Brandon Bagnell
AO# 30886
50 Crossroads Drive
Shelby, MT 59474

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In The SUPREME **Court Of Montana**

Petition No: OP 24-0623

BRANDON BAGNELL,

Petitioner,

v.

State of Montana, Warden Godfrey,

Respondent.

(RE: Cause Nos. DC-15-355 - Lake County
(DC-13-80 - Lake County,
(and Yellowstone County DC-00-0054, DC-00-0006,
(and Flathead County DC-90-223.
(Petition For Writ of Habeas Corpus,
(and AFFIDAVIT,
(RE: DC-13-80 & DC-15-355 20th Judicial District,
(RE: DC-00-0054 & DC-00-0006 13th Judicial District
(RE: DC-90-223 11th Judicial District.

AFFIDAVIT and PETITION FOR WRIT OF HABEAS CORPUS

Comes now Brandon Bagnell (Affiant), the Petitioner, pro-se counsel in this Petition for Writ of Habeas Corpus. It has recently come to the Petitioner's attention that he was improperly prosecuted for felony charges in the above stated cause number(s), when the State failed to indict by grand jury. The Petitioner had previously failed to attempt any remedies to this issue due to the fact that he had not been aware that his rights were violated. The Petitioner is aware that the Ninth Circuit Court of Appeals has ORDERED that Montana's failure to indict by grand jury warrants dismissal of all cases whereupon a defendant whom has been convicted of a felony in Montana without an indictment must have their cases dismissed and be released from custody [(Complaints of Judicial Misconduct, Campbell, Cause No. 22 900 59; and Haithcox, Cause No. 22 900 60)SEALED]. Montana's continued failure to abide by the order of Ninth Circuit Court and The Consititution of United States under the Fifth Amendement and USCS Const. Art. VI, Cl 2 is a gross violation of his civil rights afforded by the Constitution of the United Sates, to which the Petitioner submits: "I am actually innocent of these alleged crimes and improperly charged with no actual evidence and no verified witnesses under oath absent grand Jury indictment."

"This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

* Invalid charges/convictions in following Judicial Districts: 20th, 13th, 11th,

The Petitioner contends that he is entitled to be prosecuted by a grand jury indictment because the Legislature of the State of Montana has failed to specifically provide by statute, that an information could be used to prosecute a felony; and that the Montana Supreme Court has ruled that Montana is a Common Law State, and in Common Law States, without specific statute, the use of an Information is restricted to misdemeanors. Since his case(s) was filed as a felony, the Montana 20th Judicial District Court - and all courts in the State of Montana - is without jurisdiction, and this case must be dismissed. Even if such statute

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exists, no state statute can overrule a Federal Constitutional right.

The Petitioner further submits the following case laws in support of this petition:

"Supremacy clause of Federal Constitution (Art VI, cl 2) is not source of any federal rights, but rather accords all federal rights, whether created by treaty, statute, or regulation, priority whenever they come in conflict with state law." Chapman v. Houston Welfare Rights Organization, 441 U.S. 600, 99 S. Ct. 1905, 60 L. Ed. 2d 508, 1979 U.S. LEXIS 101 (1979).

"Valid federal laws are part of supreme law of land, and state may not discriminate against rights created by or arising under such laws." Caldwell v. Alabama Dry Dock & Shipbuilding Co., 161 F.2d 83, 12 Lab. Cas. (CCH) ¶ 63715, 6 Wage & Hour Cas. (BNA) 835, 1947 U.S. App. LEXIS 3083 (5th Cir.)

"Federal statute cannot be invalidated under state constitution." Walker v. San Francisco Unified Sch. Dist., 46 F.3d 1449, 95 Cal. Daily Op. Service 737, 95 D.A.R. 1288, 1995 U.S. App. LEXIS 1685 (9th Cir.)

"State constitutions and amendments thereto are subject to applicable prohibitions and limitations of Federal Constitution." Gray v. Moss, 156 So. 262, 1934 Fla. LEXIS 1672 (Fla. 1934); Gray v. Winthrop, 156 So. 270, 1934 Fla. LEXIS 1673 (Fla. 1934).

"Constitution of West Virginia is subject to Constitution and laws of the United States which shall be made in pursuance thereof, and all treaties made under authority of United States, all of which constitute supreme law of land." Harbert v. County Court, 129 W. Va. 54, 39 S.E.2d 177, 1946 W. Va. LEXIS 39 (W. Va. 1946).

The Petitioner invites this Court to make the following considerations before making a judgment on this petition, and for future cases in Montana:

1. Whether or not Montana law supercedes common law doctrine when a Montana law disparages a person of certain rights and protections retained by the people of the United States.

2. Whether or not Montana law violates the Constitution of the United States of America when Mont. Const., Art. II § 20 allows a court to prosecute felony charges either by information, or by indictment, at a judge's discretion.

3. Whether or not when Montana law allows felony prosecutions against a defendant to proceed only after a complaint or information qualifies as equal protection under the law.

4. Whether or not ANY judge has license to forego grand jury proceedings based on a file of information before proceeding to prosecute felony charges against a defendant, without that defendant having first waived his right to a grand jury indictment.

5. Whether or not a citizen of the Constitutional Federal Republic of the United States of America must enjoy the same rights and protections afforded by the Constitution of the united States of America while being held to answer for an infamous crime in a Montana judicial district court.

6. Whether or not the provision regarding a presentment or indictment by a grand jury in the Fifth Amendment is a right retained by the People of the United States of America.

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7. Whether or not Montana's constitution in Mont. Const., Art. II § 4 regarding equal protection of the laws should only refer to Montana's laws.

8. Whether or not a judicial district within Montana that allows felony prosecutions by information or indictment ever receives funding meant for the expenses of grand jury proceedings.

9. Whether or not a judicial district within Montana that allows felony prosecutions by information or indictment that does receive funding meant for the expenses of grand jury proceedings is allowed to redistribute that funding as that district sees fit, if that funding has not been spent on indictments.

10. Whether or not such funding mentioned in questions 8 and 9 can be construed as a motive and incentive to deny a person's individual right to a grand jury indictment.

11. Whether or not the United Sates Constitution is satisfied when a defendant is prosecuted for a felony without an indictment or waiver thoerof.

12. Whether or not USCS Const. Art. VI, Cl 2 provides the fifth amendment priority over Montana law.

13. Whether or not the Fourteenth Amendment's omission of a right to a presentment or indictment by a grand jury supercedes the Fifth Amendment's provision for a grand jury.

14. Whether or not ANY court has subject matter jurisdiction to prosecute felonies on an information without an indictment, or waiver thereof.

The Petitioner begs that this Court seeks answers to the preceding questions and upon determining the truth of the petitioner's claims, dismiss all of the charges in this case, order his immediate release, and expunge the above cases from his record. AFFIANT-PETITIONER hereby SWEARS/AFFIRMS the foregoing to be true, correct and complete to the best of Petitioners Knowledge under Penalty of Perjury of the laws of Montana State and The United States of America.

Affiant- Petitioner's signature - Brandon Kale Bagnell

Dated this 15th day of October, 2024

cc: Clerk of The Supreme Court of Montana,
Attorney General of Montana,
File
Clerk of the Ninth Circuit Court, California
Lake County District Court
Yellowstone County District Court
Flathead County District Court

STATE OF MONTANA)
County of Toole) S.S.

SUBSCRIBED and SWORN to before me this 15th day of October, 2024, personally appeared Brandon Kale Bagnell under Oath. SEE ATTACHED NOTARY →

BETHANY LYNN ROSS
Shelby, MT Expires: Oct 11, 2027

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