

FILED

10/23/2023

Bowen Greenwood  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

Case Number: OP 23-0626

Donald Grant  
Inmate Name

1989.7  
Inmate ID or AO#

Montana State Prison  
Facility of Incarceration

700 Cowley Lake Rd.  
Address of Facility

Deer Lodge Mt. 59722  
City State Zip

FILED

OCT 23 2023

Bowen Greenwood  
Clerk of Supreme Court  
State of Montana

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. OP 23 - 0626  
[The Clerk of Court will assign a number]

Donald Grant  
NAME

PETITIONER, PRO-SE.

v.  
STATE OF MONTANA  
WARDEN SEM SALMONSEN  
NAME OF WARDEN/FACILITY ADMINISTRATOR,

RESPONDENT.

Petition for a Writ  
of  
Habeas Corpus

I, Donald Grant, Pro-SE, am representing myself, and I  
[Name of Inmate]  
believe that I am entitled to a Writ of Habeas Corpus under § 46-22-101, MCA, for one  
or more of the following reasons:

[Check the applicable box]:

- The Department of Corrections has incorrectly calculated my sentence which illegally extends my parole eligibility or discharge date.
- The Parole Board should have granted me a parole AND the Board violated my Due Process rights in denying me a parole.
- I am entitled to more credit for jail time served than I received.



Petitioner alleges His conviction is in violation of the United States Constitution's Amend. XIV (14) by depriving Petitioner His life, liberty, & his property...

Petitioner alleges the State of Montana's Legislature's Statute labeled as "Leave to file information" & Montana's Constitution section 20 out of Article II(2) are type's of "Information" used to allow the judge as a procedure to start the proceeding that is classed under criminal prosecution(s).

Montana Legislature also has bound all State judge's to the Federal United States Constitution under MCA. 1-1-105 along with Supreme Court stating in Marbury v. Madison, 5 137-180

[that] "The Court, as well as other Departments are bound to that instrument" and "a law repugnant to the U.S constitution is Void".

It is said [the fourteenth amend.] nullifies & makes void all State Legislative, & state actions of every kind which impairs the privileges & immunities of Citizens of the United States, or which injures them in life, liberty, or property without Due Process of the law, or which denies to any the equal protection on the [laws] 1883 Civil Rights cases, 109 U.S 3. S. Ct. 18, 27 L. Ed 835..

Authority:

Petitioner claim gets it's Authority from the Supreme Court of the United States "Constitutional Law" which is the law of the land, and is the only Court that can make binding rules for all Court of lower jurisdiction by constitutional law. The State's procedure shows the fundamental misunderstanding of federalism but Petitioner claim(s) will make clear that the Court in Montana have but one course of action and "the states own ignorance of the law can't be used as a defence."

The Courts in Montana have relied on the case laws of Ah Jim 23, at 78 (1890) & the Hurtado v. California, 110 U.S. 516. 532-33 (1889) to define what is procedural due process of law but it can be shown that this is just part of what is required.

In the laws Petitioner has stated Petitioner is not here too say the State of Montana is to throw out the case of Ah Jim and or is not to use Hurtado. Petitioner would simply ask for the Montana Supreme court to consider the History of "procedure's"

In the Hayburn's Case 2 U.S. S. Ct. 409 Aug. 11, 1792 this mandate was placed for all Courts in the United States please read: " The Court considers that the practice of the Courts of the King's Bench and the Chancery in England as affording outlines for the practice of this Court; and that they will from time to time make such alterations there in, as circumstances may render necessary".

Petitioner known advances the time line 4 years for the convince of this Court. See in the United States v. La Vengeance (case) 3 U.S. S. Ct. 297 Dated 1796 it explained that:

"Informations are proceedings at common law & classed with criminal prosecutions, but there are but two kinds of "Information" known in England"

(1) in the Exchequer touching matters of Revenue, and the other is,

(2) in the "King's Bench" touching the punishment of misdemeanors. [3 Bl. Com. 262]

Petitioner would point out the same [Blackstone Commentary] [3 Bl. Com. 262] are defined in Ah Jim and Hurtado. This because of the use in the "King's Bench" known is codified Constitutional law out of the United States Supreme Court, and in use in the Colony(s) which latter becomes the United States of America.

Petitioner and this Court "when faced with a clash of Constitutional principal and a line of unreasoned cases wholly divorced from the text, history, and structure of our founding document, we should not hesitate to resolve the tension in favor of the Constitution's original meaning." Justice Clarence Thomas, site (omitted).

The very "Blackstone Commentaries" are the primary legal authority see the fallowing as its clearly stated out of the United State Supreme Court Constitutional law of case:

Schick v. United States, 195 U.S. 65, 24, S. Ct. 826, 827, 49 L Ed. T.D (1904 (emphasais added)

"The Supreme Court of the United States noted that the blackstone commentaries are accepted as the most satisfactory exposition of the common law of England" [and]

Washington v. Glucksberg, 512 U.S. 702, 712, 117 U.S. S. Ct. 2258, 2263-64, 117 S. Ct. 2302, 138 L. Ed. 2d 772 (1997)

"The Blackstones Commontaries on the laws of England provided a definitive summary of the common law; and served as primary legal authority for 18th and 19th century American Lawyers".

