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APR 18 2024

Bowen Greenwood
Clerk of Supreme Court
State of Montana

Kingsley U. Ariegwe
2068957
Crossroads Correctional Center
50 Crossroads Drive
Shelby, MT 59474

Pro-Se Defendant and Appellant

IN THE SUPREME COURT OF THE STATE OF MONTANA

KINGSLEY UROMU-OKPE ARIEGWE,
(Defendant and Appellant),)

v.,)

STATE OF MONTANA,
(Plaintiff and Appellee).)

Case Number: DA-24-0135

MOTION FOR
APPOINTMENT OF COUNSEL

Introduction

COMES NOW, Pro-Se Defendant and Appellant in the above mentioned Case Number, do hereby humbly and respectfully submits his Motion for Appointment of Counsel, during this Critical Stage of the proceeding against him, so that, he can be well represented in his pending case in this instant case, since this involved a substantial rights, that requires a serious investigation and a research, which Ariegwe, is not capable of at this time.

Background

That, on August 22, 2023, the Montana Eighth Judicial District Court, held that, the State of montana committed

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Structural Error, of Constitutional dimension, in violation of the Sixth Amendment to the United States Constitution, and Article II, Section 26 of the Montana Constitution, in tandem with § 3-15-405, MCA. As a result of this violation, the Montana Eighth Judicial District Court, held that, the Hinkle trial and All Trials held in the Eighth Judicial District through September 25, 2023, are all Vacated.

State v. Hinkle, Cause No. BDC-22-242 (Montana Eighth Judicial District Court, Cascade County, Aug. 22, 2023).

Accordingly, on February 15, 2024, Ariegwe filed a Motion for a New Trial in light of Hinkle. But that, on February 22, 2024, the Montana Eighth Judicial District Court, DENIED Ariegwe's Motion for a New Trial, and Ariegwe, promptly filed a Notice of Appeal in this Court (Case Number DA 24-0135).

Argument

Standard of Review

We review de novo a trial Court's decision to deny a motion for equitable tolling where the underlying facts are undisputed. Brambles v. Duncan, 412 F.3d 1066, 1069 (9th Cir. 2005); Spitsyn v. Moore, 343 F.3d 796, 799 (9th Cir. 2003); see also Chance v. Harrison, 899 P.2d 537, 538 (Mont., Jul. 17, 1995).

Davis v. State, 187 P.3d 654, 656, ¶10 (Mont., Jun. 24, 2008).

Discussion

In the landmark case of Gideon v. Wainwright, 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed.2d 799 (1963), the Supreme Court

concluded "[t]hat appointment of counsel for an indigent criminal defendant was a '[F]undamental right, essential to a fair [t]ria[1],' and that the Fourteenth Amendment requires appointment of counsel in a State Court, just as the Sixth Amendment requires it in a Federal Court. 372 U.S. at 340, 83 S.Ct. at 794. In a sister case, Douglas v. California, 372 U.S. 353, 83 S.Ct. 814, 9 L.Ed.2d 811 (1963), the Court applied the Gideon holding to "[t]he '[a]ppeal [p]roces[s];'" stating that "Federal Courts must honor his [the indigent defendant's] request for counsel regardless of what they think the merits of the case may be; and 'representation in the role of an advocate is required. Ellis v. United States, 356 U.S. 674, 675, 78 S.Ct. 974, 975, 2 L.Ed.2d 1060 (1957).'" 372 U.S. at 357, 83 S.Ct. at 816.

State v. Swan, 649 P.2d 1297, 1301 (Mont., Aug. 19, 1982) (emphasis added).

The Court went on to apply this rule to the California Supreme Court, which had denied appellant's petitions for appeal without a hearing, stating:

"... The present case, where counsel was denied petitioners on appeal, shows that the discrimination is not between 'possibly good and obviously bad cases; but between cases where the rich man requires the Court to listen to argument of counsel before deciding on the merits, but a poor man cannot. There is lacking that equality demanded by the Fourteenth Amendment where the rich man, who appeals as of right, enjoys the benefit of counsel's examination into the record, research of the Law, and marshalling of arguments on his behalf, while "[t]he '[I]ndigen[t],' already burdened by a preliminary determination that his case is without merit, is "[f]orced to shift for [H]imself.'" The indigent, where the record is unclear or the errors are "[h]idden, has '[only]' the right to a meaningful '[r]itua[1],' while the rich man has a "[m]eaningful '[a]ppea[1].'" 372 U.S. at 357, 83 S.Ct. at 816.

Swan, 649 P.2d at 1301 (emphasis added).

