

IN THE SUPREME COURT OF THE STATE OF MONTANA

No.

MATTHEW THEODORE TEMPEL,

Petitioner,

v.

THE JUSTICE COURT, LIBERTY COUNTY,
JUSTICE OF THE PEACE CHRISTOPHER
CASE, PRESIDING,Respondent.

PETITION FOR WRIT OF SUPERVISORY CONTROL

*Original Proceeding Arising from the Justice Court, Liberty County, State of
Montana; State of Montana v. Matthew Tempel, Cause No. TK-530-2023-21,
Justice of the Peace Christopher Case, Presiding*

APPEARANCES:

JEREMY S. YELLIN
Attorney at Law
419 4th Ave
P.O. Box 564
Havre, MT 59501
(406) 265-3303
jeremy@jyellinlaw.com

Attorney for Petitioner Matthew Tempel

JOHN CHRISTIAN
JULIE CLEMENTS
Spec. Dep. Liberty Cty. Attys.
121 4th Street No, Suite 2A
Great Falls, MT 59401
jchristian@casadecountymt.gov
jclements@casadecountymt.gov

Attorneys for State of Montana

CHRISTOPHER CASE
Justice of the Peace, Liberty County
111 1st St. East
Chester MT 59522
(406) 759-5213

Respondent

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STATEMENT OF ISSUE

Whether the Liberty County Justice Court is proceeding under a mistake of law, causing a gross injustice, by allowing the replacement of Special Deputy Prosecutor Stephen A. Gannon (Choteau County Attorney) with Special Deputy Prosecutors John Christian and Julie Clements (Cascade County Deputy County Attorneys) at the request of the alleged victims' mother's complaints to Liberty County Attorney Robert Padmos?

STATEMENT OF THE CASE

The Justice Court's rulings and the actions of the Liberty County Attorney's office (in collusion with the alleged victims' mother) as described below, implicate the fundamental constitutional rights to due process, a fair trial, and a meaningful defense, guaranteed by Amends. VII, XIV, and Art. II, §§ 17, 24, Mont. Const., including those guaranteed to Petitioner Matthew Tempel, who petitions this Court for a Writ of Supervisory Control, over the Liberty County Justice Court.

Specifically, over Petitioner's objection, and without a hearing, the Justice Court allowed the withdrawal of Mr. Gannon upon the request of Mr. Padmos, who sought Mr. Gannon's replacement with Mr. Christian and Ms. Clements, after complaints by the alleged victims' mother, Britney Tempel, that Mr. Gannon was going to offer Mr. Tempel a plea deal (See attached, Order Allowing Withdrawal

of Counsel, dated February 28, 2024, Exhibit A; and Notice of Appearance Exhibit B).

After the Justice Court condoned the switch, Petitioner Tempel applied to the Liberty County District Court for a Writ of Mandamus, which The Honorable Kaydee Snipes Ruiz denied April 1, 2024 (See attached Application for Writ of Mandamus, Exhibit C; Order Denying Writ of Mandamus, Exhibit D).

The District Court determined “Petitioner has not presented sufficient authority that the Justice Court has a legal duty to not allow the State’s attorney to withdraw (Exhibit D).

Additionally, the Court does not find that “there is not a plain, speedy, and adequate remedy” available to the petitioner “in the ordinary course of law” given the avenues of appeal available in the Petitioner’s underlying case (Exhibit D).

Such rationale ignores the fact that an appeal, after conviction, cannot remedy the pretrial posture of the case.

Petitioner is entitled to pretrial due process because a post-conviction appeal cannot change the prosecutor assigned to the case.

In support of his Application, Petitioner submitted an Affidavit, in which he averred that Ms. Tempel (mother of the alleged victims in the underlying criminal case), was motivated to see him prosecuted, convicted, and punished, as she and

Petitioner were involved in a pending custody dispute, involving the alleged victims.

Petitioner also requested a fair prosecutor and specifically represented to the District Court that Ms. Tempel's "complaints concerning the prosecution should not inform [his] prosecution" (See attached, Affidavit of Mr. Tempel, Exhibit **E**).

