



ORIGINAL

FILED

03/16/2022

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: OP 22-0105

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. OP 22-0105

ANTHONY WEIMER,

Petitioner,

v.

ELEVENTH JUDICIAL DISTRICT COURT, FLATHEAD COUNTY
HONORABLE HEIDI J. ULBRICHT, Acting

Respondents.

FILED

MAR 16 2022

Bowen Greenwood
Clerk of Supreme Court
State of Montana

Petition
for
Rehearing?

CORRECTED PETITION FOR WRIT OF SUPERVISORY CONTROL

Eleventh Judicial District Court, Flathead County, Cause No. DC-20-207C

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STATEMENT OF JURISDICTION

The Montana Supreme Court's acceptance of jurisdiction is appropriate and necessary because review of the legal questions and issues set forth herein, the normal appeal process is made inadequate.

The Montana Supreme Court is an appellate court, but it is empowered by the constitution of Montana to hear and determine such original and remedial writs as may be necessary or proper to the complete exercise of its jurisdiction. *Barrus v. Mont. First Judicial Dist. Court*, 2020 MT 14, 398 Mont. 353, 456 P.3d 577. The Supreme Court has jurisdiction pursuant to Mont. R. App. P. 14(1) and (3)(a) and (b). And this Court has general supervisory control over all other courts. Mont. Const. art. VII, § 2(2).

STATEMENT OF QUESTIONS AND ISSUES

1. *The District Court did proceed under mistake of law in violation of the Defendant's right to an impartial jury, speedy trial and not to be tried twice?*
2. *District Court Judge Amy Eddy proceeded further in the cause after an affidavit in support of disqualification for cause was filed pursuant to § 3-1-805, MCA.*
3. *The District Court is proceeding under mistake of law when pretrial motions ripe for ruling that, inter alia, secure affirmative defenses and countercharge the victim will flip the case and end it?*

STATEMENT OF CASE

This petition arises on the District Court's actions as result of denial of rehearing and then reversal and remand by the Montana Supreme Court in DA-21-

0075; 2021 MT 266N.

Ensuing remittitur, District Court Judge Amy Eddy (Judge Eddy) entered her order notifying the parties that they would not be able to rely on any evidence not disclosed by the time of the Omnibus Hearing (D. Ct. doc. 95 (1)(b)).

Weimer filed his notice of motions-pretrial motions countercharging the victim (Flathead County), requesting issuance of an order abating the ten commandments and raising his affirmative defenses, inter alia, pursuant to § 46-13-101, MCA (D. Ct. doc. 100).

A hearing was held on December 21, 2021 where Weimer objected to a trial on grounds of a partial jury, in the event of a trial, when the then presiding Judge Eddy stated that she could not order the monolith bearing the ten commandments to be removed from the public property it had been re-erected on before final disposition of the case. But Judge Eddy entered a guilty verdict against Weimer at the first trial because he did not use the optional litigation method for removing the monolith bearing the ten commandments as opposed to his right to remove it pursuant to § 27-30-204, MCA.

A hearing was held on January 3, 2022, where Weimer was then badgered by Judge Eddy to continue the trial after she refused to either grant or deny his request in subpoenaing witnesses via certified mail with return receipt without stating that he would be waiving his right to a speedy trial.

Weimer filed an affidavit in support of disqualification for cause against Judge Eddy on January 4, and it was denied by Chief Justice McGrath on January 5. Judge Eddy then continued trial out 234 days in an amended scheduling order violating Weimer's right to a speedy trial and not to be tried twice on January 6. When Weimer filed his reply to the State's response to his pretrial motions on January 7, he also filed a second affidavit in support of disqualification of Judge Eddy pursuant to § 3-1-805, MCA. Instead of Judge Eddy proceeding no further and referring the matter to the Montana Supreme Court as covertly as she did the first time not on the record, she recused herself and requested Judge Heidi Ulbricht (Judge Ulbricht) to assume jurisdiction, which Judge Ulbricht assumed the same day as filed on January 24, while also filing her amended scheduling order that also violates Weimer's right not to be tried twice and right to a speedy trial by 90 days past felony case thresholds of 200 days without addressing the pending motions ripe for ruling.

These are urgent and emergency circumstances because they involve Weimer's rights as matters of law that are being blatantly violated and causing gross injustice in the District Court's proceedings.

