



ORIGINAL

Cause No. **OP 24 - 0648**

FILED

10/31/2024

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: OP 24-0648

In The
MONTANA THIRTEENTH JUDICIAL DISTRICT COURT

MARK EUGENE BENTON,
Petitioner

-vs-

STATE OF MONTANA,
Respondents

FILED

OCT 31 2024

Bowen Greenwood
Clerk of Supreme Court
State of Montana

~~PETITION FOR WRIT OF HABEAS CORPUS~~

Petitioner:

Mark Eugene Benton
50 Crossroads Dr.
Shelby, MT 50474
Pro se Petitioner.

Respondent:

State of Montana
Attorney General
215 N. Sanders
PO Box 201401
Helena, MT 59620-1401

PETITION BASED UPON MONTANA CODE ANNOTATED §§46-22-101 through 46-22-307;
MONTANA CONSTITUTION ARTICLE II §19; and UNITED STATES CONSTITUTION ARTICLE
I, SECTION 9, CL. 2.

CLAIMS: VIOLATION OF PETITIONER'S CONSTITUTIONAL RIGHTS:

MT. CONST. ART. II, § 17, DUE PROCESS OF LAW;
U.S. CONST. AMEND. 14, AMEND. 5, DUE PROCESS;
SUPREME COURT/9th CIR. JURISPRUDENCE CONTROLLING JUDICIAL MISCONDUCT
~~ABUSE OF DISCRETION, BIAS, AND ABUSE OF PROCESS BY PRESIDING JUDGE.~~
[See attached Rule 60(b) Motion]

Signed this **24th** day of Oct., 2024

Mark E. Benton, pro se

COVER

I. INTRODUCTION

Comes now the Petitioner, Mark Eugene Benton, pro se, to hereby move this Honorable Court issue a Writ of Habeas Corpus for unconstitutional and unlawful misconduct, and abuse of discretion by the residing Judge Donald Harris of the 13th Judicial District Court in Cause No. DC-21-0438, State v. Benton.

II. JURISDICTION

This Court has Jurisdiction pursuant to the Montana Code Annotated, as ratified by the Montana Legislature and Governor, §46-22-101 through § 46-22-307.

The Montana Constitution granted this right to the petitioner, Benton, under Art. II, §19, Habeas Corpus, "The privilege of the writ of Habeas Corpus shall never be suspended."

The United States Constitution grants this court jurisdiction under Art. I, Legislative Department, Clause 2, Habeas Corpus, "The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in cases of Rebellion or Invasion the Public Safety may require it."

III. CONSTITUTIONAL RIGHTS

The petitioner hereby claims that the State of Montana, through its presiding Judge Harris, did knowingly and purposefully violate Mr. Benton's guaranteed Constitutional right to Due Process of Law Article II, Sect. 17 Due Process of Law. "No person shall be deprived of life, liberty or property without due process of law."

The petitioner is also guaranteed the Right to Due Process as encompassed in the Fourteenth Amend., Sec. 1. "[Citizens of the United States.] All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Judge Harris knowingly and purposely violated the petitioners constitutional rights by unlawfully presiding in all of the critical stages of the Thirteenth Judicial criminal proceedings against Benton.

Judge Harris's abuse of discretion in this proceeding is a matter of record, that he presided unlawfully in the accusatory stage, trial stage, and the sentencing stage of the criminal proceedings. The Federal Courts have deemed this to be a violation of the due process of law, and a violation of Constitutional Rights.

The State and Federal laws concerning the disqualification of a judge is the controlling authority in a situation such as this where a judge unlawfully presided in the accusatory and judicial roles. See 28 USC § 455, Disqualification of justice, judge, or magistrate [magistrate judge]:

(a) Any justice, judge or magistrate [magistrate judge] of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

Montana statute also controls at: MCA §§ 3-1-803 and 3-1-805.

§3-1-803; Disqualification of Judges all courts, holds;

Any justice, judge, justice of the peace, municipal court or city court judge must not sit or act in any action or proceeding:

(1) To which he is party, or in which he is interested.

§3-1-805; Disqualification for cause; holds;

(1) Whenever a party to any proceeding in any court shall file an affidavit alleging facts showing personal bias or prejudice of the presiding judge, such judge shall proceed no further in the cause...the matter shall be referred to the Montana Supreme Court.

Based on the record that Judge Harris presided in the accusatory and judiciary [trial and sentencing] stages of Mr. Benton's Cause No. DC-21-0430, State v. Benton, violated the petitioners Constitutional rights to the Due Process of Law as held above by statute.

The Courts are very specific on this abuse of discretion as being Structural Error and demands immediate reversal of the charges, as held in Arizona v. Fulminate, 499 US 279, 310-311, 111 S.Ct. 1246 (1991); Weaver v. Massachusetts, 582 US 285, 294-300, 137 S.Ct. 1899 (2017) holding:

"The Court recognised, however, that some errors should not be deemed harmless beyond a reasonable doubt. Chapman v. California, 386 US 18, 23, 87 S.Ct. 824 (1967)."

"The purpose of Structural error doctrine is to ensure insistence, on certain basic, Constitutional guarantees that should define the framework of any criminal trial. Thus the defining feature of a structural error is that it 'affects the framework within which the trial proceeds', structural error defies analysis by harmless error standards."