As discussed below, the fundamental constitutional due process and fair trial implications presented by this case, including those personal to Petitioner, combined with the prejudicial effects of the Justice Court's erroneous ruling and its implication for future prosecutions, along with the Liberty County Attorney's actions, present the unique, urgent and emergency circumstances which justify this Court's exercise of supervisory control under Rule 14(3), M.R.App.P.

SUPERVISORY CONTROL STANDARD

Pursuant to Art. VII, § 2(2), Mont. Const., this Court "has general supervisory control over all other courts" and as authorized by Rule 14(3), M.R.App.P., "may, on a case-by-case basis, supervise another court by way of a writ of supervisory control . . . when urgency or emergency factors exist, making the normal appeals process inadequate, when the case involves purely legal questions, and when . . . the other court is proceeding under a mistake of law and is causing a gross injustice."

This includes reversal of decisions of justice courts which prejudice a criminal defendant's constitutional rights. *Daenzer v. Municipal Court*, 2020 MT 140, ¶ 4, 400 Mont. 179, 464 P.3d 996.

The Justice Court's failure to ensure Petitioner's pretrial due process were protected by allowing the alleged victims' mother to dictate the prosecuting attorney, without a hearing, is an error of such magnitude and constitutional dimension that it must be remedied by this Court.

UNDISPUTED FACTUAL AND PROCEDURAL BACKGROUND

The Liberty County Attorney, Mr. Padmos, could not prosecute Mr. Tempel because he has a business relationship with the minor alleged victim's mother.

As such, on October 25, 2016, the Liberty County Commissioners approved a resolution appointing Mr. Gannon, Choteau County Attorney, as Special Deputy Liberty County Attorney, to assist with prosecution of justice court cases, as authorized by § 7-4-2705, MCA (See attached, Resolution 16-12, Exhibit **F**).

Accordingly, Mr. Gannon was the appointed special prosecutor in this matter as Mr. Padmos could not prosecute due to a conflict of interest. Mr. Gannon filed a Notice of Appearance on December 22, 2023 (See attached, Notice of Appearance, Exhibit **G**).

To that end, undersigned counsel initiated plea negotiations with Mr. Gannon.

Ms. Tempel was displeased with Mr. Gannon and relayed the same to Mr. Padmos, who, upon information and belief, addressed her complaint by requesting Mr. Gannon to withdraw as special prosecutor, and simultaneously requesting the Liberty County Commissioners to appoint replacement special counsel, Cascade County Deputy Attorneys Mr. Christian and Ms. Clement, who might be less inclined to offer a plea deal (Exhibit E).

Specifically, email exchanges between Mr. Padmos and Ms. Tempel in February of 2024, evidence such collusion (See attached, Letter from Mr. Padmos attaching email communications, Exhibit H).

The parties were texting regarding the case in December and January, and on February 7, 2024, it is apparent that Mr. Padmos and Ms. Tempel discussed the appointment of Mr. Christian. There are also messages from Amy Jacques, the Victim Witness Advocate, to Mr. Padmos.

Indeed, on February 20, 2024, the Liberty County Commission appointed as special deputies Deputy Cascade County Attorneys John Christiana and Julie Clements to replace Mr. Gannon (See attached, Resolution 24-08, Exhibit I).

On February 21, 2024, Mr. Gannon filed a motion to withdraw, indicating that Cascade County Attorney's Office had been appointed as special deputy counsel for Liberty County (See attached, Motion to Withdraw, Exhibit J).

On February 27, 2024, undersigned counsel filed an Objection to Mr. Gannon's Motion to Withdraw, requesting a hearing and arguing the replacement was unlawful and violated Mr. Tempel's constitutional rights to due process (See attached, Objection to Motion to Withdraw and Request for Hearing, Exhibit K).

The undersigned also requested the Justice Court to stay its decision on Mr. Gannon's motion to withdraw, because "Mr. Tempel requires time to conduct research on the efficacy of the government switching attorneys" (See attached, Request to Stay Decision, Exhibit L).

