR REVIEW

A Petitioner requesting Postconviction Relief has the Burden to show, By a PREPONDERANCE OF THE EVIDENCE, that the FACTS JUSTIFY POSTCONVICTION RELIEF. State v. Cobell: 2004 MT. 46, 12, 203 Mont. 122, 86 P.3d 20. In a Postconviction Proceeding, This Court Reviews a District Court's Findings of Fact to determine if they are clearly ERRONEOUS and Reviews it's Conclusions of Law to determine if they are correct. Sartian v. State: 2012 MT. 164, 9, 135 Mont. 483, 285 P.3d 407.

### PRESERVATION FOR REVIEW: INEFFECTIVE ASSISTANCE OF COUNSEL:

The Montana Supreme Court generally does not address NON-RECORD BASED (IAC) Ineffective Assistance of Counsel Claims on Direct appeal. IAC Claims are Record based only if the Record fully manifests Counsel's rationale for a disputed Action or inaction. Because they are not Amendable to review on Direct appeal, The Supreme Court generally dismisses NON-RECORD IAC Claims on Appeal WITHOUT PREJUDICE to timely Postconviction Review under MCA §46-21-201.

### CRIMINAL LAW AND PROCEDURE: POSTCONVICTION PROCEEDINGS:

Postconviction Relief is a Civil remedy available to persons who have been Adjudicated Guilty of a Criminal Offense, Have no adequate remedy of appeal, and claim that the Sentence was imposed in violation of the constitution of Montana or the United States MCA §46-21-201(1). A Petitioner for Postconviction Relief must file a verified petition demonstrating by a Preponderance of the evidence that he is entitled to relief. A Petitioner has the burden to demonstrate to the District Court that his Plea WAS NOT VOLUNTARY. A Postconviction Relief is a Proper Forum for raising issues relating to the Ineffective Assistance of Counsel.



#### DUE PROCESS OF LAW:

'Due Process of Law includes Both 'PROCEDURAL' and a 'SUBSTANTIVE' Component protected by the (14th) Fourteenth Amendment of the U.S. Constitution and the Montana Constitution; Artical: II §17. State v. Egendorf: 2003 MT. 264, P.19 317 Mont. 436, 77 P.3d 517; Duncan v. Louisiana: 391 U.S. 145, 147-48, 88 S.Ct. 1444 (1968); and Duncan v. Poythress: 657 F.2d 691, 704 (5th Cir. 1981).

#### DUE PROCESS OF LAW:

'DUE PROCESS INTEREST PROTECTED AND EXEMPTION FROM RULE MAKING PROCEDURE'  
Montana Constitution Artical II § 17; Plumbcreek Lumber Co. v. Hutton: 608 F.2d 1283 (9th Cir. 1979); Violating Const.Rights of Prisoners: Pollard v. geo: 607 F.3d 583 (9th Cir. 2010) Can not be DENIED DUE PROCESS; Haines v. Kerner: 404 U.S. 519 (1972).

#### CONSTITUTIONAL LAW: BILL OF RIGHTS:

"The Asserted Denial of [DUE PROCESS] is to be tested by an appraisal of the [TOTALLY OF FACTS] given in a case., That which May, in one setting, Constitute a [DENIAL] of [FUNDAMENTAL FAIRNESS, shocking to the universal sense of Justice], May in other Circumstances, and in light of other considerations, Fall Short of Such denial." Gideon v. Wainwright: 372 U.S. 335.

#### CONSTITUTIONAL LAW: BILL OF RIGHTS; FUNDAMENTAL RIGHTS; PROCEDUURAL DUE PROCESS:

"The [PROHIBITIONS] of the Fourteenth Amendment refer to all of the [INSTRUMENTALITIES] of the State; EXECUTIVE, LEGISLATIVE and JUDICIAL; and therefore whoever by VIRTUE OF [PUBLIC POSITION] Under a [STATE GOVERNMENT] Deprives Another of any RIGHT PROTECTED by the Fourteenth Amendment against

DEPRIVATION BY A STATE, [VIOLATES THE CONSTITUTIONAL INHABITATIONS] AND HE ACTS IN THE NAME OF AND FOR THE STATE, THUS, IS [CLOTHED] WITH THE STATES POWER; Thus, HIS ACT IS THEREFORE OF THE STATE." Chicago, B&Q.R.Co. V. Chicago: 166 U.S. 226; Scott v. McNeal: 154 U.S. 34; and Standard Oil Co. V. Missouri: 224 U.S. 270, 280-82.

#### CONSTITUTIONAL CANONS: GOVERNMENTS, COURTS:

"THE [CANONS OF CONSTITUTIONAL AVOIDANCE] PROVIDES THAT A COURT [WILL NOT] PASS UPON A [CONSTITUTIONAL QUESTION] IF THERE IS SOME OTHER GROUND UPON WHICH THE CASE MAY BE DISPOSED." Marshall V. Marshall: (In Re Marshall): 721 F.3d 1032 (th Cir.2013); In Re Boarder Infrastructure Envtl. Litig.: 284 F. Supp. 3d 1092 (9th Cir. 2018); U.S. v. perry: 250 F.3d 720 (9th Cir. 2001); U.S. v. Colacurcio: 84 F.3d 326 (9th Cir. 1996); Portman V. Cnty of Santa Clara: 995 F.2d 898 (9th Cir.1993) and Dorado v. Kerr: 454 F.2d 892 (9th Cir. 1972).