This is the case herein, the United States Supreme Court holds:

"it would be strange if our system of law permitted a judge to act as a grand jury and then try the very person accused as a result of his investigations... a single 'judge-grand jury' is even more apart of the accusatory process than an ordinary juror. Having been part of that process a judge cannot be, in the very nature of things, wholly disinterested in the conviction or acquittal of the accused. While he would not likely have the zeal of a prosecutor, it can certainly not be said that he would have none of the zeal."

This basic ruling demonstrates the bias and partiality of Judge Harris, acting some of the "zeal" of a prosecutor instead of an unbiased judicial officer.

Our system of law forbids Judge Harris from participating in the judicial process.

Judge Harris himself denied the petitioner the right to a fair trial by continuing participation as the presiding judge after the arraignment 'accusatory' stage of Mr. Benton's proceedings in Cause No. DC-21-0430. The Murchison court held:

Fair trials are too important a part of our free society to let prosecuting judges be trial judges of the charges they prefer." In re Murchison, 349 US 133 (1955).

"A person charged...before a 'one man grand jury' cannot be summarily tried. Id. at 137.

Judge Harris was the "one man grand jury", and must by law have disqualified himself. Judge Harris did not, and denied the petitioner his right to Due Process of law under the Constitutions and Statutes of the United States and of the State of Montana.

The controlling jurisprudence that follows is the controlling jurisprudence in support of this due process, judicial misconduct claim by the petitioner, and that Mr. Benton was denied a fair trial the minute Judge Fagg took the bench to preside over the petitioner's case.

Munchison at 136 explains the courts holding on a fair trial:

"A fair trial in a tribunal is a basic requirement of due process. Fairness of course requires an absence of actual bias in a trial of cases. But our system of law has always endeavored to prevent even the probability of unfairness."

"To the end no man can be a judge in his own case and no man is permitted to try cases where he has an interest in the outcome. That interest cannot be defined with precision. Circumstances and relationships must be considered. The Court has said, however, that "every procedure which would offer a possible temptation to the average man as a judge...not to hold the balance nice, clear and true between the State and the accused, denies the the latter due process of law." See *Tumey v. Ohio*, 273 US 510, 532 (1927).

Mr. Benton did not receive a fair trial by the courts of Yellowstone County and Judge Harris, and as such, this matter should be reversed and the charges vacated based upon this wholly unconstitutional trial, conviction and sentence.

"The courts' presence determining that certain errors are structural and require reversal because they cause fundamental unfairness, either to the defendant in the specific case, or by pervasive undermining of the system requirements of a fair and open judicial process...protecting a defendant from erroneous conviction and ensuring "that the administration of justice should reasonably appear disinterested." *Weaver v. Massachusetts*, 582 US 268, 301, 137 S.Ct. 1899 (2017); citing *Liljeberg v. Health Services Acquisitions Corp.*, 486 US 847, 869-870, 108 S.Ct. 2194 (1988).

Judge Harris' continued participation from arraignment through trial into sentencing Mr. Benton shows a pervasive undermining of the system requirements of a fair and open judicial system in Montana. A strain on the integrity of the Montana judicial system, and tainting the confidence of a fair system the the public can safely trust. Judge Harris should have self-recused, by law and by right.

"Recusal is appropriate where a reasonable person with knowledge of all the facts would conclude that the judge's impartiality might reasonably be questioned... under § 455(a), impartiality must be evaluated on an objective basis, so that what matters is not the reality of bias or prejudice, but its appearance". See *United States v. Carey*, 929 F.3d 1092, 1104 (9th Cir. 2019). Citing *Liteky v. United States*, 510 US 540, 548, 114 S.Ct. 1147, 127 L.Ed.2d 474 (1994); See also Murchison at 136.

Judge Harris's unlawful continued participation must be construed as being either a mistake, or other grounds for "relief from judgement" under rule 60(b) as attached to this petition by motion.

The grounds for relief are consistent, that Judge Harris, could not sit on the bench and adjudicate this case further after the petitioners arraignment. The court further held:

"Having been a part of the [on man grand jury] process, a judge cannot be, in the very nature of things, wholly disinterested in the conviction or acquittal of the accused." *Caperton v. Massey Coal Co.*, 556 US 868, 880, 129 S.Ct. 2252, 137 L.Ed. 2d 1208 (2009); citing *Murchison* 349 US 133, 137 (1955).

The Ninth Circuit is in agreement in *Northern Mariana Islands v. Kaipat*, 94 F.3d 574, 576 (9th Cir. 1996), and based on this 'Circuit Law', in support of Supreme Court controlling authority, this court is bound by law to grant this petition and issue a Writ of Habeas Corpus, to correct the present wrongful conviction and illegal sentence. Relief is also demanded based on the illegal sentence.

Relief was available by virtue of Fed. R. Crim. P. rule 35 that provides:

"The Court may correct an illegal sentence at any time." See *Heflin v. United States*, 358 US 415, 422, 79 S.Ct. 451, 3 L.Ed. 2d 407 (1959).

This, combined with the attached Rule 60(b) Motion for 'Relief from Judgment' based on section (1) of the Montana and Federal Rules of Civil Procedure; the petitioner should rightfully be granted relief from the present unconstitutional and unlawful conviction and sentence that resulted from the structural defects and errors of the court. See *Kemp v. United States*, 142 S.Ct. 1856, 1860 (2022).

The petitioner prays this Court will abide by the above prevailing authorities and grant this petition with the relief that the charges be reversed and expunged from the record with prejudice.

signed this 24th day of Oct., 2024.

Mark E. Benton, pro se

