



ORIGINAL

FILED

11/23/2022

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: DA 22-0626

James William Walker
A.O. 3019013
Montana State Prison
700 Conley Lake Road
Deer Lodge, Montana
59722 Pro se

FILED

NOV 23 2022

Bowen Greenwood
Clerk of Supreme Court
State of Montana

IN THE SUPREME COURT OF THE STATE OF MONTANA

STATE OF MONTANA,
Plaintiff and Appellee,

Cause No. DA 22-0626

vs.

PETITION FOR REHEARING OF
DEFENDANT/APPELLANT'S MOTION
FOR APPOINTMENT OF COUNSEL

JAMES WILLIAM WALKER,
Defendant and Appellant.

COMES NOW, Defendant/Appellant, James William Walker, and Petition's this Honorable Court for a rehearing on his motion to appoint counsel Whereas, Defendant/Appellant filed a Motion to appoint counsel on November 1st, 2022, stating that, his filed "Motion in the Nature of Writ of Error Coram Nobis" was a "step in the criminal Case" DC-15-333C, and this Court acknowledged said statement in it's denial for appointment of counsel.

Defendant/Appellant now informs this Court that said "step in the-criminal case" DC-15-333C, is authorized by United States v. Morgan, 346 U.S. 502, (1954) under which authority the Defendant/Appellant presented his Motion in the Nature of Writ of Error Coram Nobis, and petition's this Court to rehear said Motion for appointment of legal counsel.

That, Defendant/Appellant filed a verified "Motion in the Nature of Writ of Error Coram Nobis" on July 23rd, 2022, as is on record with the Clerk of the District Court, Eighteenth Judicial District and not on record is a Collateral Civil Proceeding of a Petition for Post-conviction Relief as has been falsely alleged by the County Attorney,

Alton Jessop, and the District Court Department 3, Judge John C. Brown. The determination by the Judge, changing defendant/appellant's Lawful "Motion" into a collateral civil proceeding for postconviction relief is in fact unlawful, and unconstitutional in violation of the United States Supreme Court Precedent Law Case, United States v. Morgan, 346 U.S: 502, (1954), and the Montana Constitution Article 7, § 4-District Court-(1).. "And such jurisdiction as may be delegated by the laws of the United States or the State of Montana."

The United States Supreme Court in it's Holding in Precedent Case Law United States v. Morgan, has stated that,

"There must be a means for legal recourse to correct errors of a fundamental character and that, the record adequately presented a "Motion in the Nature of Writ of Error Coram Nobis" and that such Motion was available under 1651 (a), the All Writs section of the Judicial Code."

Additionally, Coram Nobis § 1-power of a Federal Court to entertain Motion in the Nature of Coram Nobis states that,

"any power granted by § 1651 (a) of the judicial code to Federal Courts to issue writs of coram nobis comprehends the power of a District Court to take cognizance of a Motion in the Nature of a Coram Nobis."

The United States Constitution in Sub Article VI, authorizes a delegated jurisdiction to the trial court whether State or Federal.

The Montana Constitution in Article 7, § 4-District Court-(1) states,

"The District Court has original jurisdiction in all criminal cases amounting to a felony...It may issue all writs appropriate to it's jurisdiction as may be delegated by the law of the United States or, the State of Montana. It's process shall extend to all parts of the State."

There is no ambiguity that Defendant/Appellant's Motion in the Nature of Writ of Error is in fact, a step in the criminal case DC-15-333C, and therefore, Defendant/Appellant is entitled to counsel.

In U.S. v. Morgan, The Court states, "A Motion in the Nature of Writ of Error Coram Nobis is a step in a criminal case and not like Habeas Corpus where relief is sought in a separate case and record, the beginning of a separate civil proceeding."

The Court Held that,

"The writ was not abolished by 2255 of the judicial code, permitting Federal and State prisoners to attack their sentence by a Motion in the sentencing Court, and that Rule 60(b) of the Federal Rules of Civil Procedures, abolishing the writ, was not applicable to a Motion in the Nature of Coram Nobis filed in a criminal case."

