

FILED

04/18/2024

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: OP 24-0244

Neil L. Nunes
Inmate Name

#3030625
Inmate ID or AO#

Montana State Prison
Facility of Incarceration

700 Conally Lake Rd
Address of Facility

Deer Lodge MT 59722
City State Zip

FILED

APR 18 2024

Bowen Greenwood
Clerk of Supreme Court
State of Montana

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. OP 24-0244
[The Clerk of Court will assign a number]

Neil L. Nunes
NAME

PETITIONER,

v.

Petition for a Writ
of
Habeas Corpus

Jim Salmonsén (Warden)
NAME OF WARDEN/FACILITY ADMINISTRATOR,

RESPONDENT.

I, Neil Nunes, 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.

☐ My sentence is illegal because:

☐ I was sentenced after April 28, 1999, and I received a sentence of more than 5 years to the Department of Corrections, none of which was suspended.

☐ My sentence violates my right to be free from double jeopardy.

☐ The length of my sentence is longer than the law allows.

☐ I am entitled to good time that is not credited against my sentence.

☐ I am being held in jail and I believe my bail is excessive.

☒ Other reason incarceration is illegal.

Describe in detail why you are entitled to habeas corpus relief. Be specific. If possible, provide citations to legal authority. Attach any documents that help you explain why the Court should grant your petition. A copy of any judgments, orders or other documents that support your argument must be provided.

Petitioner Neil Dunes Cause NO DC-19-031 is

void for the District Court Lacked Jurisdiction (see Supplement

Brief) Petitioner asks this court to Restore Petitioner's Life,

Liberty and Property for violations of Mont Const Sect 17,19

"Due process Clause" and for his rights under the 14th Amendment

of the U.S. Constitution.

Petitioners only putting forth to this Court one question.

They question of Jurisdiction Does this Court and or the

Dist Court have any....?

Montana State Prison
700 Conley Lake Rd.
Deer Lodge MT 59722
Pro-Se
Cause NO. DC-19-031

IN THE SUPREME COURT OF THE STATE OF MONTANA
NO. _____

Neil Nunes

Petitioner/appellant,

SUPPLEMENT BRIEF

V.

Jim Salmonson (warden)

Respondent/Appellee

Comes now Petitioner Neil Nunes as Pro-Se in the above referenced cause DC-19-031: Bringing a Writ of Habeas Corpus as authorized under MCA 46-23-101 & 102.

Petitioner's habeas shall be defined under Montana Supreme Court Case Law, Rood v. Laughlin, 2021 Mont. lexis 418 & as (quoted) there In Lott v. State, 2006 MT. ¶¶ 1 & 2, 234 Mt. 270, 150 P. 3d 337 at ¶ No. 7 [as] then reads "WHEN" the Delegates Ratified the 1972 Constitution, they intended, at the minimum, that an Individual Incarcerated pursuant to a "Facially Invalid Sentence" and "which has violated Constitutional Rights." (will then) @ ¶¶ 22 (have the chance too) as Read Lott ¶¶ [Quoting] Have the right too [under Lott] "Fix" under the "Writ of Habeas Corpus" [Lott] "Correct such flaws and to remedy, Extreme Malfunctions in the State (Montana's) Criminal Justice Systems (quoting) Jackson v. Virginia, 443 U.S. 307, 332 n 5 ¶¶ S.Ct. 2781, 2796 n 5 ¶¶ 61 L. Ed 2d 560 (1979).

The Court has Failed in the past stating that its 5th Amend. of the U.S. Constitutions has not been extended to Person's in the State's. Petitioner points out the law and the 14th Amendment in fact is & has been the controlling law and the protection of his right.

Petitioner has put for Convenience to history by Lexis.....

