

FILED

10/02/2024

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: DA 24-0418

APPELLANTS
BRIEF

FILED

OCT - 2 2024

Bowen Greenwood
Clerk of Supreme Court
State of Montana

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- ' STATE V. ANDERSON (P.3), L-21,22
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 - (P.9), L-1,3,12
 - (P.12), L-13

1 IN THE SUPREME COURT OF THE STATE OF MONTANA

2 No 24-0418-1

3 STATE OF MONTANA,

4 Plaintiff/Appellee,

5 v.

6 Billy J. Rogers,

7 Defendant/Appellant.

8 OPENING BRIEF OF APPELLANT

9
10 On Appeal from the Third Judicial District
11 Court, Mineral County. Honorable John W.
12 Larson presiding.

13
14 Appearances:
15 Defendant/Appellant,

16 Billy J. Rogers
17 Crossroads Corr. Center
18 50 Crossroads Dr.
19 Snelby, MT. 59474

20
21 Plaintiff/Appellee,
22 Debra Jackson, (County Attorney)
23 Mineral County Attorney
24 300 River St.
25 P.O. Box 129
26 Superior, Mt. 59872
27

1 STATEMENT OF ISSUE

2
3 The District Attorney and the Public
4 Defender Kirk Krutilla in of the County,
5 (Mineral) violated the Ex post facto Clause
6 and the MONT. Constitution, ART. II § 31
7 in this matter, by not doing an investigation
8 on the defendants/Appellants criminal
9 background in the prior conviction of
10 Sexual Abuse of a minor (16) in and for
11 the state of IDAHO, to see if the Appellant,
12 Billy D. Rogers was subject to legal
13 Prosecution.

14 Mont. Law states if ["I"] the Appellant
15 completes the 10 years without re-offending,
16 "THE DUTY TO REGISTER WOULD EXPIRE". Under
17 the registration act of 1995 the sexual
18 offender shall be released of registering by
19 it automatically expiring as long the
20 offender did not violate the law by
21 failing to register or even committing a
22 new Felony offense. STATE V. HINMAN
23 2023 MT 116, 412 MONT. 434, 536. P. 3d, 1271,
24 2023 MONT. LEXIS 627, (MONT. 2023).

STATEMENT OF CASE

This case, NO. 24-0418 is a case that will show by law, STATE V. HINMAN 2023, violations of the Ex Post Facto Clause, the MONT. CONSTITUTION, ART. II § 31, By increasing restrictions and punishments under the MONT. Sexual, Violent Offender Registration Act, which allowed additional punishment which was not lawful when the sexual offense was committed, (9-7-1990). HINMAN V. STATE 2023.

MONT. Const. ART II § 31: (1) does not punish a crime which was not lawful when committed; (2) the amendments do not deprive a person of any defense; (3) They do not make the Punishment for a prior conviction more burdensome, but apply only to a current sexual conviction. STATE V. ANDERSON 2008 MT 116.

Ex Post Facto Clause applies to cases in which the statute of limitations expired before subsection (9) came into effect; the expiration of a statute of limitations

1 created a conclusive presumption forbidding
2 prosecution, and any punishment when the
3 limitation period was extended after the
4 expiration date has passed. Tipton v.
5 Mont., - thirteenth Judicial District Court,
6 201...

7 There are (4) four categories of laws that
8 will violate the Ex post Facto Clause: (1) EVERY
9 law that makes an action done "BEFORE" the
10 passing of the law, (1997), and which was
11 innocent when done, criminal, and punishes
12 such action: (2) every law that aggravates
13 a crime, or makes it greater than it was,
14 when committed: (3) every law that changes
15 the punishment, than the law annexed to the
16 crime, when committed; (4) every law that
17 alters the legal rules of evidence, and
18 receives less, or different, testimony, than
19 the law required at the time of the Commission
20 of the offense, in order to convict the
21 offender. All these, and similar laws are
22 manifestly unjust and oppressive.

23 With these rules of law the County
24 (Mineral) Attorney violated all (4) of these
25 rules.

26 State v. Hinman 2023 MT 116.
27

STATEMENT OF FACTS

The expiration of a statute of limitations creates a conclusive presumption forbidding prosecution, and any alleged perpetrator is not liable to any punishment when the limitation period is extended after that expiration date has passed, (Dec 30, 2015), [1] punishes as a crime an act which was not lawful when committed; [2] makes a punishment for a crime more burdensome; or [3] deprives [a] person charged with a crime of any defense available under the law at the time the act [was] committed. STATE V. MOUNT 2003 MT 275, [P.24].

Under the Montana Constitution, Citizens have the right to be free from retroactive punishment, it is "UNCONSTITUTIONAL" to reach back years or decades and alter the punishments from previous convictions or retroactively punish conduct that was once lawful, STATE V. HINMAN 2023 MT 116 [HN8].