STATEMENT OF FACTS

On November 5, 2021, the Flathead County District Court received the Montana Supreme Court's remittitur reversing and remanding (D. Ct. doc. 90),

after it denied, Anthony Weimer's (Defendant or Weimer) petition for rehearing. Subsequently in the District Court, Weimer, filed a motion and brief in support to stay trial pending petition for writ of certiorari to the United States Supreme Court on November 11 (D. Ct. doc. 91). The Respondent, State of Montana (Plaintiff or State), filed a response requesting a scheduling order setting trial on November 23 (D. Ct. doc. 93). Weimer's reply was filed on November 29 (D. Ct. doc. 94). On December 7, 2021, the District Court entered its order denying stay, its schedule, and a jury trial set for January 10, 2022 (D. Ct. doc. 95). On December 16, the State filed its second motions in limine (D. Ct. doc. 97); an amended notice of witnesses and exhibits list (D. Ct. doc. 98) and its proposed jury instructions (D. Ct. doc. 99). on December 17, Weimer filed a notice of motions – pretrial motions which included countercharging the victim (Flathead County), motion for order of abatement of the monolith bearing the ten commandments, motion to dismiss the information with prejudice for facial deficiency and raised defenses, as well as, motioning for issuance of an order releasing all the papers bearing his signature within the Flathead County Sheriff's Office and Detention Center (D. Ct. doc. 100). Weimer filed an amended notice of witnesses and exhibits list and proposed jury instructions on December 20. A conference - pre-trial hearing occurred on December 21. At this hearing, Judge Eddy advised Weimer that she nor the prosecutor would be called to testify at a trial. Judge Eddy then instructed that a

decision on Weimer's pre-trial motions would be rendered at the next hearing after the State had opportunity to respond and then ordered intrust through Office of Public Defender (OPD) to insure Weimer with standby counsel (D. Ct. doc. 104). On December 22, the District Court filed an order changing the jury trial date from January 10, 2022 to January 18, 2022 after input from the parties on scheduling at the December 21 hearing (D. Ct. doc. 106). On the same day that the State filed its response to Weimer's pre-trial motions on December 27 (D. Ct. doc. 108), the District Court filed an order setting mediation stating that it would be bound to any agreement (D. Ct. doc. 109). On December 28, Weimer filed his response to the States second motions in limine (D. Ct. doc. 121). On January 3, 2022, a conference – status hearing was held. At the hearing, Weimer objected to mediation and stated he needed to reply to the States response to his pre-trial motions. The Court instructed a ruling would be issued as soon as briefing was complete. Judge Eddy badgered Weimer to continue trial and directed him to file a motion to continue and once received, the District Court would continue (D. Ct. doc. 123). On January 4, Weimer filed an affidavit in support of disqualification for cause against Judge Eddy (D. Ct. doc. 124). The next day an order by the Supreme Court was issued denying the disqualification (D. Ct. doc. 125). The day thereafter, the District Court filed an order vacating the mediation and continuing the jury trial (D. Ct. doc. 126), followed by an “amended scheduling order” (D. Ct.

doc. 127). On January 7, Weimer filed his reply to the States response to his pre-trial motions (D. Ct. doc. 128), and his second affidavit in support of disqualification for cause (D. Ct. 129). On January 24, Judge Amy Eddy filed a “relinquishment and acceptance,” that she had signed on January 21, requesting Judge Ulbricht to assume jurisdiction whom Judge Ulbricht accepted by also signing the same (D. Ct. 130). Judge Ulbricht filed an amended scheduling order the same day as her assumption of jurisdiction (D. Ct. doc. 131). Weimer filed a notice of void recusal and fraud upon the court on January 25 (D. Ct. doc. 132). On February 4, the State responded to the notice of void recusal and fraud upon the court, stating that it would only provide further briefing at the Court’s request (D. Ct. doc. 133). On February 10, The Court filed an order concerning the notice of void recusal and fraud upon the court (D. Ct. doc. 134). On February 11, Weimer filed a notice of void court order to doc. entry 134 revealing the Court’s affirmation to the commingling Judges official misconduct (D. Ct. doc. 135).