HISTORY FOR COURT CONVENIENCE

The process Act [1789-90 [Congress]
Hayburns Case 2 U.S. 409 S. Ct. 1792
U.S. v. La Vengeance U.S. S. Ct. 3 297 [1796]
Ratification of the 5th Amendment [1791] [Congress]
Ratification of the 14th Amendment [1868] [Congress]

Valarino v. Thompson U.S. S. Ct. Cas 866 22-28 F. [1857]

Hurtado v California, 110 U.S. S. Ct. 516, 532-33 [1884]

Mont: Ah Jim, (Mont. 167 [1890]

Rules enabling Act [1934] [Congress]-

Current Version 2 28 U.S.C. §2073 (a) (b) (REA)-

REA Authority to promulgate Fed: Rules of Criminal Procedure (RULE 7)

Petitioner as you read has given date:(s) Starting at [1789] so that this court may fully understand IT starts with the PROCESS ACT of Congress; along with what the Court must except as the Codified Constitutional Law and The Congressional Law that is Binding on the Court of record.

The Restrictions of Montana's own case of Ah Jim and the Supreme Court Case of Hurtado will become clear as defined and written as a Mandate as the Court of the Supreme Court has stated in and for all attorneys as reads in the S. Ct. case of Washington v. Glucksberg 521 S. Ct [1997].

The Glucksberg has reiterated thatw as the outcome in the Hayburns Case and the La Vengeance case and what came out of the Process Act.....

Petitioner also under [Congressional] Act §6's Judicature Act of [1873] has merged the King's bench Rules and the Rules of the Supreme Court. What this maeans to the Court is plain for both the states case of Ah Jim and the Hurtado[Decent] that explains that all informations will be restricted to "MISDEMANORS ONLY".

Petitioner would remind this Court that under Stamp v. Sparkman, 435 U.S. 349, 356-57 98 Ct. 1099, 55 L. Ed 2d 331 (1979) [THAT] Judicial Immunity remains subject to certain limitations, such as when a Judge act(s) are not taken in a Judicial Capacity or when there is an absence of Jurisdiction.

LAW OF JURISDICTION

Every court has recognized that the court must satisfy Itself of its Jurisdiction no matter how Difficult, Beofre reading the merits of the case.

WITHOUT Jurisdiction the Court Cannot Proceed at all in any way. Jurisdiction is the power to declare the law and when it ceases to exist, the only function remaining for the Court is the announcing the fact and dismissal of the Case [see] U.S. v. Cotten, 535 U.S. 625, 630 S, Ct. (2002) In Montana (the term Jurisdiction means the Courts statutory or Constitutional power to adjudicate the case) Mont. rule 59.

By U.S. Supreme Court Law of Constitutional Interpertation and the 14th Ammendment has a sentence and Judgement that is Void. and a[Estoppel] under §

§ 138-141 and 143-144 C.J.S ¶key• 68.

Must see that the Court is barred from asserting a claim or right contradicts what one has said or done (Congress and U.S. Sup. Ct.) before or what has been Legally established as TRUE [case] and (key) 53-59 C.J.S. because " Without authority, It's Judgement(s) and orders are registered as Nullities. They are not voidable, but simply void; and form no Bar to a recovery sought, even prior to a reversal in opposition to them. they constitute NO Justification: and all persons concerned are considered in law as Trespassers."

Elliot v. Piersol, 1 Pet. 328 340 U.S. Sct 328 340 (1828) and a Judgement rendered in Violation of Due Process is Void in the rendering State and is not entitled to full faith and credit elsewhere" Pennoyer v. Neff 95 U.S. S. Ct. 714, 732-733 (1878) along with - S. Ct. Case of World- wide Volkswagen Corp. v. Woodson 444 S. Ct. U.S. 286 (1980) [A] void Judgement is one which has no legal force or effect, Invalidity of which may be asserted by any person whose rights are effected at any time and at any place directly or Collaterally....

It's seed under the authority of the 9th Cir is binding to the State of Montana [Neives v. Allison, 2023 U.S. Dist lexis 162339 (Publication 9th Cir.)

" The substantive component of the Fourteenth Ammendments Due Process Clause; Forbids the government from depriving a person of Life, Liberty or property in such a way that... Interferes with rights Implicit in the concept of ordered Liberty" (Citation omitted) and the Due Process Clause of the Fourteenth Ammendment contains both a procedural and substantive component" as noted by (quoting) the Washington v. Glucksberg, 521 U.S. S.Ct. 702, 720-721, 117 2258 117 S. Ct. 2302, 138 L. Ed 2nd 772 (1997).

