



ORIGINAL

FILED

06/13/2022

Bowen Greenwood  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

Case Number: DA 21-0425

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 21-0425

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STATE OF MONTANA,

Plaintiff and Appellee,

v.

JAY DONALD WITKOWSKI,

Defendant and Appellant,

FILED

JUN 13 2022

Bowen Greenwood  
Clerk of Supreme Court  
State of Montana

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**BRIEF OF APPELLANT**

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On Appeal from the Montana Seventeenth Judicial District Court,  
Valley County, the Honorable Yvonne Laird, Presiding

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APPEARANCES:

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Pro Se

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AND APPELLEE

## STATEMENT OF THE ISSUES

**(1) Did the District Court abuse its discretion when it dismissed**

**My (Jay Witkowski) post-conviction relief petition.** When the Court (Judge Laird) asserted her own personal opinion or belief, when she stated that my allegations of ineffective assistance of counsel, and judicial bias\unfair conduct, and sheriff's department misconduct, appeared to be self-serving and that in her opinion, I was minimizing my actions. Judge Laird gave me restitution (damage to the sink, kitchen area) for the charge of criminal mischief, that was dismissed. I believe Judge Laird should have recused herself. Judge Laird let her personal belief/thoughts cloud her professional, and what should have been unbiased duties in regards to sentencing, and dismissing my post-conviction petition. And with the courts statement, quote "Mr. Witkowski, will find no relief in this court", It appeared that she had her mind made up about me before this case even started, it also appeared that she did not pay attention to my attorney who only appeared over vision net during sentencing, as it appeared that she was looking down at her desk the entire time. the feeling of helplessness/hopelessness, I had given up and at that moment it did not matter what happened to me, I was going to end it one way or another, I didn't expect to make it through that alive.) and one of the effects of adhd, is you act impulsively, without thinking about consequences, and with valley county jail staff, not giving my meds consistently I was not in my right frame of mind.

**(2) Did the District Court abuse its discretion, when the Court (Judge Laird), let her personal belief of me, factor in, when she denied allowing This case (DA 21-0425) and my Homicide Case (DA 18-0621) to run Concurrently instead of Consecutively, when even though they happened months apart, the cases are connected.** Judges have the authority to decide a defendant's sentence, however, federal law requires that the default rule is for concurrent sentences, unless the state statute calls for consecutive. 18 US Code 3584. She (Judge Laird) did not take into consideration my state of mind at the time of attempted escape, I was under extreme duress, and stress about my attorney in homicide case NOT filing any type of defense or fighting on my behalf at all, refusing to look



into specific things I repeatedly requested of them, that could have changed the outcome of my case.( train video, car evidence, talked to \cross examined any of the witnesses for the state , during the process ever, even up to and including the sentencing. **Allowed my 2<sup>nd</sup> attorney in homicide case to continue even after he requested his firm be allowed to withdraw from case, due to conflict of interest.** And with Valley County Jail employees not giving my meds consistently (Seroquel)( used to treat bi polar, depression,) that is one medication you should take consistently and not just stop taking.

- (3) **Did the Court deny me (Jay Witkowski) the right to Due Process, by excessive sentencing, unfairness, and denying appointment of counsel to someone with mental health disorders and learning disabilities(cognitive disabilities)?.** Americans with Disabilities Act, And excessive sentencing, **45-5-303. Aggravated kidnapping. (1) A person commits the offense of aggravated kidnapping if the person knowingly or purposely and without lawful authority restrains another person by either secreting or holding the other person in a place of isolation or by using or threatening to use physical force, with any of the following purposes:**  
**Not sure it meets the criteria for aggravated kidnapping in Montana, I did NOT restrain anyone, no one was placed in isolation, or threatened or intimidated by physical force, or intimidated. She was able to push the button by the door and have it opened, just like she did every other day., She originally stated that she never felt like she was being threatened, intimidated or like she was in any harm.**  
**45-7-306. Escape. (1) (a) "Official detention" means placement of a person in the legal custody of a municipality, a county, or the state as a result of:**

(2) A person subject to official detention commits the offense of escape if the person knowingly or purposely eludes official detention or fails to return to official detention following temporary leave granted for a specific purpose or limited time. A person also commits the offense of escape if the person is participating in a county jail work program under 7-32-2225 through 7-32-2227 and knowingly or purposely fails to appear for work at a time and place scheduled for participation in the program.