The Justice Court did not conduct a hearing, or afford Mr. Tempel additional time, but rather granted the motion the very next day, February 28, 2024, reasoning:

Upon consideration of Stephen A. Gannon's Motion to Withdraw as Counsel for the State of Montana filed herein and good cause appearing, and after reviewing and taking into consideration Defense Counsel's Objection to the motion, as well as the Defense's Request to Stay Decision, the "questionable" nature of the replacement of counsel as mentioned in the objection is outside the scope and purview of this Court and will not be addressed.

(Exhibit A).

The same day, Mr. Gannon filed a Notice to the Court, indicating that "Mr. Padmos notified my office that he would like the Cascade County Attorney's office to handle the above matter as they has previously prosecuted" Mr. Tempel (See attached, Notice to the Court, Exhibit M).

Mr. Gannon did not seek to withdraw for any other reason other than the request of Mr. Padmos.

As argued below, the Justice Court's decision and the actions of the Liberty County Attorney's office are in direct contravention of the law and Mr. Tempel's due process and fair trial rights.

It must be remedied by this Court before this matter proceeds any further.

ARGUMENT

Section 7-4-2705, MCA, authorizes a county's employment of special counsel "to assist in the prosecution of any criminal case," however, there is no provision authorizing removal and reappointment of new special counsel if the County is dissatisfied.

And while § 37-61-403(1), MCA, contemplates the "change of attorney . . . upon consent of both client and attorney," county prosecutors hold positions of great public trust and represent the entire Montana citizenry.

A prosecutor "is the representative not of any ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all." *State ex rel. Fletcher v. Dist. Court*, 260 Mont. 410, 415, 859 P.2d 992, 995 (1993) (citation omitted).

As such, prosecutors are held to high standards, including the duty to "seek justice and not simply an indictment or a conviction." *Id.*

“[T]he prosecutor must execute the duties of his representative office diligently and fairly, avoiding even the appearance of impropriety that might reflect poorly on the state.” *Id.* He “may not seek victory at the expense of the defendant’s constitutional rights.” *Id.*

A defendant is entitled to due process, including the fair procedural pretrial rights which ensure a fair trial, and a prosecutor should not act in a manner which deprives a defendant of these rights. *Clausell v. State*, 2005 MT 33, ¶ 11, 326 Mont. 63, 106 P.3d 1175 (citing *State v. Gray*, 207 Mont. 261, 266-67, 673 P.2d 1262, 1265-66 (1983)).

A defendant’s due process rights extend to fair pretrial procedures. *State v. Spady*, 2015 MT 218, ¶¶ 33-34, 380 Mont. 179, 354 P.3d 590; *State v. Strang*, 2017 MT 217, ¶ 22, 388 Mont. 428, 401 P.3d 690.

The Liberty County prosecutor’s office, and the Liberty County Commissioners for that matter, should play no role in the prosecution of Mr. Tempel, or in replacing the special prosecutor by an office of its choosing, when a special prosecutor was already appointed.

This is especially true when Mr. Padmos is prohibited from prosecuting the action based on a conflict of interest and Mr. Gannon had no reason to withdraw, save for Mr. Padmos’ request at the urging of Mr. Tempel.

Indeed, it is wholly improper to replace a special prosecutor upon the complaint of a minor accuser's mother, especially a mother whose has a business relationship with the County prosecutor, and stands to gain by way of a pending child custody matter.

A prosecutor owes a professional duty to ensure a defendant receives a fair and impartial trial, and should not purport to speak for the victim. *C.f. State v. Ugalde*, 2013 MT 308, ¶¶ 59-61, 372 Mont. 234, 311 P.3d 772.

In *Young v. U.S. Ex Rel. Vuitton Et Fils S.A.*, 481 U.S. 787, 804, 811-812 (1987), the United States Supreme Court, in a criminal contempt action, held that appointed special prosecutors must be “disinterested” and not influenced by “private parties” because they are appointed “to solely to pursue the public interest in vindication of the court’s authority.”

Specifically, the *Young* Court noted:

A prosecutor exercises considerable discretion in matters such as . . . whether to enter into plea bargains and the terms on which they will be established, and whether any individuals should be granted immunity” and therefore “the requirement of a disinterested prosecutor is consistent with that trend, since “[a] scheme injecting a personal interest, financial or otherwise, into the enforcement process may bring irrelevant or impermissible factors into the prosecutorial decision.”