The date to register would expire 10 years after the initial date of registration, STATE V. HINMAN 2023 MT 116 [P5] LG.

IAC, Ineffective Assistance of Counsel. In Mont. the right to counsel includes the right to "EFFECTIVE" assistance of appointed

1 Counsel. HANS V. STATE 283, MONT. 379, 408...
2 more over, when, but for Counsel's deficient
3 performance, such error is prejudicial, STATE
4 V. ROGERS, 2001 MT 165, ¶24.

5 During the courts proceeding Appellants appointed
6 Attorney failed to raise or research Appellant's
7 criminal conviction of, Sexual Abuse of a minor
8 from the STATE OF IDAHO, to know if the state
9 had the legal right to charge (Appellant) with
10 failure to register as a sexual offender; to [SEE]
11 if I met the state statute of limitation, If the
12 Appellants appointed Attorney would have fully
13 investigated, he would have found that the
14 Appellant met the IDAHO and the Montana
15 Rules of law, SVORA requirements.

16 I was arrested on January 16, 2014, which
17 by that date and year the Appellant had met the
18 requirements, Appellants Appointed Attorney should
19 have raised the issue of meeting the Montana
20 SVORA laws.

21 Appellant should have never been arrested
22 or even charged, let alone convicted.

23 Appellants Attorney should have raised the issue,
24 [After meeting the 10 year registration requirement,
25 It would have "EXPIRED" automatically] there
26 would have been no requirement of Appellant
27 petitioning the courts in the County Appellant.

1 resides in. I would have EXPIRED automatically,
2 state v. Johnson 2019 MT 34.

3 Montana law, when you move from one County
4 to the next within the state you have up to
5 10 days to register, on the 11th day you must
6 register in that County. Appellant moved from
7 Missoula County to Mineral County
8 on January 11th 2016 and upon the 5th
9 day Appellant was arrested for failure to
10 register within 3 business days.

11 Under Section 46-23-505, MCA, you have
12 10 days and on the 11th day you have to
13 register in that County. State v. Simple.

14 Prosecutorial Misconduct, 2-18-103, MCA,
15 officers and employees: (1) elected officials; (4)
16 Judges and employees, (Prosecutor) of the Judicial
17 Branch; (8) Just cause may include, but is not
18 limited to, an actual violation of an established
19 agency standard, procedure, legitimate order,
20 policy, or labor agreement, failure to meet applicable
21 professional standards; Criminal misconduct;
22 wrongful discrimination, deliberate misconduct;
23 negligence; etc.

24 I, Appellant believe the Prosecutor violated
25 the standards of conduct by; (1) not meeting
26 procedural legitimate order; (2) NOT doing
27

1 a complete back ground investigation on the
2 Appellants sexual Criminal Conviction to see
3 what laws Appellant falls under from the time
4 of the conviction. (3) Policy: not following
5 the rules of Prosecutorial Procedure, fair
6 and Just. (4) Deliberate misconduct: Deliberately
7 failed to investigate the Montana rules
8 of law on Sexual offenses and registration
9 requirement on a conviction 25 years
10 prior, withheld and lied to the courts
11 and to the people of Montana to gain
12 a conviction. (5) Neglegantly: Acted in a
13 Prosecutorial misconduct to deliberately
14 cause harm to an innocent civilian
15 to gain a Conviction.

16 This newly discovered law; State v. Hinman
17 2023 MT 116, shows cause Appellant did not
18 commit the crime of Failure to register as a
19 Sexual Offender, by the 1995 SVORA mont. laws
20 "Appellant" should have been removed from the
21 sexual offender registration automatically,
22 Appellant met the requirements of the 1995 SVORA,
23 Mont. Law on registering.

24 Appellant discovered this newly discovered
25 Law on Dec 17, 2023.

26 A Post Conviction is allowed normally
27 within the (1) year statute of limitations under

1 46-21-102(2), when a claim is made that alleges the
2 existence of "Newly discovered law". Section
3 46-21-102(2), requires claims that allege the existence
4 of law, to ~~be~~^{be} raised in a petition filed within
5 (1) one year of the date on which the conviction
6 becomes final, [or] the date on which the petitioner
7 discovers, or reasonably should have discovered
8 the existence of the law, whichever is later,
9 (December 17, 2023).

10 In an untimely post-conviction petition,
11 the exception to the (1) one-year time limit
12 under Mont. Code Ann. § 46-21-102(2), calls for
13 existence of newly discovered law, (evidence).

14 The courts may correct a factually erroneous
15 sentence or judgment of ["ANYTIME"]. Illegal
16 sentences "MUST" be addressed in the manner
17 provided by law for appeal and Post-conviction
18 relief. Mont. Code, Ann. § 46-18-116(13).