#### CONSTITUTIONAL LAW: BILL OF RIGHTS:

"THE ASSERTED DENIAL OF [DUE PROCESS] IS TO BE TESTED BY AN APPRAISAL OF THE [TOTALTY OF FACTS] GIVEN IN A CASE, THAT WHICH MAY, IN ONE SETTING, CONSTITUTE A [DENIAL] OF [FUNDAMENTAL FAIRNESS], [SHOCKING TO THE UNIVERSAL SENSE OF JUSTICE], MAY IN OTHER CIRCUMATANCES, AND IN LIGHT OF OTHER CONSIDERATIONS, FALL SHORT OF SUCH DENIAL." Gideon v. Wainwright: 372 U.S. 335.

#### GROSS INJUSTICE:

" GROSS INJUSTICE, DISTRICT COURT IS PROCEEDING UNDER ["MISTAKE OF LAW"] AND IN DOING SO, IS CAUSING A [GROSS INJUSTICE]". State v. Ex rel. Torres v. Mont. 8th Judicial District Court: 265 Mont. 445 (1994).

## CONSTITUTIONAL LAW: SUPREMACY CLAUSE:

### U.S. CONSTITUTION: ARTICLE IV §2:

"The Constitution and the [LAW OF THE UNITED STATES] Which Shall be made in Pursuance thereof: and all treaties made, or Which Shall be made, [Under the Authority] of the United States: Shall be the [SUPREME LAW OF THE LAND]; and The [JUDGES] IN EVERY STATE SHALL [BE BOUND THEREBY]; Anything in the Constitution or the [LAWS OF ANY STATE] TO THE CONTRARY [NOTWITHSTANDING]." (ORDER AND OPINION OF THE UNITED STATES SUPREME COURT: Stevens, J.; Joined by: Kennedy, Souter, Ginsburg and Breyer, J.J. U.S. Justices) New York v. F.C.C.: 486 U.S. 57 (1988); People ex rel. Heppell v. Sischo: 23 Cal. 2d 478, 144 P.2d 785 (Cal. 1943) AND U.S. 869 (1945).

"Constitution of the United States is [SUPREME LAW OF LAND] and [BINDS EVERY FOURM], Whether it Deserves it's [AUTHORITY] from the State or the United States." U.S. v. Butler: 297 U.S. 1, (1936); Cook v. Moffat & Curtis: 46 U.S. 295 (1879); Cater v. Cater Coal Co.: 298 U.S. 238 (1936) and U.S. v. Darby: 312 U.S. 100 (1941) .

"Federal Constitution Is the SUPREME LAW OF LAND] AND [UPON STATE COURTS]; Equally with Courts of the Union, Rest [OBLIGATION] to [Guard and ENFORCE every Right SECURED by the CONSTITUTION]". Dixon v. State: 224 Ind. 327, 67 N.E. 2d 138 (Ind. 1946).

## CONSTITUTIONAL LAW: JUDICIAL CONDUCT: COURTS; JUDGES:

"The COMMENTS to (M.C.J.C.) Montana Code judicial Conduct 1.2: States in Part: 'That [PUBLIC CONFIDENCE] in the [JUDICIARY] is Eroded Improper Conduct and Conduct the [CREATES THE APPEARANCE OF IMPROPRIETY]. A judge, Should expect to be the [SUBJECT] of Public Scrutiny that might be Viewed a [BURDENSOME] If Applied to other citizens. The Test for Appearance of [IMPROPRIETY] Is Whether the [CONDUCT] Would Create in Reasonable Minds a Preception that the [JUDGE VIOLATED] the Code or Engaged in other Conduct that reflects [Adversely] on the Judges Honesty, Impartiality, Temperment or fitness to Serve as Judge.

CONSTITUTIONAL LAW: STRUCTURAL ERRORS:

"[STRUCTURAL ERROR DEFECTS]"ARE CONSTITUTIONAL VIOLATIONS WHICH SO EFFECT AND CONTAMINATE THE [FRAME WORK] OF TRIAL AS TO RENDER IT [FUNDAMENTALLY UNFAIR]; REQUIRING [AUTOMATIC] REVERSAL." State v. Charlie: 2010 MT.95, 40 357 Mont. 335, 239 P.3d 934; Quoting: Prawitt: 262 P.3d 1205.

