



ORIGINAL

FILED

09/11/2023

Bowen Greenwood  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

Case Number: DA 23-0021

IN THE SUPREME COURT OF THE STATE OF MONTANA  
No. DA 23-0021

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GREGG ALLEN ZINDELL,  
PETITIONER

V.

STATE OF MONTANA,  
RESPONDANT

FILED

SEP 11 2023

Bowen Greenwood  
Clerk of Supreme Court  
State of Montana

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RECONSIDERATION

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On Appeal from the Montana Eighth Judicial District Court,  
Cascade County, The Honorable John A. Kutzman

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Appearances:

Gregg Zindell A.O. 3011357  
Montana State Prison  
700 Conley Lake Road  
Deer Lodge, Mt. 59722

Austin Knudsen  
Attorney General  
215 North Sanders  
P.O. Box 201401  
Helena, Mt. 59620

Clerk of The Montana Supreme Court  
Bowen Greenwood  
P.O. Box 203003  
Helena, Mt. 596620-3003

Josh Racki  
Cascade County Attorney  
121 4th Street North  
Great Falls, Mt. 59401

## STATEMENT OF ISSUE

Gregg Allen Zindell is requesting a reconsideration on the Montanas Supreme Courts decisions in the tolling of time, a different option on Actual Innocence, and the Cascade County Attorney Office did recieve Zindells 2nd PCR.

## PROCEDEURAL BAR

Peterson v. Salmonsens, 2019 U.S. Dist. Lexis 187470

AEDPA imposes a one year statue of limitations for filing a federal habeas petition 28 U.S.C. § 2244 (d) (1). This one year period begins to run after the date the habeas petitioners state conviction becomes final. Carey v. Safford 536 U.S. 214,216, 122 S.Ct. 2134, 153 L.Ed 2d 260 (2002). A conviction is final either "the date on which the judgement became final by the conclusion of direct review" 28 U.S.C. 2244 (d)(1). For petitioners who do not seek direct review from the States highest court, their conviction is final at the [\*4] "expiration of the time for seeking such review" Gonzalez v. Thaler 565 U.S. 134,150,132, S.Ct.. 641,181 L.ed. 2d 619 (2012). The one year limtations period is tolled during the time "which is properly filed application for state post-conviction or other collateral review is "pending" in front of a state court, U.S.C.2244 (d)(2).

Zindells time has been "tolled" since his 1st PCR was being appealed. 3/19/2015 was notice of appeal of 1st PCR, 9/26/2016 was affirmed. 2nd PCR was filed 5/30/2017,giving Zindell plenty of time to file.

## ACTUAL INNOCENCE

ADAMS v. Frink, 2016 U.S. Dist. LEXIS 12254

E. Exceptions to Limitations Period-Actual Innocence

Also, the assertion of actual innocence of a offense must be viewed "in light of all the evidence[.]" Bousley v. United States , 523 U.S. 614,623,118 S.Ct.1604,140 L.ed.2d 828(1998). All admissable evidence of petitioners guilt or innocence is revelant to the inquiry. id at 624. The court must consider evidence that is "old and new, incriminating and exculpatory, and admissible at trial or not." Lee,653 F.3d at 938.

The habeas court must make its determination concerning the petitioners innocence "in light of all the evidence, including that alleged to have been illegally admitted (but with due rgard to any unreliability of it) and evidence tenable claimed to have been wrongly excluded or have become available only after the trial."

With the record complete, the court must then "make a probabilistic determination about what reasonable, properly instructed jurors would do." Shulp, 513 U.S.at 329. The court must assess whether "it is more likely than not that no reasonable juror would have convicted [the prisoner]." Bousley, 523 U.S. at 623

COUNTY PROSECUTOR RECIEVED 2nd PCR

On 5/24/2017 Zindell sent his 2nd PCR to Tim Fox office (A.G.), Josh Racki(county attorney) and Faye Mcwilliams (clerk of courts Cascade county).

During Zindells second meeting with the BOPP hearing (11/15/2018) Anette Carter inquires on why there has been no progress in Zindells 2nd PCR? Susen Webar responds "Oh that thing". Zindell has enclosed a copy of inmate mail history. None returned either.

CONCLUSION

If the court was to determine that Zindells argument is convincing, Zindell would request an evidentiary hearing as is proper procedure according to the Attorney Generals office.