Petitioner in this last case State's Montana has constraints on ALL INFORMATION(s) as set down by the S. Ct. and Congress.

Supreme Law of the Land [Rule of Law]

Act of Congress made in accordance with the U.S. Constitution

[Cases: Constitutional Law

Supremacy Clause [Preemption]

The Process Acts of the United states

judicial Act 14th Section

Kurns v. RR Friction Prods, Corp. 565 U.S. 625 S.Ct. 2012

Supremacy Clause: The united States Supreme Court has found that state law must Yield to a Congressional Act.

Mut Pharm. Co. v. Bartlell 570 U.S. 472 (2013)

HN3 Supremacy Clause Federal Preemption

Under the supremacy Clause, U.S. Const .Art VI d 2

[state laws that require a private party to violate Federal law are Preempted, and thus are without effect.

Petitioner "Standard of Review" feels come from the case of State v. Montgomery 2015 Mt. 151 ¶9 379 Mont. 353. 350 P.ed 77

Pg.6 the grant or denial of a motion to dismiss is a criminal case presents a question of the law that we review for correctness.

State v. Haller, 2013 MT. 199 ¶ 5 371

Mont. 86 306 P Ed 338 (citing)

Robinson, 2003 Mt. 198 ¶ 6 317

Mont. 19 75 P. 3d. 301

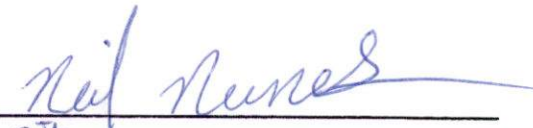
Petitioner would point out plain erro~~r~~ the 8th cir's case of U.S. v. allen 406 F. 3d 940 942 is not Mont's Jurisdiction so petitioner looked to the 9th Cir case of Ehrenberg v. Halajyan (In re Victory Entm't Inc. 634 B.R. 90 and it clearly quotes the S. Ct. case of washington v. Glucksberg, 5 21 U.S. 702, 117 S.Ct.2258 2263-54 & 117 S. Ct. PP. 2202 138ed 21 772 (1997)).

Petitioner would look to the Court to consider a new "STANDARD" which is "Cause and Actual Predjuice Claim [see] Bousley v United states 523, U.S. 614, 622 118 S. Ct. 1604, 140 L Ed. 2d 828 (1998) noting this remedy is "EXTRODINARY".

Petitioner has Plainly stated by S. Ct. Case and by Congressional law and acts thast the state of Montana action at Barr is void of jurisdiction for want of processes and orprocedures that give zero authority in view of the constraints placed on the Law.... by congress and the United States Supreme Court.

Due process has been violated and an extreme malfunction in the criminal Justice System put forth here in Montana...

Petitioner simply requests that this court comply with the Law(s) of the land and to restore his life, libert and property in Compliance with Montana's Const Sec 17 and the 14th Ammendment of the Constitution of the United States.

Respectfully: 

This Date of April 9th 2024.

CC: montana Atty General

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:

Announcing Facts & Dismissal of Case.

as read from (SEE) U.S. v Cotten 535 U.S. 625,630 S.Ct.(2002)

Montana Rule 59

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 9th day of April, 2024.

Neil Nunes
Inmate Signature

Neil Nunes
Printed Name

CERTIFICATE OF MAILING (SERVICE)

I hereby certify that on April 9th, 2024, I have mailed the Petition for a Writ of Habeas Corpus, as noted by a check mark (✓), to the following attorney by placing a copy in the United States Mail, postage prepaid:

☒ State of Montana

(see INSTRUCTIONS #9)

Office of the Attorney General

P. O. Box 201401

Helena, MT 59620-1401

or

☐ _____ County Attorney (see INSTRUCTIONS #9)
[Write name of County]

Neil Nunes
[Signature]

Neil Nunes
[Print name]