CONSTITUTIONAL LAW: STRUCTURAL ERRORS:

"THE FIRST STEP IN CONDUCTING A HARMLESS ERROR ANALYSIS IS TO DETERMINE WHETHER THE ERROR IS [STRUCTURAL ERROR] OR TRIAL ERROR. [STRUCTURAL ERROR] AFFECTS THE [FRAME WORK] WITHIN WHICH THE TRIAL PROCEEDS. [STRUCTURAL ERROR] IS OF CONSTITUTIONAL DIMENSIONS, [PRECEDES TRIAL] AND [UNDERMINES THE FAIRNESS OF THE ENTIRE TRIAL PROCEEDINGS.]"...., EXAMPLES INCLUDE: ERRORS IN THE JURY SELECTION PROCESS, DEPRIVATION OF THE [RIGHT TO COUNSEL] AND THE "[LACK OF AN 'IMPARTIAL' JUDGE.]" [STRUCTURAL ERROR] IS [NOT] SUBJECT TO HARMLESS ERROR REVIEWS AND [IS AUTOMATICALLY REVERSABLE]". STATE v. Lemere: 2000 MT. 45, 298 M. 358, 2 P.3d 204 (2000)

CONSTITUTIONAL LAW: DUE PROCESS AND LIBERTY INTEREST; ACCUSATORY PROCESS:

JUDICIAL OFFICERS: JUDGES:

" THESE ACTS OF [SIFTING] IN [INFORMATION PROCESS] VIOLATES A DEFENDANTS [RIGHT NOT TO BE TRIED OR SENTENCED BEFORE A [BIASED] JUDGE] WHICH IS A [BASIC FUNDAMENTAL RIGHT] FOR THE ACCUSED WHICH LIE AT THE BASE OF [ALL OUR CIVIL AND JUDICIAL INSTITUTIONS]." Hebert v. Louisiana: 272 U.S. 312, 316; 71 L.Ed 270, 272; 47 S.Ct. 103 (48 A.L.R. 1102).

# INTRODUCTIONARY STATEMENT.

1) Martell, Asserts and Declares: that he has been wrongfully Accused of a Crime in violation of MCA:§ 45-5-503(1): Sexual Intercourse Without Consent (SIWOC) which Martell was a YOUTHFUL JUVINILE of 17 Years of age at the time that this "ALLEGED" Crime was Alleged to have taken place. Martell was as a YOUTH placed in the Custody and Care of the FOSTER HOME of Mr. and Mrs. Travis (Lacquement) as a Foster Child (Son) Prior to the Alleged December 11, 2017 incident.

2) Martell Asserts and Declares that during his placement in the Lacquement 'Foster Home' that there were Strained tensions between Martell and Mr. Lacquement, prior to this Alleged Incident, where Martell felt very uneasy and Mentally and Emotionally Distress in the course of his placement in the Lacquement Home.

3) Martell Asserts: he has and does continues to MAINTAIN HIS INNOCENCE and does Declare that the Evidence which His Former Defense Attorney: PRIVATELY RETAINED Attorney Brandon (Hartford) Should've gathered between the List of High Probability Witnesses containing nearly 15 to 20 Witnesses on Martell's behalf along with the Cell Phone records and the fact that to Martell's Knowledge, The State's Prairie County Attorney's Office FAILED to RELEASE OR TURN OVER it's Discovery Files and Records of the Case they had alleged against Martell.

4) On December 12, 2017: Upon Martell returning home from school He was met with Mr. Lacquement: telling Martell that they had to go to the Courthouse.

5) Upon arrival at the Courthouse, Mr. Lacquement and Martell were met by the Prairie County Sheriff and (2) Two Deputies, One that stood outside the Door and the other who went into the Interrogation Room with Martell, Mr. Lacquement, and the Prairie County Sheriff to conduct the Interrogation of Martell in the

presence of Martell's "Legal Guardian" Mr. Lacquement, Who IS THE FATHER OF THE 'ALLEGED VICTIM' A.L. Which is Martell's Foster Father.

6) At No time Prior to the Interrogation was Martell Advised that as a Youthful Juvenile as a Primary Suspect in a Criminal Offense that He had the Right to have the Court Appoint a Guardian Ad Litem; Based on the Fact that Mr. Lacquement was IN FACT THE FATHER OF THE 'Alleged' Victim. Rather the Prairie County Sheriff himself and His Deputy continued to Interrogate this YOUTHFUL Suspect in the Presence of the "alleged" Victim's Father, where there were already Strained Tensions Between Martell and Mr. Lacquement.

7) As A Direct Result of the Strained Relationship between Martell and Mr. Lacquement; Martell now being Under extreme Duress Felt he had no other option then to allow the Prairie County Sheriff and his Deputy to continue with the full interrogation of Martell, out of Fear of what May happen if Martell was to return back to the Lacquement home ALONE WITH MR. LACQUEMENT. During this Biased Interrogation Martell, Acting under Duress, Without any Proper Counsel or Legal Advisor was Compelled to Give a Statement which in turn was a Force and Coerced Confession through Highly Illegal Misconduct on part of the Prairie County Sheriff Himself and his Officers all who knew that it is "ILLEGAL TO QUESTION A JUVINILE YOUTH SUSPECT WITHOUT ADEQUATE LEGAL COUNSEL OR AN ADVISOR AND IN THE PRESENCE OF THE 'ALLEGED' VICTIM'S FATHER.