19 Under newly discovered law, (evidence) the
20 state acted in a Constitutional violation of
21 this state and/or the Constitution of the United
22 states, that the courts was without jurisdiction
23 to impose such sentence, under the Constitutional
24 violation stated in the Post-conviction DV-31-
25 2024-0000021-PR, the state failed, (errored)
26 to hear alleged allegations.
27

SUMMARY OF ARGUMENT

Under the Ex Post Facto Clause, Quantum of punishment. Also under the Montana Constitution, citizens have the right to be "FREE" from retroactive punishments. State v. Hinman 2023 MT 116. It is unconstitutional to reach back years or decades and alter the punishments from previous convictions or retroactively punish conduct that was once lawful.

Congressional Duties & powers, Bills of Attainder and Ex Post Facto Clause. A test for determining whether a law in Criminal matters is ex post facto is if the law: (1) punishes as a crime an act which was not ~~un~~lawful when committed.

STATE V. MOUNT 2023 MT 275.

IAC, Appellants ineffective assistance of Counsel claim raises issues on Appeal because there was no reasonable justification for Appellants counsel to fail to object to the Ex Post Facto violation. Defendant, Appellants Counsel failed to "RECOGNIZE" that, as to the 2016 allegations, Appellant was being prosecuted under a statute that "DID NOT" apply and carried a substantially more severe penalty.

1 Counsel failed to object to the statute under
2 which Appellant was prosecuted resulted in prejudice
3 and carried a more severe punishment that did not
4 ingest as a matter of law. State v Tipton 2021
5 MT 281.

6 The State had no right to charge "Appellant" with
7 Failure to register as a Sexual Offender. If counsel
8 would have done a full investigation of the Appellant's
9 criminal background, "Kuek" would have found that the
10 Appellant met the IDAHO and Montana SVORA
11 requirements. By the time and date counsel
12 would have known that the Appellant met the
13 10 year registration requirement by at least
14 18 days. After meeting the 10 year requirement,
15 registering would have "EXPIRED" automatically.
16 there would not have been a requirement of
17 Appellant to petition the courts in the
18 County Appellant resided in. It would have
19 expired automatically. State v. Johnson
20 2019 MT 34.

21 Prosecutorial Misconduct and miscarriage
22 of Justice. The prosecutor violated several
23 procedural legitimate orders. Failed to do
24 a complete background investigation on the
25 Appellant to see what laws apply under
26 the time of the Appellant's conviction, (1990).

1 Prosecution Deliberately failed to investigate on a
2 full legal conviction. "IF" the prosecutor would
3 have done a full legal investigation, the state
4 would have found that "I"; Appellant would
5 have met the SVORA and the Appellants
6 registration requirements would have
7 "Expired" automatically which would ^{show} show
8 that the Appellant did not commit the
9 offense of "Failing to register as a sexual
10 offender."

11
12 Post Conviction Statute of limitations, Mont.
13 Code Ann 25 46-21-102(2), is a jurisdictional limit
14 on litigation and is waived [only] when there
15 is a "Clear" miscarriage of Justice, one so obvious
16 that the Judgement is rendered a complete
17 nullity, the "miscarriage of Justice" exception
18 does not apply to Post Conviction claims
19 "UNLESS" a Appellant alleges newly discovered
20 Law establishing that the Appellant did "NOT"
21 Commit the offense.
22
23
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STANDARD OF REVIEW

Appellant will raise the expert facts
clause violation upheld by the Mont. Const.
Art. II §31, back'd by the United States
Constitution, State v. Hirman 2023 MT 16.
With the above addressed violations and
discovering law that back'd the above
violations the District Courts should
have corrected the plain error.
Plus with the State, (County Attorney) "I"
acting under a miscarriage of justice, I"
further bring it to the Supreme Court to
address these issues.

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ARGUMENT

Appellant raises the issue of a *Ex Post Facto* violation, IAC and Prosecutorial misconduct in a Post-Conviction.

Honorable John W. Larson denied the Post-conviction on a untimely warrant. "LARSON" denied the Post-conviction on the same day that it was filed, (May 1st. 2024) in the District Court. I believe Judge Larson and the County Attorney failed to even review the allegations in the Post-Conviction and failed to correct the error. Appendix A, B. STATE V. Hinman 2023, MT 116, Mont. Code Ann. Rule 3.8

On a untimely post-conviction from the (1) year requirement from the final judgement can be waived [only] when there is a "CLEAR" miscarriage of justice, one so obvious that the judgement is rendered a complete nullity.

