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Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: DA 24-0390

Robert S. Pierce
Montana State Prison
Attn: Mail room Staff
AO# 3013080
700 Conley Lake Road
Deer Lodge, Mt 59722

FILED

NOV 08 2024

Bowen Greenwood
Clerk of Supreme Court
State of Montana

IN THE SUPREME COURT OF THE STATE OF MONTANA

NO. DA 24-0390

Robert S. Pierce,

Plaintiff and Appellant,

v.

STATE OF MONTANA,

Defendant and Appellee,

AMENDED BRIEF OF APPELLANT PURSUANT TO
ORDER OF OCTOBER 15, 2024

On Appeal from the Montana Third Judicial District Court,
Anaconda-Deer Lodge County, the Honorable Robert Whalen, Presiding

APPEARANCES:

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1 IN THE MONTANA SUPREME COURT OF MONTANA
2 FOR THE STATE OF MONTANA

3
4 Robert S. Pierce,
5 Appellant,
6 vs
7 State of Montana,
8 Appellee.

CAUSE NO: DA 24-0390

AMENDED
OPENING BRIEF pursuant
to October 15, 2024 Order
to redact personal information
relating to birthday on
pages 7, 8, 13 and 20.

9 COMES NOW, Robert S. Pierce, respectfully files this
10 Appellant's Opening Brief, in Pro Se, seeking relief of the District
11 Court's denial of ruling and resulting "deemed denied" of his
12 MT.R.CIV.P. Rule 60(b)(4) Brief, motion and affidavit. Pierce
13 will show the court, the following, pursuant to MT.R.CIV.P Rule
14 4(1)(b)(5)(a)(iv)(E).

15 STATEMENT OF JURISDICTION

16 Under MCA 3-2-201, the Jurisdiction of the Supreme Court
17 is of two kinds: (1) original; and (2) Appellate. The Appellate
18 jurisdiction of the Supreme court extends to all cases at law
19 and in equity. Montana Constitution, Article VII, Section 2(1)
states: The Supreme Court has appellate jurisdiction and may
issue, hear and determine writs appropriate thereto. It has original
jurisdiction to issue, hear, and determine writs of Habeas Corpus
and such other writs as may be provided by law.

STATEMENT OF ISSUES

1 Did the District Court error in not ruling on the Appellant's Motion
2 for MT.R.Civ.P Rule 60(b)(4) brief and motion within 60 days of filing the
3 said verified Motion and Brief and error in not dismissing the criminal charges,
4 vacate the conviction and exonerate the criminal record of Mr. Pierce in
5 the case of DC 12-29, when there was no probable cause, no subject matter
6 jurisdiction, an inconsistant Jury verdict and the sentencing judge having
7 no authority to grant judgement?

STATEMENT OF THE CASE

8
9 Mr. Pierce was charged by information for leave to file. This was amended
10 twice. At arraignment, Mr. Pierce entered a plea of not guilty and posted
11 bail in the amount of \$20,000. Mr. Pierce went to trial in the Third Judicial
12 District Court during April 22-25, 2013. The case was submitted to a jury,
13 which rendered a verbal verdict of guilty of the commission of an offense
14 of April 3. 2014, or 343 days after their verdict was rendered.

15 On December 10, 2013, Mr. Pierce was sentenced to 40 years with 15 years
16 suspended and a ten (10) year parole restriction, by a judge with no authority
17 to render the judgement.

18 The evidence adduced at trial, maybe summerized as follows: Witness
19 testimony(admittedly perjured), Grooming evidence(admittedly false), including
20 a photo(exhibit 18) of an unknown and(admittedly never seen) bare chested
21 woman. The witnesses admitted to giving investigators and prosecutors false
22 evidence and perjured testimony, also denied under oath of seeing Rocking
23 the Rivers photos, and the State admitted no pornography existed.

24 Among the evidence gathered by the State in it's investigation of the
25 of the crime, but not admitted at trial was transcripts and recordings of
26 two forensic interviews. Which were both based on known false statements.

1 This is provable by the answers to a civil complaint provided by
2 alleged victim and her mother, two primary witnesses in DC 12-29.

3 Pierce filed the civil action in the 3rd Judicial District
4 Court under DV 15-99 on October 10, 2015. This case was removed to
5 Federal District Court under cause No: 2:15-CV-0071-BU-BMM-JCL, under
6 42 U.S.C. 1983. The Federal Court dismissed the Federal claims under
7 Heck v Humphrey, 512 US 486-87, on June 30, 2016 (findings and
8 recommendations) and final decree on August 31, 2016. The Federal
9 Court then remanded the State Claims to the 3rd Judicial Court
10 for further proceedings on the State claims in DV 15-99.