8) Martell, Upon Hiring Hartford Immediately advised Hartford of the December 12, 2017 Interrogation in the Precence of Mr. Lacquement. At that Point Hartford had a Obligation Duty of Care to his client, Martell, to move for Dismissal of the case or to at least move the Court to Supress Martell's Force and Coerced Confession due to the Police Misconduct by Prairie County Sheriff's Office.

9) On December 12, 2017: Immediately after Martell's Forced and Coerced Confession he was taken into Custody and thereafter transferred to the Youth Services Center in Billings, Montana where he remained in Custody and Detained for an estimated 7 Months before he turned 18 and was thereafter transferred to the (DCCF) Dawson County Correctional Facility in Glendive, Montana where he remained in the Custody and Detained throughout the Rest of his Pre-Trial or Pre-Sentencing Hearing.

10) At no time during his Pre-Detainment in either Yellowstone Youth Services Center or at Dawson Correctional Center did Martell have adequate MENTAL HEALTH SERVICES to address his MENTAL HEALTH NEEDS. Prior to his Immediate Incarceration Martell was in and attending MENTAL HEALTH Therapy with ALTACARE since the start of his 6th Grade year. From Age 16 he was attending Therapy on a weekly basis.

11) Martell further Asserts that at no time did his Attorney Hartford take into account or present to the Court, That Martell's Educational Background where his highest grade completed was the 8th Grade, and unaware of what Martell's G.P.A. was; However that the G.P.A. couldn't have been too far past the 68% to 72% which would render Martell Unable to fully comprehend any of the Legal Knowledge in which to Properly be able to help Prepare for his Legal Defense.

12) Simply put Martell was a Very Scared Juvenile Youth that was without the knowledge to fully understand the Legal Proceedings, the Language or the Knowledge and when his Hired Attorney Hartford came to him telling him: "If you go to Trial and you lose their going to give you 100 years to Life in Prison...." whereby Hartfords Threat's of the 100 years to Life to a 17 year old CHILD had: Horrified Martell. Then Hartford Also used the same threats with Martell's Parents

in turn Martell's Biological Mother Pleaded for Martell not to go to Trial Just incase he Lost, She didn't want Him sent away for Life. Martell thereby upon the Threats and the Coercion of Hartford felt he had no other option but to Plead out His Innocence in trade for a chance to return back to society someday opposed to being incarcerated for Life, if he Lost at trial.

13) Martell Asserts and Declares: Had it not been but for the ill advise of Hartford, He would have and wanted to fully proceed on to trial. At no time was Martell given any Discovery, Records or files from Hartford to actually view the State's Evidence, if any, against Martell. In fact Martell's of the Belief that Hartford Purposely failed to give him any discovery or that the Prairie County Attorney's Office flatly did not Turn over any of Martell's Discovery after they obtained the Martell's Cell phone as it Proved Martell's ACTUAL INNOCENCE through the 'Snapchat' of December 12, 2017, Where alleged victim A.L. Openly Admitted : She knew that MARTELL DID NOT RAPE HER!!!" That in and of it's self would've been detrimental to the prosecutions case. Martell was shown a Warrant for the Cell Phone, However the CellPhone has NEVER BEEN SEEN SINCE!

14) Martell is of the belief that he does have Sufficient Grounds to the Ineffective Assistance of Counsel Claim, as Hartford was Paid and Retained through Cash, \$1,500.00 Whereby Hartford had an Obligational Duty of Care owed to Martell to provide the fullest Effective Assistance to Martell, opposed to using tactic's of Threats and Coercion to get Martell to take a Plea of Guilty over his ACTUAL INNOCENCE, Which is Often (too Often) used by the State's PUBLIC DEFENDERS to Hurry along Case by case to indigent Accused. Here Martell Retained Hartford with cash, to Personally represent Martell. Moreover hartford's Disbarrment Must be taken into account in and throughout the Review of this Appeal.



15) Martell Contends: he has Always maintained his ACTUAL INNOCENCE and the Fact that he was Under extreme Duress when the Prairie County Sheriff Himeself Coupled with his Deputies and the fact that the BOLOGICAL Father (Lacquement) of the Alleged Victim A.L. was in the same room during and throughout Martell's Confession of the Interrogation which was through the Malicious use of "POLICE MISCONDUCT" actually has Prejudiced Martell's statement. When taken into account with the Ineffective Assisitance of Counsel through Hartford's Conduct with Martell is sufficient ground to raise under the 'CUMULATIVE EFFECT' Standards for the Reviewability by this court on appeal.

16) Martell Contends the FACT that had it not been through the Coerced Confession through POLICE MISCONDUCT and the THREATS made by Hartford that If "You take this to Trial and you lose they'll give you 100 Years to Life in the Prison...". In Fact; had it NOT been through the Threats and Coecion Martell had every intention of going to Trial because he IS ACTUALLY INNOCENT and believes that any Reasoable Juror would in fact find in favor for him at Trial.