Thank You

  
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Gregg A. Zindell

9-5-2023  
Date

## CROSSROADS CORRECTIONAL CENTER

Print Date: 7/14/17 12:18PM

## INMATE MAIL HISTORY

INMATE NAME: ZINDELL, GREGG

AGENCY #: 3011357

PERM #: 2062498

HOUSING: E/E/208/L

MAIL DATE	MAIL TO/FROM AND ADDRESS	MAIL TYPE
07/14/2017	Faye McWilliams/Clerk of Court, 415 2nd Ave N, Great Falls, MT 59401-	OUTGOING-LEGAL
06/16/2017	Montana Innocence Project L Mansch, PO Box 7607, Missoula, MT 59807-	INCOMING-LEGAL
06/12/2017	Ofc of Disciplinary COUNSEL for MT, PO Box 1099, Helena, MT 59629-1099	OUTGOING-LEGAL
06/02/2017	no return address Mitchell D Hill Invest, state on envelope Personal & Confidential Legal Mail,	INCOMING-LEGAL
06/02/2017	Montana Innocent Project, PO Box 7607, Missoula, MT 59807-	UNAUTHORIZED
06/02/2017	Montana Innocence Project, PO Box 7607 Lisa Ma iLuber, Missoula, MT 59807-	INCOMING-LEGAL
05/30/2017	No return address Mitchell D Hill invest, states on envelope Personal & Confidential Legal Mail,	INCOMING-LEGAL
05/24/2017	Tim Fox MT Attorney General, 215 N Sanders, Helena, MT 59620-	OUTGOING-LEGAL
05/24/2017	Joshua A Racki/County Attorney, 121 4th Street North, Great Falls, MT 59401-	OUTGOING-LEGAL
05/24/2017	Faye McWilliams Clerk of Court, 415 2nd Ave N, Great Falls, MT 59401-	OUTGOING-LEGAL
05/15/2017	Taleff & Murphy PC, 300 River Dr N Ste 5, Great Falls, MT 59403-	INCOMING-LEGAL
05/08/2017	Jud Standards Comm Supreme Court, 301 S Park, Ste 328, Helena, MT 59620-	INCOMING-LEGAL
04/28/2017	Supreme Court Sent. Review Division, 301 S Park, Ste 328, Helena, MT 59620-	OUTGOING-LEGAL
04/28/2017	State Bar of Montana, 7 W 6th Ave, Ste 213, Helena, MT 59624-	OUTGOING-LEGAL
04/28/2017	Shelly Nash/Judicial Standards Commissio, PO Box 203005, Helena, MT 59620-	OUTGOING-LEGAL
04/28/2017	Commission on practice & review, Ward Taliff/Attorney, Great Falls, MT 59403-	OUTGOING-LEGAL
04/28/2017	Office of Disciplinary Counsel, PO Box 1099, Helena, MT 59624-	OUTGOING-LEGAL
04/07/2017	Innocence Project aatn: Woody, PO Box 7607, Missoula, MT 59807-	OUTGOING-LEGAL
03/06/2017	Faye McWilliams Clk of Dist Crt, 415 2nd Ave N, Great Falls, MT 59401-	INCOMING-LEGAL
03/03/2017	Montana Innocence Project, PO Box 7607, Missoula, MT 59807-	INCOMING-LEGAL
03/03/2017	Faye McWilliams/Clerk of Dist Court, 415 2nd Avenue North, Great Falls, MT 59401-	INCOMING-LEGAL