(3) A person convicted of the offense of escape shall be:

(a) imprisoned in the state prison for a term not to exceed 20 years if the person escapes by the use or threat of force, physical violence, a weapon, or a simulated weapon;

**(b) imprisoned in the state prison for a term not to exceed 10 years if the person escapes after having been charged with or convicted of a felony; or**

**(c) fined an amount not to exceed \$500 or imprisoned in the county jail for a term not to exceed 6 months, or both, if the person escapes under circumstances other than those described in subsections (3)(a) and (3)(b).**

When I say I have learning disabilities, adhd and bipolar depression, I am not using that as an excuse, I am stating facts. Well documented facts. I have lack of access to legal materials; I only have access to outdated forms that are given to inmates. and have no ideas what case law I should be looking up, or how to write legal briefs, therefore, how does anyone expect even a fair chance at justice, and due process. Extraordinary circumstances exist for appointment of counsel under 46-8-104(2)-(3), 46-21-201(2) mca. And is qualified for such under the Montana public defender act.

### **STATEMENT OF THE CASE**

I,(Jay Witkowski) for months of being held in Valley County Jail, on a homicide charge, believed my attorney in that case, was not doing his job to the best of his ability, I filed request for new counsel with OPD, and wrote the judge a letter requesting the same, he did not at any time offer any type of defense for me in that case, did not argue against any so called circumstantial evidence, did not question any discrepancies in even experts statement, at one point my attorney even argued against me, my attorney is supposed to work for me, fight for me, instead he lied to me, pressured me into taking a plea deal I had refused several times, my attorney refused to look into enhancing the video which I believe shows a second vehicle, failed to measure specific things I asked, failed to file motion I asked him to, failed to file motion to withdraw my plea, he lied when he told me, that all I had to admit to was hitting her with the car, which I have never denied. I was being threatened and intimidated by prosecution and my attorney that if I did not take the plea deal they would make sure I never got out of



prison, during my hearing for new counsel, **Judge Laird told me quote" be careful what you say" which I perceived as threat**, she never explained that I could ask questions, what was I supposed to do when I am in a hearing with the same attorneys representing me, that I am trying to replace, How does anyone expect that to have a good outcome? she (Judge Laird) also allowed the prosecutors to be present during that hearing; she even allowed the prosecutor to offer his opinion and recommendation, the prosecutor commented that "I should be lucky to have the attorneys I had", this procedure was fundamentally unfair and caused me prejudice, I had no advocate at a hearing that was a critical stage of the proceedings. She did not consider the fact that there were actual and irreconcilable conflict with my defense attorney in homicide case, I was stressed, being pressured/threatened, along with the valley county jail staff, messing around with my medication, one of which was Seroquel, (is one medication you should take consistently,) they would give it to me one night, then mysteriously misplace it for a day or so then find it, and so on. I filed grievances with the jail at that time, repeatedly. In adequate medical care, under the Americans with Disabilities Act.

3-27-17,5/18/17,6/20/17,7/19/17,8/11/17,12/15/17,12/18/17 are the ones I can find about meds, on 3/24-3/26/17 we were denied toilet paper over 48 hrs., told by Jesse Vaughn to "use your hand to wipe you're ass" , at that point I had been given laxatives. I believe that is a violation of the 8<sup>th</sup> amendment, (prohibition against cruel and unusual punishment), humane conditions of confinement. on 6/21/17,7/11/17and 8/10/17 I requested form to request change of counsel, over 2 months before I finally had someone outside of jail print one online. (Never got the one I requested from jail)

After months of believing and feeling like my attorney was not working on my behalf at all, I had given up, when another inmate and myself tried escaping from valley county jail, it was not planned, at least on my part. at that point it didn't really matter what happened to me, whether I lived or died, then the other guy got a 5-year sentence with some suspended, it was even stated at court that I was the accomplice, and I received 40 years. I know it was wrong to try to escape, thankfully no one was hurt, the lady guard (Daria) originally said she knew she was never in any danger and

returned to work the next shift, then all of a sudden changes her statement.?? When My attorney was speaking over vision net, for sentencing, it appeared that Judge Laird did not even pay attention to what he was saying, she just kept looking down at her desk, didn't even acknowledge he was speaking, it appeared she had her mind made up before the hearing even started. it felt like he also gave up because Judge Laird was listening to what he was saying.