17) Moreover: at no time did Hartford attempt or even discuss a 'NO - CONTENDRAI' Plea or NO - CONTEST Plea, which would've allowed Martell to Maintian his Innocence while taking such a plea if he truly felt that a jury may find him guilty, which again Martell must state he feels is Highly Unlikely. Further at no time did Hartford discuss a LESSER INCLUDED OFFENCE for him to plea to. In Short as a PRIVATELY RETAINED COUNSEL HARTFORD really didn't have Martell's best interest at Stake. He wanted an open and shut case, as His records both as a "PUBLIC DEFENDER" and as a Private Counsel will reflect the Facts that Hartford was Legally Disbarred on February 25, 2020 due to his Unethical and Unlawful Representations of his clients, both on the state's Behalf as a Public Defender and as a Privately Retained Attorney Show.

## PROCEDURAL AND FACTUAL HISTORY

18) Martell has been accused of Allegedly committing a crime in violation to MCA: §45-5-503(1) which has been alleged to have occurred on the evening of December 11, 2017 in prairie County, Montana.

19) On December 12, 2017: That Morning (the very Next day) both Martell and Alleged Victim A.L. had conducted a series of texts on 'SNAPCHAT' to which the Alleged Victim A.L. texted to Martell: "...People are going to ask why you RAPPED me!" Martell responded: "I DIDN'T RAPE YOU!" A.L. Replied: " I KNOW...". End of Texts. Both went to School as if the day were as of any other.

20) Date of Same: Martell returned home (to his Foster Home with the Lacquement's) and was met by Mr. Lacquement stating that they needed to go to the Courthouse, which they did. For the Purpose of this section Martell Realleges and incorporates by reference paragraphs 1 Thru 20 as if set forth herein and reserves the right to plead the alternative.

NOTICE AND ADVISEMENT OF RESERVING THE RIGHT TO ADD OR AMEND AT A

A LATER DATE UNPO THE RECEIVING HIS CASE FILES... ANY

CLAIMS IN SUPPORT OF INEFFECTIVE ASSISTANCE OF COUNSEL AND JUDICIAL BIAS.

21) Martell hereby Gives DIRECT AND CONSTRUCTIVE NOTICE pursuant to MCA: §1-1-217 (1)(a), (b) & (2) That he is RESERVING HIS RIGHT TO ADD OR AMEND ANY OTHER CLAIMS which may come to light upon receiving his case files, Discovery and all other pertinent information as so Directed By Order of the Seventh Judicial District Court dated December 3, 2020 Instructing the Prairie County Clerk of Court and Prairie County Attorney Rice to Turn over Martell's Case files.....

22) Martell Declares he has a Fundamental protected Right of Due Process to be afforded all evidence against him to file and Defend himself against a Crime.

23) On March 14, 2019: One-year, Three Months and Two Days: After Martell's Initial Arrest as a Juvenile Youth Alleged Offender; Martell was Sentenced per a Plea Agreement before Judge: Reiger of the Seventh Judicial District Court and was Remanded in the Custody of the State Of Montana's Department of Corrections in the Dawson County Correctional Facility Pending transportation to the (MASC) Missoula Assessment Screening Center in Missoula, Montana.

24) On or About March 18, 2019: Martell: was Transported to the MASC in Missoula, Montana. Martell Remained at MASC from March 18, 2019 to December 12, 2019. During Martell's incarceration at MASC, the MASC Facility had Absolutely NO MEANS NECESSARY for Martell to Prepare his Postconviction Relief Petition, as MASC has ABSOLUTELY NO LEGAL LIBRARY ACCESS or any Means in which to Provide those INMATES who are incarcerated at MASC with any REASONABLE ACCESS TO LAW BOOKS, etc., which are needed to Adequately Defend themselves in The REQUIRED TIMEFRAMES allotted per State Law Statutes. Thereby any forms of delay in Martell's TIMELINE Lies the burden back upon the State of Montana, for it's Failure to Properly and adequately Provide the MEANS necessary for Martell (and all other Inmates in the Custody of the Department of Corrections, in State Contracted Facilities Such as MASC) Access to the LEGAL LITERATURE AND MATERIALS NECESSARY FOR LEGAL RESEARCH TO PROPERLY PROPERLY DEFEND AND PREPARE LEGAL DOCUMENTS TO DEFEND THEIR DUE PROCESS RIGHTS, Such As POSTCONVICTION, SENTENCE REVIEW and WRITS OF HABEAS CORPUS PROCEEDINGS, Therefore Martell Is Not responsible for the Burden of TIMELESSNESS Where he Couldn't do the Adequate Research Necessary to Properly Prepare for his Postconviction for the (8) Eight Months that he was Under the States Custody at MASC without Means to Meaningful Access to Legal Material's in which to research prepare and Draft his Postconviction Petition.