The miscarriage of justice discovered establishes the "Appellant" did "NOT" commit the offense, the (1) year time bar is waived under Montana Code Ann. §§ 46-21-102(2). and under the Montana Code Ann, Rule 3.8

On Appeals I, Billy J. Rogers, Appellant prays that the Courts incorporate the criminal case file, Ex Post Facto Clause, Mont. Const. Art II § 31, SVOB, Registration Act of 1995, the Sexual

CONCLUSION

Again under 46-21-102(2) - A claim that alleges the existence of newly discovered law, (evidenced), if proved and viewed in light of the law as a whole would establish that the Appellant did not engage in the criminal conduct for which the Appellant was convicted, may be raised in a Appeal / petition filed within (1) year of the date on which the conviction became final, [or] reasonably should have discovered the existence of the law, which is later, (December 17, 2023).
Post-Conviction Statute of limitation, Mont. Code Ann. 46-21-102(2), is a jurisdictional limit on litigation and is waived [only] when there is "clear" miscarriage of justice, one so obvious that the judgment is rendered a complete nullity, the "miscarriage of justice" exception does not apply to Post-conviction claims "UNLESS" a defendant/Appellant alleges newly discovered law establishing that the Appellant did "NOT" commit the offense.

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1 offender "shall" be released of registering
2 "automatically" expiring as long as the offender
3 did not violate the law by failing to register
4 or even commit a new felony offense.

5 By the state of Montana increasing the
6 Appellants registration requirements of the
7 Montana Sexual, Violent Offender Registration
8 Act, as amended, violated the Ex Post Facto
9 Clause and Mont. Const. Art II § 31.

10 I, Appellant hereby request the supreme
11 courts for reversal, removing Appellant
12 from the Sexual Offender Registration Act
13 due to meeting the 10 year registration
14 Act of 1995 and expunge the case from the
15 Appellants record, (DC-201601) and to apply
16 all time incarcerated and or on Probation
17 for such crime "be" given towards Case No.
18 DC-32-2022-0000605-IN, and be released
19 from confinement immediately, to avoid any
20 further civil action towards the state and
21 or the Appointed Counsel, "Kirk Krutilla."

22
23
24 The expiration of a statute of Limitations
25 creates a conclusive presumption forbidding
26 prosecution, and any alleged perpetrator
27

1 is not liable to any punishment when the
2 limitations period is extended after that
3 expiration date has passed, (December 30, 2015).
4 [1] punishes as a crime, an act which was not
5 lawful when committed.

6 The courts should have granted the Post-
7 Conviction and applied a full investigation
8 of said allegations.

9 Judge, (Larson) denied the Post-
10 conviction due to untimely filing but
11 failed to review the allegations to said,
12 "Ex POST FACTO," and the "Mont. Const.
13 Art II ³³ ³¹" violations.

1
2
3 CERTIFICATE OF SERVICE

4 I, Billy J. ROGERS, Appellant hereby certify that
5 I have served true and accurate copies of the
6 forgoing Brief, Appellants Opening to the following
7 on 27th of September 2024.

8 Austin Miles Knudsen (Gast Attorney)
9 215 N. Sonders
10 Helena MT 59620

11
12
13 Debra Jackson, County Attorney
14 Mineral County Courthouse
15 300 River St.
16 P.O. Box 129
17 Superior, MT 59872
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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this opening Brief is printed with proportionately spaced black ink, is appropriately double-spaced; and the word count calculated 10,000 word or less, excluding Table of Contents, Table of Authorities, Certificate of Service, Certificate of Compliance and Appendices.

19

1 John W. Larson, District Judge
2 Fourth Judicial District Dept. 3
3 Missoula County Courthouse
4 Missoula, MT 59802,
5 (406) 258-4773

6 MONTANA FOURTH JUDICIAL DISTRICT COURT, MINERAL COUNTY

7 BILLY J. ROGERS,
8 vs.
9 STATE OF MONTANA,
10 Respondent.

11 Dept. 3
12 Cause No. DV-24-21

13 ORDER DENYING PETITION
14 FOR POST-CONVICTION
15 RELIEF


16 Petitioner has filed a Petition for Post-Conviction Relief.

17 Pursuant to Section 46-21-102, MCA, a petition for post-conviction relief
18 may be filed at any time within 1 year of the date that the conviction becomes
19 final.

20 The original Judgment in this matter was filed November 22, 2016, and
21 probation violation Judgments were filed on February 21, 2019, and
22 November 20, 2019 (see attached for easy reference).

23 Therefore, IT IS HEREBY ORDERED that Petitioner's Petition is denied.

24 Dated this ^{1st} day of May, 2024.

25 
26 JOHN W. LARSON, DISTRICT JUDGE

27 Copies of the foregoing were sent to:

28 Debra Jackson, County Attorney
29 Mineral County Courthouse
30 300 River Street, Superior, MT 59872

31 Billy Rogers - AO37708
32 Montana State Prison
33 700 Conley Lake Road
34 Deer Lodge, MT 59722

APPENDIX

10/10/2020

TABLE OF CONTENTS

- Appendix - Post-Conviction Relief (A)
- Appendix - AFFIDAVIT ON Post Con. (B)

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