ARGUMENT

I. The District Court Proceeded the Defendant’s Mont. Const. art. II §§ 24 and 25 and U.S. Const. Fifth and Sixth Amend. Rights Making the Normal Appeal Process Inadequate.

A. The Court Violated the Defendant’s Right to a Speedy Trial.

On January 3, 2022, a conference – status hearing was held in the District Court. Judge Eddy refused to either grant or deny Weimer’s request to issue subpoenas via the mail. Judge Eddy than deceptively badgered—without her

stating that the jury trial would be set for the next term and that the right to a speedy trial would be waived—Weimer as to whether he would continue the trial that was set for January 18, 2022. Weimer stated that he would because he needed to submit his reply to the States response to his dispositive pretrial motions, move for disqualification for cause of Judge Eddy, and subpoena witnesses—as Judge Eddy refused to decide service be made through mail.

On January 4, 2022, Weimer filed a motion for disqualification for cause against Judge Eddy. The Montana Supreme Court denied it the next day as “untimely” and stated that it was based on “rulings” that could be raised on appeal.

The day after the denial of disqualification, Judge Eddy filed an order vacating a mediation she concocted and continued the trial (Dist. Ct. doc. 126) on her own volition contrary to the instruction that a jury trial would be continued once a motion to continue was filed by Weimer (Dist. Ct. doc. 123).¹

Judge Eddy’s amended scheduling order (Dist. Ct. doc. 127)² setting a jury trial for the term of June 27, 2022, is 234 days distance from the issuance of remittitur (Dist. Ct. doc. 90). Judge Ulbricht’s amended scheduling order is 90 days past the threshold of 200 days for a speedy trial (D. Ct. doc. 131).

Weimer has not caused the delay and never affirmatively waived his right to

¹ See conference-status hearing minutes doc. 123 as Exhibit 1.

² See Judge Eddy’s amended scheduling order doc. 127 as Exhibit 2.

“A court’s function is to determine legislative intent, and where that can be determined from the plain meaning of the words used, the plain meaning controls and a court need not go further or apply other means of interpretation”.

Gulbrandson v. Cary, 272 Mont. 494, 500, 901 P.2d 573, 577 (1995); *State v. Ankeny*, 2010 MT 224, ¶ 21, 358 Mont. 32, 243 P.3d 391.

In any event that a trial is had with the monolith bearing the ten commandments still erected on State-owned public property automatically creates a partial jury effectually insinuating guilt upon the Defendant.

Additionally, the Flathead County submitted an insurance claim for damages to Montana Association of Counties (MACo) Property and Casualty Trust before a guilty verdict was even entered against Weimer in the first trial. Every citizen in any county within the state of Montana has direct ties to interest in the outcome of the case. Supervisory control is necessary pursuant to Mont. R. App. P. 14(3)(a).

The monolith bearing the ten commandments is a Constitutional issue of state-wide importance effecting individual dignity and freedom from discrimination and religion pursuant to Mont. Const. art. II §§ 4 and 5. Acceptance of jurisdiction is appropriate and necessary pursuant to Mont. R. App. P. 14(3)(b).

C. The Judges Scheduling Orders are not Consistent with the Defendant’s Right not to be Tried Twice.

Correlating with section II. below, both Judge Eddy and Judge Ulbricht filed scheduling orders that start the legal process over as opposed to Judge Eddy’s first

schedule entered after remittitur (D. Ct. doc. 95). This violates Weimer's right not to be tried twice pursuant to Mont. Const. art. II § 25.

After Judge Ulbricht's scheduling order,³ she acquiesced to violating Weimer's right not to be tried twice in her order attempting to unlawfully regain jurisdiction (D. Ct. doc. 134)⁴, but was exposed to her deceit by the Defendant (D. Ct. doc. 135)⁵. The District Court is interfering with respect to neutrality among the parties. Acceptance of Jurisdiction is appropriate pursuant to Mont. R. App. P. 14(3)(a).

II. There is no Judge Presiding with Lawful Jurisdiction Over this Case and the District Court has Been Proceeding Under Mistake of Law from Before the First Notice of Appeal and Issued Remittitur.

On January 24, 2022, Judge Eddy filed a "relinquishment and acceptance" (D. Ct. doc. 130)⁶ after an affidavit in support of motion for disqualification had been filed against her on January 7 (D. Ct. doc. 129). The unambiguous plain statutory language provides that after an affidavit against a district court judge is filed, that district court judge shall proceed no further in the cause and shall refer the matter to the Montana Supreme Court. See § 3-1-805(1), MCA.