25) On November 12, 2019: Martell took it upon himself to make contact with Hartford by Mail in which Martell sent a letter to Hartford Specifically detailing the discovery and Case Files he was in need of so that he could get his Petition for a Postconviction drafted. See: Attached Exhibits.

26) On December 12, 2019: Martell was Transferred to the (MSP) Montana State Prison, and upon arrival placed in (MDIU) Martz Diagnostic Intake Unit, The MSP's Administrative Intake Unit. Martell Remained there for approximately 82 to 85 Days. At no time in the MDIU was Martell Provided any Means in which to adequately Research or prepare any legal documents necessary to TIMELY FILE his Postconviction, As the Montana State Prison's MDIU (Administrative Intake Unit) Does not allow any INMATES Meaningful or adequate access to Legal Materials, Research capabilities or the Alike. In fact NO INMATES that comes through MDIU are allowed any such access until they are Classifide and Moved into the Prison's Compounds. Again Martell Must Assert; the TIMELESSNESS Burden falls back onto the State of Montana for their own Failures to Adequately meet the Inmates Legal rights of Due Process by providing access to all Legal Materials needed to properly Research, Prepare and Draft needed Petitions and Documents for Sentence Review, Postconvictions and Writs of Habeas Corpus' while being Processed for Classification and Treatment needs on MDIU.

27) On January 13, 2020: After Two Months of waiting a Reply from Hartford; Martell again sent another letter specifically outlining all the discovery and Case files he seek's so he can file Either an Appeal or Postconviction. In fact in this letter, first page, second paragraph, lines 2 & 3 Martell specifically asked Hartford: "I NEED TO KNOW IF YOUR'RE GOING TO REPRESENT ME IN EITHER THE APPEAL PROCESS OR MY POSTCONVICTION?" To date Hartford's never Replied.

28) February 19, 2020: Martell sent a final letter to Attorney Hartford stating right out of the gate on Page 1 First Paragraph: "I SPECIFICALLY GAVE YOU A [DEADLINE] OF FEBRUARY 13, 2020 TO SEND ME MY ENTIRE COURT CASE FILES AND SPECIFICALLY STATED: "ANY FAILURE TO RESPOND TO THIS [SHALL] BE AN OPEN ADMISSION OF [YOUR FAILURE TO EFFECTIVELY PROVIDE ME EFFECTIVE ASSISTANCE OF COUNSEL]...". See Attached Exhibits.

29) On March 6, 2020: Martell was Moved into the Highside Compound of high-side Unit 1. Upon arriving in Highside Unit 1, Martell placed a Call to his Mother advising her that He was now in the General population of the Prison and could now proceed with his Postconviction if he got it in on time. At this point Martell's Mother advised him that Hartford had been [DISBARRED] Last Month, Being February 2020 for Unethical and unlawful Representation.

30) On date of Same, After the Call, Martell seeked out a known 'Jailhouse' Lawyer who he'd been instructed was pretty good and asked the 'Jailhouse' Lawyer about how long he had to file his Postconviction. He learned that time was very close, and thereafter began to put together a MOTION FOR AN EXTENTION OF TIME TO FILE POSTCONVICTION RELIEF.....

31) On March 17, 2020: Montana State Prison Declared an EMERGENCY LOCKDOWN Due to the COVID-19 Virus and Seized all movement except for Essential workers as in Food Service where Martell Worked as a Diet Cook. Thereby Preparing SPECIAL DIET's FOR THE ENTIRE PRISON POPULATION..

32) AS A MATTER OF FACT: the NO MOVEMENT CLOSED ANY AND ALL ACCESS TO THE MSP LIBRARIES. This was ineffect Until on or about April 20, 2020: were Minimal access was allowed. Most times for Legal Library were during Martell's Work Schedule, thus, to which Martell was Unable to attend due to his Job assignment.

33) On or About July 10, 2020: MSP lifted their EMERGENCY LOCKDOWN and began to return back to Semi-normal Operations. At this time Martell began to take the Time off needed to go Obtain Photocopies of His "MOTION FOR AN EXTENTION OF TIME TO FILE HIS POSTCONVICTION...".

34) On August 3, 2020: Martell was able to finally receive a Notary to Notarize his Motion and able to obtain copies, which he had to await Food Service Pay to Purchase Copy cards for the Copies. These were unavailable until about July 27, 2020 Due to the Backlog in the Accounting department as a result of the LOCKDOWN due to COVID-19.

35) On August 3, 2020: Upon receiving the Copy Martell sent out his MOTION FOR AN EXTENTION OF TIME TO FILE HIS POSTCONVICTION...".

36) On August 20, 2020: Prairie County Attorney: Daniel (Rice) Responded seeking the Court to Dismiss Martell's Motion for Extention of time to file his postconviction...; on the grounds of TIMELESSNESS.