03/01/2017	Judy Griffith, 1579 Hwy 431, Power, MT 59468-	UNAUTHORIZED
02/16/2017	John Katzman County Judge, 415 2nd Ave N Room 300, Great Falls, MT 59401-	OUTGOING-LEGAL
02/16/2017	Tim Fox Attorney General, 215 North Sanders, Helena, MT 59620-	OUTGOING-LEGAL
02/16/2017	John Parker County Attorney, 412 2nd Ave N, Great Falls, MT 59401-	OUTGOING-LEGAL
12/22/2016	Innocence Project, PO Box 7607, Missoula, MT 59807-	OUTGOING-LEGAL
12/06/2016	Faye McWilliams, Clk of Crt, Great Falls, MT 59401-	OUTGOING-LEGAL
10/26/2016	Montana Innocence Project, PO Box 7607, Missoula, MT 59807-	OUTGOING-LEGAL
10/12/2016	Montana Innocence Project, PO Box 7607, Missoula, MT 59807-	INCOMING-LEGAL
10/03/2016	Sutton Dubois & Mills PLLC, PO Box 1348, Great Falls, MT 59403-	INCOMING-LEGAL
09/26/2016	Ed Smith Clerk of Supreme Court, PO Box 203003, Helena, MT 59620-	INCOMING-LEGAL
09/13/2016	MT Innocence Project, PO Box 7607, Missoula, MT 59807-	OUTGOING-LEGAL
09/09/2016	EdSmith Clk of Supreme Crt, State of MT, Helena, MT 59620-3003	INCOMING-LEGAL
06/27/2016	Ed Smtih Clk of Supreme Crt, State of MT, Helena, MT 59620-3003	INCOMING-LEGAL
06/27/2016	Montana Inncence Project, Larry Mansch Atty, Missoula, MT 59807-	INCOMING-LEGAL
05/31/2016	Larry D Mangh Montana Innocence Project, PO Box 7607, Missoula, MT 59807-	OUTGOING-LEGAL
05/24/2016	Larry Mansch/MIP, PO Box 7607, Missoula, MT 59807-	INCOMING-LEGAL
05/12/2016	Ed Smith/Clerk of Supreme Court, PO Box 203003, Helena, MT 59620-	OUTGOING-LEGAL
05/12/2016	Tim Fox/MT Attorney General, PO Box 201401, Helena, MT 59620-	OUTGOING-LEGAL
05/04/2016	Tim Fox MT Attorney General, 215 N Sanders, Helena, MT 59620-	INCOMING-LEGAL
04/27/2016	Ed Smith Clerk of Supreme Court, PO Box 203003, Great Falls, MT 59403-	INCOMING-LEGAL
04/18/2016	Ed Smith Clerk of Supreme Court, PO Box 203003, Helena, MT 59620-	INCOMING-LEGAL
04/13/2016	Tim Fox Artorney General, 215 North Sanders, Helena, MT 59620-	INCOMING-LEGAL
03/23/2016	Ed Smith/Clerk of Supreme Court, PO Box 203003, Helena, MR 59620-	INCOMING-LEGAL
03/22/2016	Cadmus/Donated,	INCOMING-PACKAGE
03/21/2016	State of MT Atty General Tim Fox, Joseph P Ma...rek Justic Bldg 215 N Sanders, Helena, MT 59620-1401	INCOMING-LEGAL
02/17/2016	Ed Smith Clk of Supreme Cri State MT, PO Box 203003, Helena, MT 59620-3003	OUTGOING-LEGAL