The determination by the District Court was and is unlawful, and unconstitutional. Defendant/Appellant's Motion is "lawful", available and cannot be changed, altered or denied as, the record makes "plain a right to relief." Montana Courts must recognize, and respect the Supreme Court Precedent Law of the United States in United States v. Morgan, 346 U.S. 502,.

Denial of appointment of counsel in this criminal case, denies Defendant/Appellant's rights guaranteed by the United States Constitution and the Bill of Rights.

The Sixth Amendment requires Courts to provide counsel for defendants unable to employ counsel unless the right was competently and intelligently waived. The Fourteenth Amendment has made appointment of counsel an essential right made obligatory upon the States.

The Sixth Amendment's guaranty of counsel is a fundamental right.

"the Bill of Rights which is "fundamental and essential to a fair trial" is made obligatory upon the States by the Fourteenth Amendment." Gideon v. Wainwright, 372 U.S. 335,... "the Sixth Amendment stands constant***805 admonition that if the constitutional safeguards it provides be***15 lost, justice will not 'still be done'." Johnson v. Zerbst, 304 U.S. 458, 462. (1938).

The Montana Constitution, Article II, § 24, also guarantees the right to effective assistance of counsel. --

The State has, "a sovereign obligation to ensure justice is done in all criminal prosecutions." State v. Bell, 556 U.S. 499.

"the effective assistance of counsel is critical to our adversarial system of justice; a lack of effective counsel may impinge the fundamental fairness of the proceeding being challenged." State v. Lamere, 2005 MT 118.

"the purpose of the Sixth Amendment guarantee of counsel is to

ensure that a defendant has the assistance necessary to justify reliance on the outcome of the proceeding." State v. Lamere, 2005, MT 118.

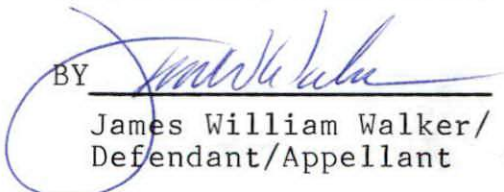
"the United States Supreme Court has stated that in certain Sixth Amendment contexts, prejudice is presumed[****24]"Strickland, 466 U.S. at 692,104 S. Ct. at 2067.

"actual or constructive denial of assistance of counsel is presumed to result in prejudice." Strickland, 466 U.S. at 692, 104 S. Ct. at 2067.

Therefore, Defendant/Appellant respectfully requests this Honorable Court re-examine it's denial of Defendant/Appellant's Motion to appoint appellate counsel.

This 20th day of November 2022.

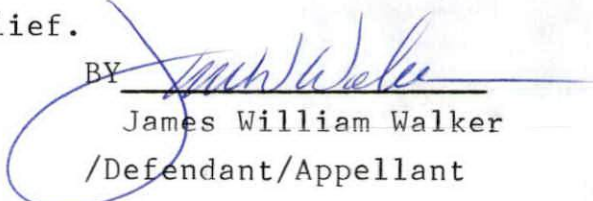
Respectfully submitted,

BY 
James William Walker/
Defendant/Appellant

UNSWORN DECLARATION

I, James William Walker, declare under penalty of perjury that, the facts and matters set forth in the "Petition for rehearing of Defendant/Appellant's motion for appointment of counsel" are accurate to the best of my knowledge and belief.

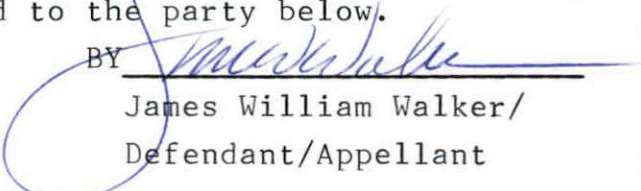
This 20th day of November 2022, at
Deer Lodge, Montana.

BY 
James William Walker
/Defendant/Appellant

CERTIFICATE OF SERVICE

The undersigned, certifies that on the 20th day of November 2022, a copy of the "Petition for Rehearing" was placed in the prison legal system First Class Postage Paid, and addressed to the party below.

State of Montana
Mr. Austin Kundsens/Attorney General
P.O. Box 201401
Helena, Montana 59620-1401

BY 
James William Walker/
Defendant/Appellant