37) Martell Contends: The Court Must take into account the fact that Hartford Failed to File any notice of Withdrawal from representing Martell or giving Martell any notice or responding to Martell's Correspondences In which to let Martell know that Hartford was not going to Represent him on an appeal or through any of the postconviction Proceedings; As well as the State of Montana's FAILURE to provide Martell Meaningful Access to Legal Research while in the custody of the Department of Correction and Montana State Prison's MDIU Unit, as so Discussed above.

38) Martell Contends: at no time has he been adequately provided the Case files in and throughout his case to Properly Prepare, Research and Draft any Defenses on his Behalf to the date of this Appeal.

REVIEWABILITY OF ACTUAL CONTROVERSY RESULTING IN  
A MANIFEST GROSS MISCARriage OF JUSTICE.

39) Martell Contends: Through and By way of the Judicial Bias by the the Seventh Judicial District Court (Judge Reiger) he has been deprived and restricted his Fundamental Right to Due Process of Law to Rightfully and Legaly Challenge the unconstitutionality of his casue through Judge Reiger's PREMATURE DISMISSAL of His Postconviction Relief, which Martell thereby would be able to fully challenge the violations of his (4th) Fourth, (5th) Fifth, (6th) Sixth and (14th) Fourteenth Amendments of the U.S. Constitution and those pursuant to Artical II § 3 Inalienable Rights, §4 Equal Protection and Individual Dignity, § 6 Right to Redress..., § 9 Right to Know, § 10 Right to Privacy (cell phone Texts), § 11 Search and Seizure, § 15 Rights of Persons NOT ADULTS, § 16 Adminstration of Justice, § 17 Due Process of Law, § 20 Initiation of Proceedings, §21 Right to Bail, § 23 Detention, § 24 Rights of THE ACCUSED, § 25 SELF-INCRIMINATION, § 26 TRIAL BY JURY; § 28 Rights of the Convicted/ Crimial Justice Policy, and §34 Unenumerated Rights; Of the Montana Constitution; All of which are clearly Established Laws.

40) Martell Contends He is entitled to Relief Under and pursuant to the Post-Conviction Proceedings based on the Actual Facts of this case which the Foundation is settled Upon Martell's Claims of the Actual Innocence Claims couple with the Ineffective Assisitance of Counsel and the excessive Police Misconduct which Follows with the Prosecutional Misconduct and the Judicial Bias that Martell has been subjected to throughout the entirity of his case from day one.

41) Martell if given the Chance: Shall Show with the Preponderence of Evidence That this case stems from the Fruits of the Poisionous Tree through the Police Misconduct, Prosecutional Misconduct, Ineffective Assistance of Counsel and the

Judicial Bias that has thereafter followed throughout the entirety of this case.

42) Martell Asserts; His Factors of The Police Misconduct by the Sheriff Himself of Prairie County, for the failure to assure Martell was not in The Interrogation Room with the Father of the Alleged Victim A.L. Breached Martell's Fundamental Rights under the 5th and 6th Amendment; and constitute as Fruits of the Poisonous Tree.

43) Martell's Claims of Ineffective Assistance of Counsel thereafter by Brandon Hartford followed through the inadequate and unlawful Representation of Hartford; who's recently been Disbarred, Coupled with the Prosecutions Misconduct of failing to Intervine as Officer's of the Court, knowing full well that Martell's Confession was Illegally Obtained through the Police Misconduct and the Prosecutions Failure to Disclose or Turn over it's Discovery which falls well within the Claims of Brady and Jenks; Even upon the Courts December 3, 2020 Order to do so. Lastly; The Judicial Bias stemming from the courts Premature dismissal of Martell's Right to File PostConviction Relief. All these Errors thereby become CUMULATIVE and Are therefore Reviewable under the 'CUMULATIVE ERROR'S STANDARDS'; Which has a High Probability of Martell's Release based on Such vital Errors in this case.

#### SUPPORTING ARGUMENTS

44) Martell Contends: Actual Controversy Does in fact exist in and throughout the entirety of this case. It was initiated by way and through 'POLICE MISCONDUCT' which thereafter followed in a tainted Self-Confession while under Extreme Duress and Distress as a YOUTHFUL JUVINILE [WITHOUT] any forms of Legal Counsel on a Legal guardian other than the FATHER of the Alleged Victim, Which Contributed to the Extreme Duress and Distress upon Martell.



45) Martell hereby Realleges and Incorporates by reference Paragraphs 1 thru 44, as if setforth herein and reserves the Right to Plead to the Alternitive.

46) Martell further Asserts and Contends: he has Established the (3) Three Factors required to raise an Actual Controversy Reiew.

47) The first element: INJURY IN FACT: Martell has, and is, Suffering INJURY INFECT; as he is Unlawffully Imprisoned for a crime that he has NEVER COMMITTED, Thus was forced through POLICE MISCONDUCT in the Presence of both the Prairie County Sheriff, himself, and the Alleged Victim's Father to Confess to a Crime that he Did not Commit through the Coecion and Forced Tactic's of Prairie County Sheriff's Department. Thereafter Martell was Deprived and restricted to See any ACTUAL EVIDENCE or any DISCOVERY by the State or By his PRIVATELY RETAINED Attorney; Hartford, who's Conduct fell Far, Far Below the Standards required by the 6th Amendment. Only to be followed by the Prosecution Misconduct and the judicial Bias that followed thereafter in and throughout the entirity of this case.