Cascade County District Court

Case Register Report

DV-7-2014-0000446-PR

Gregg Zindell, #3011357 vs. State Of Montana

User: ESWHENNEY **FILED**

02/13/2023

Bowen Greenwood  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

Case Number: DA 23-0021

Filed: 6/3/2014  
Subtype: Post Conviction Relief

STATE OF MONTANA }  
County of Cascade } SS

I hereby certify that the instrument to which this certificate is affixed is a true, correct and compared copy of the original in the office of the Clerk of the District Court.

Witness my hand and seal of the District Court of Cascade County this 9<sup>th</sup> day of February 2023

TINA HENRY, Clerk of Court

By *Emaleth Greer*  
Deputy Clerk



Status History

Open 6/3/2014  
Closed 1/22/2015  
On Appeal 4/29/2015  
Reopened 9/26/2016  
Closed 3/1/2017  
Reopened 5/30/2017

Plaintiffs

Pl. no. 1 Zindell, #3011357, Gregg

Attorneys

Lulf Sutton, Meghan C. (Primary attorney) Send Notices

Defendants

Def. no. 1 State Of Montana,

Judge History

Date Judge Reason for Removal  
6/3/2014 Neill, Kenneth Retired  
7/13/2015 Kutzman, John A. Current

Register of Actions

Doc. Seq.	Entered	Filed	Text	Judge
1.000	06/04/2014	06/03/2014	Petition For Post Conviction Relief, Petition To Set Aside Or Vacate Sentence And Request For Hearing	Neill, Kenneth
2.000	06/11/2014	06/10/2014	Request for Order Preserving Defense Counsel From Disciplinary or Malpractice Claims	Neill, Kenneth
3.000	06/15/2014	06/13/2014	Order Preserving Counsel from Disciplinary or Mailpractice Claims	Neill, Kenneth
4.000	07/02/2014	07/02/2014	State's Response To Petition For Post Conviction Relief	Neill, Kenneth
5.000	08/27/2014	08/26/2014	Order for Hearing (10-2-14 9am)	Neill, Kenneth
6.000	09/10/2014	09/09/2014	Motion to Continue	Neill, Kenneth
7.000	09/12/2014	09/11/2014	Order Resetting Hearing	Neill, Kenneth
8.000	10/01/2014	09/30/2014	Motion to Continue	Neill, Kenneth
9.000	10/15/2014	10/14/2014	Order Resetting Hearing	Neill, Kenneth
10.000	11/13/2014	11/12/2014	Motion to Transport	Neill, Kenneth
11.000	11/13/2014	11/13/2014	Order To Transport	Neill, Kenneth
12.000	11/19/2014	11/19/2014	Minute Entry - Post Conviction Relief	Neill, Kenneth
13.000	12/15/2014	12/15/2014	Order to Transport (Deft from CCDC back to Crossroads)	Neill, Kenneth
14.000	01/22/2015	01/22/2015	Order Re: Petition For Postconviction Relief	Neill, Kenneth
15.000	04/07/2015	03/19/2015	Notice of Appeal and Request for Court Appointed Counsel	Neill, Kenneth

Register of Actions

Doc. Seq.	Entered	Filed	Text	Judge
16.000	04/07/2015	03/19/2015	Notice of Filing (DA 15-185) Send to Supreme Court on April 29, 2015 along with companion case CDC 12-019	Neill, Kenneth
17.000	04/07/2015	04/06/2015	Notice of Amended Appeal (DA 15-0185)	Neill, Kenneth
18.000	09/26/2016	09/26/2016	Remittitur (Affirmed)	Kutzman, John A.
19.000	09/26/2016	09/26/2016	Notice of Filing Remittitur	Kutzman, John A.
20.000	03/02/2017	03/01/2017	Order Denying Petition for DNA Testing	Kutzman, John A.
21.000	06/01/2017	05/30/2017	Petition for 2nd Post-Conviction Petition to Set Aside or Vacate Sentence and Request for Hearing (Exhibits A - Q attached)	Kutzman, John A.
22.000	11/20/2019	11/20/2019	Order for State Response	Kutzman, John A.
23.000	12/19/2019	12/18/2019	Motion for Additional Time to Respond to Second Petition for Postconviction Relief	Kutzman, John A.
24.000	12/31/2019	12/30/2019	Order for Extension of Time to Respond	Kutzman, John A.
25.000	01/23/2020	01/22/2020	Response to Second Petition for Postconviction Relief	Kutzman, John A.
26.000	10/09/2020	10/09/2020	Notice of Submission	Kutzman, John A.
27.000	05/26/2021	05/26/2021	Reply to State Response	Kutzman, John A.
28.000	07/22/2021	07/21/2021	Notice of Issue	Kutzman, John A.
29.000	08/03/2021	08/02/2021	Reply to States Motion	Kutzman, John A.
30.000	12/20/2021	12/20/2021	Notice of Issue	Kutzman, John A.
31.000	01/06/2022	01/06/2022	Newly Discovered Evidence	Kutzman, John A.
32.000	01/12/2022	01/12/2022	Supplemental Response to Second Petition for Post Conviction Relief Titled "Newly Discovered Evidence"	Kutzman, John A.
33.000	02/09/2022	02/09/2022	Address Expert Witness	Kutzman, John A.
34.000	05/13/2022	05/13/2022	Status Report	Kutzman, John A.
35.000	07/19/2022	07/14/2022	Inadvertent Error	Kutzman, John A.
36.000	07/19/2022	07/19/2022	Notice of Amended Petition (originally filed in CDC-12-019)	Kutzman, John A.
37.000	07/19/2022	07/19/2022	Discovery of New Evidence (originally filed in CDC-12-019)	Kutzman, John A.
38.000	12/14/2022	12/13/2022	Order (Writ of Supervisory Control denied by Supreme Court)	Kutzman, John A.
39.000	12/15/2022	12/15/2022	Order Denying Second PCR Petition	Kutzman, John A.
40.000	01/10/2023	01/09/2023	Notice of Appeal (DA 23-0021)	Kutzman, John A.
41.000	01/10/2023	01/09/2023	Notice of Filing (notice of appeal)	Kutzman, John A.
42.000	01/10/2023	01/10/2023	Fee Notice (Civil Appeal Fee)	Kutzman, John A.