Judge Laird inserted her personal belief, when she stated my allegations of ineffective assistance of counsel, judicial bias\unfair conduct and misconduct of Valley County Jail/Sheriff's Department was just a way to minimize my own actions. **I always admitted what I did in both cases, but I am not going to admit to parts I did not do.** And was given sentence for a charge of criminal mischief that was dismissed. My attorney never argued against that fact. My adhd, bipolar (mental health disorders) depression, learning disabilities are not excuses, they are very well documented facts. MSP, DOC, and Richland County Health Department.

**The cases are related**, if I wasn't under extreme stress over my attorney not working for me at all in homicide case, **I believed I was being convicted without a defense, I felt my life was over and with all that was going on while at valley county with meds and being denied toiletries, I had given up, when I tried to escape, there was no planning, for me it was spur of the moment, thinking in my mind it would end things one way or another, it didn't matter at that moment if I lived or died. I was scared, I believed my life was over, I was not in my right frame of mind.**

## STATEMENT OF FACTS

I (Jay Witkowski), filed petition for post-conviction relief on February 12, 2021. Where I stated, ineffective assistance of counsel, judicial bias/unfair conduct, and misconduct of the Valley County Sheriff's Department. I did request to reconsider appointment of counsel on Feb. 22, 2022, as of today (6/10/22)I still have not received a response.



I was charged with attempted escape, aggravated kidnapping and criminal mischief, all felonies, unlawful restraint and disorderly conduct both misdemeanors, in September 2017. On January 4, 2018 I took a plea deal. On February 20, 2018 I was sentenced to 40 years to run consecutively to my sentence in Valley County Cause No. DC 2017-05. I did not raise any issues at my sentencing hearing regarding constitutional deficiencies, (I did not know that I could do that), I never seen attorney in person, it was either by phone or over visionet, nothing was explained to me, at least not that I could understand or comprehend. As a person with learning disabilities and mental health issues.

I did make a statement to the Court prior to imposition of sentence acknowledging my actions.

46-21-104 MCA, Unless the petition and supporting documents conclusively show that petitioner is not entitled to relief, the court shall notice the county attorney and attorney general and order that a responsive pleading be filed,

Court/Judge Laird acts unfairly and with bias when she repeatedly stated in dismissal of post-conviction petition, that I made several allegations relating to my claims, I neglected to, a) clearly set forth the alleged violations or, b) provide affidavits (OTHER THAN HIS OWN SELF-SERVING AFFIDAVIT) She (Judge Laird), repeatedly says that throughout the letter to dismiss petition for post-conviction relief.

Any and all mitigating factors were never taken into consideration, state of mind at the time, extreme stress/duress, and fear.

With not being given medications consistently (one being Seroquel, which is used to treat schizophrenia, bi polar, and depression). And extreme stress/duress knowing that my attorneys from the homicide case were not working on my behalf at all, I had given up, at that moment it did not matter if I lived or died. and as part of ADHD, you act before thinking. I was not in my right frame of mind. I did not even touch Daria, Mr Adams grabbed her arms. We did not lock her(Daria) in a cell, she used the button to get out of the housing unit, just like she did every other day. In fact, Daria followed us down the hallway, and was still in possession of her radio. No one was hurt, and I am truly thankful for that. We did not threaten or intimate her in any way, she was back at work the next shift. I am not

minimizing my actions at all, stating facts. I have apologized for my actions, I will not, get justice in this court, as previously stated by the court, and denying legal counsel to someone with mental disorders and learning disabilities is in violation of my right to due process.

## **SUMMARY OF ARGUMENT**

The District Court violated my(Jay Witkowski) fundamental right to due process, not allowing me to have a court appointed attorney,(or just not replying to my motion for request appointment of counsel) as a person with learning disabilities and mental health challenges I do not know or understand the process or how to write a legal brief, as well as not having access to an adequate law library, I do not know what case laws to look up, I have trouble with (cognitive)comprehending things therefore, have a hard time explaining things the correct way, I only have access to outdated court forms. I never did anything to try to minimize my actions, my learning disabilities and adhd are facts. And part of adhd(attention deficit hyperactivity disorder} is acting before you think, not considering outcome. I am in no way using that as an excuse, again just stating facts.

**Extraordinary circumstances exist for appointment of counsel under 46-8-104(2)-(3), 46-21-201(2) mca. And is qualified for such under the Montana public defender act.**

I am having to rely on help from people who are not incarcerated to help with this brief, they are not lawyers or have any legal knowledge, plus have full time jobs, making their time to help me limited.