Judge Eddy's recusal on her own volition after Weimer's affidavit in support of disqualification for cause alleging bias and prejudice was filed reveals her

³ See Judge Ulbricht's scheduling order doc. 131 as Exhibit 3.

⁴ See Judge Ulbricht's order concerning void recusal and fraud upon the court doc. 134 as Exhibit 4.

⁵ See Weimer's notice of void court order [Dkt. 134] doc. 135 as Exhibit 5.

⁶ See Judge Eddy's relinquishment and acceptance doc. 130 as Exhibit 6.

admittance to proceeding under mistake of law and continuance in constructively working to violate Weimer's right to equal protection of the law. Recusal by a judge is formed on the deference that a judge must have a legitimate reason for his or her own recusal and constitutes misconduct for doing so at an inappropriate juncture while divested from the cause. "The well-established common law rule is that recusal is required when a judge has a direct, personal, substantial, or pecuniary interest in a case." *Bullman v. State*, 2014 MT 78, ¶ 14, 374 Mont. 323, 321 P.3d 121.

Finally, there is no judge presiding over this matter with authority to hear and decide matters before the court. Weimer filed a notice of void recusal and fraud upon the court on January 25 (**D. Ct. doc. 132**).⁷ This is urgency for the Montana Supreme Court to accept jurisdiction pursuant to Mont. R. App. P. 14(3)(a).

III. Weimer's Pretrial Motions Ripe for Ruling Require the Victim to Plead to the Countercharge and the Affirmative Defenses Against the Charge of Criminal Mischief Against Weimer Warrant Dismissal with Prejudice as a Matter of Law.

Weimer countercharged the Flathead County with erecting and maintaining a public nuisance supported by official City of Kalispell and Flathead County government recorded evidence, and confirmed his absolute affirmative defenses to

⁷ See Weimer's notice of void recusal and fraud upon the court **doc. 132** as Exhibit 7.

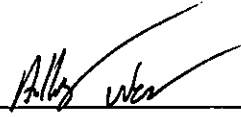
the charge (D. Ct. doc. 100). This issue is foundational for proceeding and instruction was given by the District Court that the pretrial motions would be ruled on as soon as briefed, see Ex. A.

Similarly, when Judge Eddy recused and requested Judge Ulbricht to assume jurisdiction for hearing and determining matters that arise, with her knowledge of the fact that the pretrial motions are dispositive to the case exposes mistake of law because by law the chief justice is required to assign a neutral judge to continue from where the last judge stopped from proceeding. Not start over neglecting pending motions or acting dilatory. Acceptance of jurisdiction by the Montana Supreme Court is proper and necessary pursuant to Mont. R. App. P. 14(3) and (3)(a).

CONCLUSION

With the foregoing, Weimer respectfully asks that this court accept jurisdiction and issue writ of supervisory control.

Respectfully submitted this 15th day of March, 2022.

Signature: .

ANTHONY WEIMER

Petitioner, Pro Se

Dated: 03/15/2022

CIRTIIFICATE OF SERVICE

Pursuant to Mont. R. App. P. 14(6), I hereby certify that I have filed this **CORRECTED** PETITION FOR WRIT OF SUPERVISORY CONTROL with the Clerk of the Supreme Court of Montana and that I have e-mailed a copy to each as follows:

Eleventh Judicial District Court, Flathead County
Hon. Heidi J. Ulbricht: hulbricht@mt.gov
Hon. Amy P. Eddy: aeddy@mt.gov

Office of the County Attorney
Flathead County, Montana
Stacy Lynne Boman: sboman@flathead.mt.gov

Signature: _____

ANTHONY WEIMER

Petitioner, Pro Se

Dated: 03/15/2022

CERTIFICATE OF COMPLIANCE

Pursuant to Mont. R. App. P. 14(9)(b), I certify that this **Petition** is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double spaced; 12 pages or less; is **2995** words, excluding cover page, table of contents and authorities, certificate of service, and certificate of compliance and appendix.

Dated this 15th day of March, 2022.

Signature: _____

ANTHONY WEIMER

Petitioner, Pro Se

Dated: 03/15/2022