The United States case [United States v. Beavans] 16. U.S. 336 S. Ct. Feb, 21, 1818 stated-

" We never admitted the right of the British Parliament to bind us in any case"

Petitioner would point out that Supreme Court in Mattox v. United States, 156 U.S.S 237 Sup. Ct. Feb 4, 1895 reads:

"The Constitution [3]\*\*\* should be interpreted in light of the law as it existed at the time it was adopted not as reaching out for new guarantees of the rights of the citizens, but as securing to individual such as He already possessed as a British subject- such as His ancestors had inherited and defended since the days of the Magna Charta." [the ordinance of 1787].

Knowing the adherence to the Supreme Court decision under the Doctnne of "Stare Decisis" as noted by Court in Seminole Tribe of Fla v. Fla. 517 U.S. 44, 67, 116 S. Ct. 1114, 134 L. Ed 2d. 252 (1996) stating that-

"When an opanion issues for the Court, its not only the result but also those portions of the opinion necessary to that result by which we are bound"[and]

In the United States v. Durall, 740 F. 3d 604, 408 U.S. App. DC. 73 (DC. Cir 2013) reading that Mr. Kavanaugh, J. cocurring in the denial of rehearing en banc) "Vertical Stare Decisis applies to Supreme Court precedent in two ways", Id. Hn8

Hn8- "First, the result in a given Supreme Court case binds ALL lower courts. So once a rule, test, standard, or interpretation has been adopted by the Supreme Court, that same rule, test, standard, or interpretation MUST be used by lower courts in later cases")(emphasis in original).

Montana Supreme Court is and has been aware of the King's Bench  
Petitioner refreshes this Court in just how it has been used  
please the following time line:

State v. Chilinski, 2016 Mt. 280 Mont. S. Ct.

"The King's Bench was a [criminal] court of the law"

State v. Dietz, 135 Mont. 496 Aug. 4, 1959 Mont. S. Ct

"King's Bench" Dated Back to 1552 in England"

State v. Zumwalt, 129 Mont. 529 Mont. S. Ct

"Stating that the writ of "Coram nobis" comes from  
the King's Bench"

Truro v. Passmore, 38 Mont. 544 Mont. S. Ct April 3, 1909

"Common Law has no application where the law is declared  
to be code" ie: statute noting "King's Bench"

[And] IN: State v. Ah Jim, 9 Mont. 167 Mont. S. Ct Jan, 1890

"The criminal practice act provides ample remedies for the execution of criminal laws, and necessarily conflicts with the preceding by information at common law. In the next place, the use of this remedy has been limited to certain cases, and has not embraced felonies. BLACKSTONE treats of this subject, and says:""There can be no doubt but that this mode of prosecution by information or suggestion, filed on record in the Court of the King's Bench; is as ancient as the common law itself.... But these informations, of every kind, are confined by the Constitutional law to mere misdemeanors only; for, wherever any Capital offense is charged, the same law requires that the accusation be warranted by oath of twelve Men before the party shall be put to answer it"" [4 Blackstone. Comm. 309, 310], In Ex part Wilson, 114 U.S. 417, 29 L. Bd 89. 5. S. Ct. 935. It states:

[Ex Parta Wilson] "Mr Justice Gray delived the Opinion!, and ays "by the law of England, informations by the attorney-general, without the intervention of a Grand jury were not allowed for Capital crimes"

Petitioner it seen in the last case it has been in line with the Supreme Court's case of 1792 [Hayburn], in which made the provision of the Constitution of the United States Amend: XIV (14) that say's -"No person shall be deprived of life, liberty, or property without Due process" meaning that the Petitioner's claim of His Civil Right of the Fourteenth Amend has been and is still being violated because "Information" was limited and only for misdemeanors, and being Petitioner was convicted by the use of information as the mode of proceeding in prosecution therefore His conviction is void because it was not charged as a capital crime a felony in violation of His Civil rights.

Releif in the form of reversal and record expunged with prejudices is under Constituional Law of the Land that can out of the United States Supreme Court own Laws.....

In closing Petitioner would leave this Court with one more S. Ct. case "Chisholm v. Geaorgia" 2, U.S. 419 Feb. 19, 1793

"ALL THE CITIZENS BEING AS TO CIVIL RIGHTS PEPECTLY EQUAL, THERE IS NOT, IN THAT RESPECT ONE CITIZEN INFERIOR TO ANOTHER"  
[and]

As relief, I request the following:

- my immediate release from prison.
- reduction of my sentence or that this Court remand this cause to the district court directing the court to resentence me to a lesser sentence.
- that the Department of Corrections recalculate my sentence as this Court directs.
- Other relief. Explain:

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VERIFICATION

STATE OF MONTANA )  
 County of POWELL ) : ss.

I believe I am being incarcerated illegally. I certify that the contents of this petition are true and accurate to the best of my knowledge.

DATED this 19<sup>th</sup> day of October, 2023.

Donald Grant  
 Inmate Signature

Donald Grant  
 Printed Name