The Sixth Amendment of the United States Constitution and Article II, Section 24 of the Montana Constitution guarantee a criminal defendant the right to effective assistance of counsel. The right is comprised of two correlative rights, the right to counsel of reasonable competence and the right to counsel's undivided loyalty. State v. Christenson, 820 P.2d 1303, 1306 (Mont., Nov. 19, 1991) (citing McMann v. Richardson, 397 U.S. 759, 770-71, 90 S.Ct. 1441, 1448-49, 25 L.Ed.2d 763, 773 (1970) and Wood v. Georgia, 450 U.S. 261, 271-72, 101 S.Ct. 1097, 1103-04, 67 L.Ed.2d 220, 230 (1981)).

State v. Finley, 915 P.2d 208, 219 (Mont., Apr. 16, 1996).

Moreover, a criminal defendant's right to counsel arises at "[e]very critical stage of the proceedings '[a]gainst hi[m].'" United States v. Wadsworth, 530 F.2d 1500, 1510 (9th Cir. 1987) (citing Coleman v. Alabama, 399 U.S. 1, 90 S.Ct. 1999, 26 L.Ed.2d 387 (1970)) This Court has defined a critical stage in a proceeding as "[a]ny step of the proceeding where there is '[potential-substantial-prejudice]' to the [d]efendan[t]." State v. Robbins, 708 P.2d 227, 231 (Mont., Nov. 19, 1985).

Finley, 915 P.2d at 220 (emphasis added).

A defendant has a right to the assistance of counsel on a first appeal. State v. Black, 798 P.2d 530, 532 (Mont., Sept. 7, 1990). The right to counsel on appeal includes the right to effective assistance of counsel. Evitts v. Lucey, 469 U.S. 387, 396, 105 S.Ct. 830, 836, 83 L.Ed.2d 821 (1985); Anders v. California, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967), sets forth the procedures necessary for protecting a client's right to appeal and delineates the minimum standard for providing effective of counsel on appeal.

Hans v. State, 942 P.2d 674, 692 (Mont., Jul. 2, 1997).

We are aware of the principle contained in § 46-21-105(2),

MCA, that "grounds for relief that were or could have reasonably have been raised on direct appeal may not be raised, considered in a [postconviction relief] proceeding. ...

"However, this principle must be observed in conjunction with a defendant's right to effective assistance of counsel on a first appeal. See Hans v. State, 942 P.2d 674, 691-92 (Mont., Jul. 2, 1997)

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State v. Adams, 54 P.3d 50, 53_A (Mont., Sept. 5, 2002).

CONCLUSION

Defendant and Appellant, Kingsley U. Ariegwe ("Ariegwe"), do hereby humbly and respectfully plead the Court that, the New Case Law, State v. Hinle, Cause No. BDC-22-242 (Montana Eighth Judicial District Court, Cascade County, Aug. 22, 2023), depicted the Lack of Enforcement of § 3-15-405, MCA, Article II, Section 26 of the Montana Constitution, and the Sixth Amendment of the United States Constitution, by the Cascade County Clerk of Court, and the Cascade County Sheriff, in the Jury Selection Process.

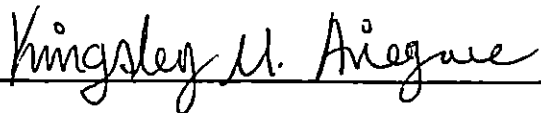
And that, because this grievous Constitutional dimension error, precedes the trial itself, it affected the framework and or the structural integrity of the entire trial process. And that, in order for Ariegwe to be represented adequately in this pending case, he plead the Court that, he needs the appointment of an effective counsel, who will have all the requirement to prepare, do the proper research, and do all the necessary groundwork to adequately present a very good appeal on Ariegwe's behalf.

WHEREFORE, in the interest of Justice, Defendant and Appellant, Ariegwe, humbly and respectfully pray this Honorable Grant or Order the following relief:

- I. That the Court appoint counsel pursuant to § 48-8-103, MCA.
- II. That the Court Grant the parties permission to conduct discovery in a manner consistent with the Montana Rules of of Civil Procedure hearing pursuant to § 46-21-201(4), MCA.
- III. That the Court conduct an evidentiary hearing pursuant to § 46-21-201(2) and (5), MCA.

DATED this 16th day of April, 2024.

RESPECTFULLY SUBMITTED,



KINGSLEY U. ARIEGWE
Pro-Se Defendant and Appellant

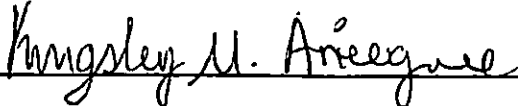
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing MOTION FOR APPOINTMENT OF COUNSEL was deposited in the United States mail, postage prepaid, to the following:

CHAD WRIGHT
Appellate Defenders of Montana
P.O. Box 200147
Helena, MT 59620-0147

DATED this 16th day of April, 2024.

RESPECTFULLY SUBMITTED,



KINGSLEY U. ARIEGWE,

Pro-Se Defendant and Appellant