48) The Second Standard Requires CAUSATION: Which Martell hereby realleges and incorporates by reference paragraphs 1 thru 47 as if setforth herein and reserves ther right to plea the alternitive. Those contained throughout this appeal Support and Clearly Connect the CAUSATION of this case to date!

49) The Third Standard Requires REDRESSABILITY: Again Martell Realleges and incorporates by reference paragraphs 1 thru 48 as if setforth herein and reserves the right to plead the alternitive. As addressed Throughout this Appeal Brief The PREMATURE DENIAL by the Court constitutes as Judicial Bias and has Factually Deprived Martell his Fundamental Constitutional Right of Due Process.

50) Martell Contends: Couple with all the Required 3 Standards He' s thereby Shown the [INVASION] OF [COMMON LAW RIGHT] which has created a Manifest Gross Miscarriage of Justice to Martell and calls into question the Integrety of the

American Judisprudence of the Criminal Justice System.

#### CONCLUSION

51) Martell Hereby Concludes: He has raised every factor throughout this Appeal Brief that he has Legal and Constitutional Standing to bringforth a Review for postconviction or to be granted to bringforth a Writ of Habeas Corpus in which to Rightfully Challenge the Illegility of His Sentence and the Unlawful incarceration which he has been subjected to through the Severe Breaches of Police Misconduct, Prosecutorial Misconduct, Ineffective Assistance of Counsel, Through an Attorney recently DISBARRED and most alarming the JUDICIAL BIAS in and throughout this case.

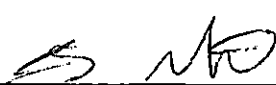
52) Martell futher Concludes: He has Shown GOOD CAUSE to fully support that the entirity of his case has IN FACT created such a Manifest Gross Miscarriage of justice that the only Reasonable [JUDICIAL REMEDY] in this case would rest in the TOTAL EXONORATION of the CHARGES and Martell's IMMEDIATE RELEASE FROM THE UNLAWFUL AND ILLEGAL INCARCERATION OF AN ACTUAL INNOCENT MAN.

#### VARIFICATION AND OATH

53) This is being Respectfully Submitted, Signed and Sworn to before the undersigned Authority under the Penalty of Purjury Pursuant to MCA: 45-7-201 and 45-7-202 as well as those contained under 28 U.S.C. §1746 And that I Hereby Duly Declare that I have Submitted this Appeal in GOOD FAITH and Not for the Purpose of unreasonable Delay, Submitted this 18 Day of February, 2021.

In the County of: Powell;

In the State Of: Montana.

  
Koby Martell/ Pro Se Appellant, Appearing  
IN Propria Persona - Sui Jurist.

ACKNOWLEDGEMENT OF NOTARY

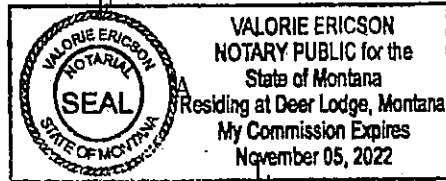
SUBSCRIBED, SIGNED AND SWORN TO BEFORE ME ON THIS 18<sup>th</sup> DAY OF February  
20 21.

IN THE COUNTY OF: Powell;

S

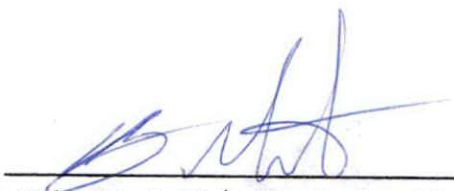
IN THE STATE OF: Montana.

Valorie Ericson  
NOTARY OF PUBLIC FOR THE STATE OF MONTANA.



CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I Hereby Certify that this Appeal Brief has been typed with a proportionately momotyped face, Spaced 12 Pitch Time Roman Numeral Text, Is Double spaced except for footnotes and for quoted and intented material, The word count is 4,699 words and less then the 10,000 words allowed in a Appeal Brief Pursuant to M.R.APP.P. Rule 11 (4) (a) and Does not exceed the 30 Page limit pursuant to M.R.APP.P. Rule 11 (4)(b), including the Certificate of Compliance, Certificate of Service and the Acknowledgement of Notary for Varification Purposes, With the Oath and Varification by the Appellant.



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Koby Martell/ Pro Se Appellant; Appearing  
In Propria Persona - Sui Jurist.

CERTIFICATE OF SERVICE

This is to certify that I have served the above foregoing: Petition For a Writ of Habeas Corpus; First Class Prepaid Postage in the U.S. Postal Service upon the following individuals on this 21 DAY OF February, 2021.

Bowen Greenwood-Clrk Crt.  
Montana Supreme Court  
215 North Sanders  
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Terry, MT. 59349-0564

BY: 

Petitioners Signature