***Mitigating factors were not taken into consideration, extreme stress/duress, fear, meds not being given consistently (Seroquel) being denied toilet paper when prescribed laxatives for over 48 hours at valley county and told by staff to "use our hands to wipe our ass." believing my attorney was not working for me at all in the homicide case, he even argued against me at one point, I had given up all hope, and being bipolar with depression, I didn't care at that point what happened to me. Did not care if I lived or died at that point. (My family even made a call to the jailor on duty, when they heard that I tried to***

***escape, and told the jailor that if "he,( jay witkowski,) was willing to try to escape, then he is at a point where he doesn't care what happens and it was a way to end it all, one way or another". My family even messaged my attorney from homicide case on 8/25/17, and told him, "That if I was a willing participant in attempted escape, that I would try killing myself"*** The District Court abused its discretion when without taking into consideration that I have mental health issues, (adhd (attention deficit hyperactivity disorder), bi polar depression and learning disabilities,) when it denied the help of court appointed counsel for filing post-conviction relief petition and the appeal of said petition, even though I have not received response from the court on the appointment of counsel for appeal. I have no access to law library, only limited access to outdated legal forms given to inmates, and no knowledge of what laws or how to proceed. **And allowing her (Judge Laird) personal opinion of me to factor in, by not allowing my sentences to run concurrently instead of consecutively, and unfairly sentencing me in the kidnapping case, when the other guy only received 5 years/part suspended and gave me 40. When she didn't, in either case, take into consideration any mitigating factors, state of mind, extreme emotional stress/duress, (naming a couple), When she denied my post-conviction petition, because I didn't show enough evidence or explain well enough, fully knowing that I have learning disabilities and mental issues. denying new counsel in homicide case because I couldn't explain well enough why I thought I needed new counsel, when she kept bringing up my juvenile record, even after it was agreed that would not be brought up. Saying that I," Mr. Witkowski will not find any relief in this court."**

***I believe Judge Laird did not make a fair, unbiased decision and should have recused herself, it was a violation of my right to due process,***

## **CONCLUSION**

I, (Jay Witkowski) respectfully requests the Court reverse the District Court's dismissal of Petition for Post-Conviction Relief, and appoint counsel. As a person with learning disabilities and mental health disorder, I should qualify un extraordinary circumstances, exist for appointment of counsel under 46-8-104(2)-(3), 46-21-201(2) mca. And is qualified for such under the Montana public defender act.

Americans with Disabilities Act, also applies, cognitive issues are part of the learning disability.

I do not want to waste the courts time by repeatedly asking for extensions, however, without legal help, I am doing my best, in the appeal of dismissal of my post-conviction relief petition. I again requested appointment of legal counsel in February. I Have not yet (6/10/22) received a reply on that request.

Also respectfully requests the court allow my sentences to run concurrently instead of consecutively. I have admitted and apologized for my actions, and thank God no one was hurt during the attempted escape. They are both lengthy sentences, and state of mind (extreme mental duress from issues in homicide case, and not being given my medications consistently, I felt hopeless and helpless, like my life was over, didn't care at that moment if I lived or died.) if I believed or felt my attorney offered any type of defense in homicide case or worked on my behalf at all, I never would have felt that way, and never would have tried to escape therefore the cases could and should be connected.

**This Brief should be evidence that I do not know what or how to write a legal brief, and that without assistance of counsel, justice will not be obtained.**

**And a violation of my rights to due process, and a fair and unbiased court proceeding/decision cannot and will not happen.**

**I also believe the restitution should be stricken from the sentence as the restitution was for a charge of criminal mischief (damage to sink area in kitchen) that was dismissed, how can I be sentenced for a crime that I was never convicted of.**

## **CERTIFICATE OF COMPLIANCE**

Pursuant of Rule 11 of the Montana Rules of Appellate Procedure.

I certify that this primary brief is printed with a proportionately spaced Century Schoolbook text typeface of 14 points.

Jay Witkowski

## **CERTIFICATE OF SERVICE**

I, Jay Witkowski, (as a person with mental health disorder, and learning disabilities, and being denied the assistance of legal counsel) hereby certify that I have served true and accurate copies of the foregoing brief, to the best of my knowledge and ability, to the following on June 10, 2022, by

(XX) U.S. Mail/First class postage prepaid

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