

ORIGINAL



DA 23-0188

FILED

07/14/2023

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: DA 23-0188

Banner Lee Boyd
Petitioner and Appellant

FILED

v.

JUL 13 2023

Bowen Greenwood
Clerk of Supreme Court
State of Montana

State of Montana
Respondent and Appellee

Opening Brief of Appellant

* IN my opening Brief; I Banner Lee Boyd Inmate # 3026250 will explain is short how the sentence that was imposed was in violation of the law. How the court was without jurisdiction to impose the sentence. Also will explain how the sentence was in excess of maximum authorized limit by law or is otherwise subject to a collateral attack upon any ground of alleged error available under a writ of habeas corpus, writ of coram nobis, or other common law or statutory remedy.

* question? Does resolution of evidence require information that is outside the trial, sentencing or district court records.
question? Does resolution of the issue require consideration of information developed or obtained by the defendant since his or her conviction (which may reasonably could not have been obtained prior to trial).

question? Is there a claim that I made of ineffective assistance (IAE) of trial or appellate counsel.

- * Question? Did I not during My Post Conviction Filing Meet the Timeliness of a Petition of Sua Sponte.
- Question? During Post Conviction Petitions Did I Not ~~extrapolate~~ and Meet the one year filing Deadline

I will explain Newly discovered Evidence purposely withheld, Impediments to filing which do not toll the time Bars

- * In Mont. Code Ann § 46-21-101(1)
Generally, the Post Conviction remedy is designed to afford the convicted person the opportunity to raise any non-record based issues relating to his/her conviction or sentence, specifically including claims alleging ineffective assistance (IAE) of trial or Appellate counsel.

- * In my claim non-record based

Because the record usually does not explain why the challenged act or omission by trial or appellate counsel occurred, most IAC claims are non-record based and therefore not procedurally barred. [See State v. Herrman] 2003 MT 149, 91 33, 316 Mont. 198, 70 P.3d 738 "When the record does not provide the basis for the challenged acts or omissions of counsel, a defendant claiming ineffective assistance of counsel more appropriately makes his claim in a petition for postconviction relief." The court has "recognized the flaw in attempting to determine the presence of tactical reasoning behind omissions or inactions of trial counsel from a cold trial record. [State v. Reed] 2007 MT 291 91 38, 339 Mont. 481, 171 P.3d 694. → Continue

* In this Brief we will touch base, and with exception of a challenge to a facially invalid sentence, Post conviction relief is generally the only means by which a defendant may self

Banner Boyd #3026250 can collaterally attack a conviction or sentence may be challenged either through Post conviction relief or habeas corpus. See also Lat v. State, 2006 MT 279, 334 Mont. 270, 150 P.3d 337 holding that the Post conviction and habeas procedural bar unconstitutionally suspend the writ of habeas corpus as applied to facially/invalid sentences.

* I will attack the validation of facts, truth and there justification and interpretation of what the deem to be Montana, rules of judicial conduct, and understanding of Due Process of Montana Law & Procedural rules? The obvious best set fourth and five example of a questionable large Michael B. Hayworth & Mr. Michael B. Hayworth deserve no honorable mention, for his abuse of a Public Set and intimidation of his employees, one Joseph Zavatsky not to up hold the Law of Montana, but instead to up hold his Idea of the Law, which in fact forced me to fill IAC claim.

* I will have not only through M. testimony but most important through evidence, tangible in facts, and Scientific Proof as well as Political Theory. how W. A. Glade Esq. Custer Deputy Co. Attorney, Judge Michael B. Hayworth Ignored M. filling of M. Post conviction with Next Nove time after for any fair/Assessment. My Personal they where proven when on Diet Appeal. In short Deliberation time was less then Authorized by State to Avoid (Illegal Doc commitment). See State v. Jackson 2007 MT 186 99 14-17, 388 Mont 344 165 P.3d 32 holding that a resentencing determination which converted on Illegal six-year Doc commitment into a six-year Prison term violated due process because a Person is more than a Doc (commitment). →

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Compare Gratz V. Maboney: 2006 MT 282 (Holding that life Without Parole Sentences are Within Statutory Parameters.

* During my filling of My Post conviction, I failed to use my Option as Petitioner which does Not entitled me to automatically disqualify the Judge. Michael B. Hayworth Under Mont. Code Ann § 3-1-803, or substitute the Judge Under Mont. Code Ann § 3-1-804, but May Move to disqualify or substitute the Judge for Cause Under Mont. Code Ann § 3-1-805 See, § II. R., below (Disqualification or Substitution of Presiding Judge).

* In this here opening Brief the Montana Supreme Court Will be notified of the Mechanics of the proceedings for Postconviction relief is commenced by filing a Verified Petition with clerk of the Court that imposed the Sentence. Mont. Code Ann. § 46-21-101, § 46-21-103 A Petition is Verified When the Petitioner Confirms or Substantiates the allegation therein by Oath or affidavit.

* I truly Need an Attorney but have Not been given one So in Hopes of steps in a Right Direction I humbly Submit My Appeal on My opening Brief which Was so promptly returned with Out Recourse. My Reson's where Vailed Vaild. Recores of Proof in/ Nexus. Thank You for Your Time

Sincerely,
Barrett Boyd

CERTIFICATE OF SERVICE

I certify that I filed this

☐ Petition

☐ Motion

☒ Other Ordered Petition Copy of Denied
[Name of document]

with the Clerk of the Montana Supreme Court and that I have mailed or hand delivered a copy to each attorney of record and any other party not represented by counsel as follows:

Wyatt Glade / Timothy Charles Fox
[Name of opposing counsel]
← Court House / Montana Attorney General
P.O. Box 201401
Helena, MT 59620-1401
1010 Main St, Miles City MT. 59301
[Address]
Counsel for Custer County

Banner L. Boyd
[Other party representing himself or herself]

MSP 700 Conaly Lake Road, Deer Lodge, MT 59722
[Address]

DATED this 23 day of June, 2023.

Banner Boyd
[Signature]

Banner Boyd
[Print name]