Young, 481 U.S. 787, 807-08 (citation omitted).

It is not clear why the Justice Court declined to conduct a hearing, when the same would have offered an opportunity to obtain sworn testimony regarding the “questionable” basis for the prosecutor switch.

Nor is it clear why the Justice Court determined the issue was outside “its scope and purview.” Such a failure to address Mr. Tempel’s objections and remedy the violation of his due process rights, requires this Court’s intervention before the matter proceeds.

The County’s actions in this case do not pass the proverbial “smell test” and the withdrawal of Mr. Gannon should be prohibited.

Accordingly, as the Justice Court refused to address the issue, and is proceeding under a mistake of law, Mr. Tempel lacks an adequate remedy besides the instant extraordinary writ.

Mr. Tempel therefore respectfully requests this Court to accept jurisdiction over the Justice Court’s failure to remedy the deprivation of Petitioner’s due process rights and direct the Justice Court to rescind its Order.

At the very least, this Court should reverse Justice Court’s Order and remand for a hearing where it can consider the sworn testimony of the parties involved to determine if the prosecutor switch was improper.

CONCLUSION

Based upon the foregoing arguments and authorities, the Justice Court of Liberty County is proceeding under a mistake of law to the severe prejudice of Mr. Tempel's rights to due process.

As such, this Court must direct the Justice Court to vacate, rescind, or otherwise dissolve its Order allowing the withdrawal of Mr. Gannon, rendering moot the Liberty County Resolution appointing Mr. Christian and Ms. Clements of the Cascade County Attorney's Office.

RESPECTFULLY SUBMITTED this 30th day of April, 2024.

/s/Jeremy S. Yellin, Esq.
Jeremy S. Yellin, Esq.

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and accurate copy of the foregoing

Petition for Writ of Supervisory Control to be mailed to:

CHRISTOPHER CASE
Justice of the Peace, Liberty County
111 1st St. East
Chester MT 59522

JOHN CHRISTIAN
JULIE CLEMENTS
Spec. Dep. Liberty Cty. Attys.
121 4th Street No, Suite 2A
Great Falls, MT 59401
jchristian@cascadecountymt.gov
jclements@cascadecountymt.gov

ROBERT PADMOS
Liberty County Attorney
110 E. Jefferson
Chester MT 59522

/s/ Jeremy S. Yellin, Esq.
Jeremy S. Yellin, Esq.

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this Petition is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double-spaced except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word for Windows is not more than 4,000 words, excluding table of contents, certificate of service and certificate of compliance.

/s/ Jeremy S. Yellin, Esq.
Jeremy S. Yellin, Esq.

APPENDIX

Order granting withdrawal of GannonEx. A

Notice of Appearance of Christians and Clements.....Ex. B

Application for Writ of Mandamus.....Ex. C

Order Denying Writ of Mandamus.....Ex. D

Affidavit of Matthew Tempel.....Ex. E

Resolution 16-12.....Ex. F

Notice of Appearance of Gannon.....Ex. G

Letter from Mr. Padmos (attaching email communications).....Ex. H

Resolution 24-08.....Ex. I

Gannon Motion to Withdraw.....Ex. J

Objection to Gannon’s Motion to Withdraw.....Ex. K

Request for Stay.....Ex. L

Notice to the Court.....Ex. M

CERTIFICATE OF SERVICE

I, Jeremy S. Yellin, hereby certify that I have served true and accurate copies of the foregoing Petition - Writ to the following on 04-30-2024:

Christopher Case (Respondent)
111 1st Street East
Chester MT 59522
Representing: Self-Represented
Service Method: Conventional

John Christian
121 4th Street N.
Suite 2A
Great Falls MT 59401
Service Method: Conventional

Julie Clements
121 4th Street N
Suite 2A
Great Falls MT 59401
Service Method: Conventional

Matthew Tempel
P.O. Box 75
Chester MT 59522
Service Method: E-mail Delivery
E-mail Address: sweetgrasscontracting48@gmail.com

Electronically signed by Emily A. Vaughn on behalf of Jeremy S. Yellin
Dated: 04-30-2024