11 On July 6, 2017, Pierce filed a post conviction relief petition
12 in the 3rd Judicial District Court under 17-89. The state was
13 also ordered to respond by July 6, 2017 and before August 4, 2017.

14 The 3rd judicial district Court then sent 22 pages of the
15 petition to the 2nd judicial Court Judge Brad Newman and put 437
16 pages of exhibits in manila envelopes, in case of appeal. This
17 was confirmed by the Attorney Generals' office in 2:19-058-BMM-KLD,
18 ~~document 25, page 9, footnote 5, even though the Attorney General~~
19 claimed in 18-0404 that they compared their copy of the petition
20 with the copy from the court and there were 459 pages of Petition.

21 The Montana Supreme Court dismissed the PCR Appeal in 18-0404
22 on March 28, 2019, affirming the denial of the Postconviction
23 petition for failure to follow MCA 46-21-104(c) and (2).

24 Pierce filed a re-hearing motion under Rule 20(2)(c) which was
25 denied on July 2, 2019. On September 23, 2019, Pierce filed a
26 Habeas Corpus under OP 19-0552 that was denied on October 8, 2019.

27 On January 8, 2020, an Amended Petition for writ of habeas
28 corpus with 42 manila envelopes of exhibits between 50 and 75 pages,

1 were maintained in the pro se department.

2 On September 14, 2021, the Federal Magistrate ordered the
3 State to file documents. As there was no further movement in four
4 years, Pierce filed a writ of mandamus and/or prohibition in the
5 9th circuit in cause 23-3362.

6 On December 15, 2023, the federal district court issued an
7 order in 2:19-CV-058-BMM-KLD, denying the habeas based on the "last
8 reasoned State District Court case being denied as conclusory."

9 On April 4, 2024, the MT.R.CIV.P. Rule 60(b)(4) motion was
10 mailed to the 2nd and 3rd judicial District courts. On May 3rd, 2024,
11 the 3rd Judicial District court clerk confirmed forwarding the
12 motion and documents to Judge Whelan in the 2nd Judicial District
13 Court.

14 STATEMENT OF FACTS

15 The Attorney General's office determined that their only
16 forensic evidence was inadmissible at trial and thereby used false
17 information in a sworn affidavit in an Information for leave to
18 file for an arrest warrant and continued using the same forensic
19 interview statements for probable cause on amended informations,
20 filed on February 15, 2013 and April 12, 2013.

21 DCI agent John Sullivan used "new, undisclosed" information
22 to conduct a second forensic interview that was used for charging.
23 This "undisclosed information" was entirely false, as proven by
24 trial testimony transcripts and a civil complaint answer filed by
25 the alleged victim.

26 On February 15, 2013, the prosecutor filed document 89, motion
27 for leave to file amended Information and document 79: States (page 2 of 7)
28 response to defendants Motions in Litine 1-11. In Document 89, the

1 state established probable cause, based on the previously filed
2 affidavit in support of the States Motion to file an Information,
3 While simultaneously stating in document 79 that both the recordings
4 and transcripts of both forensic interviews are inadmissible at trial.

5 On March 11, 2013, Assistant Attorney General Daniel Guzynski
6 testified he knew what was said in the interviews, DCI Agent John
7 Sullivan and Assistant Attorney General Mary E. Cochenour both sat
8 in on the second forensic interview used for charging, so they knew
9 what was said also, thereby knowing the statements used in documents
10 1 and 89 and 151 were "false information in sworn affidavits in an
11 application for arrest warrant." and by doing so, they also committed
12 official misconduct, tampering with or fabricating physical evidence
13 and perjury.

14 After the alleged victims filed answers in a civil action and
15 admitted to obstruction of justice and perjury, and the jury
16 convicted Pierce of a futuristic crime, 343 days after their verdict
17 and 111 days after Pierce was already sent to prison for the crimes,
18 and the case was based on actual fraud, fraud on the court and
19 constructive fraud and the charging documents were based on false
20 evidence, the forensic interviews were based on coached statements
21 and witness tampering, then the convictions was based on perjury
22 and a futuristic jury verdict, this proves actual, factual innocence.

23 STANDARD OF REVIEW

24 As quoted in Essex Inc Co v Moose's saloon Inc 2007 Mt 202, 338
25 Mont 456, 166 P.3d 451; Where the movent sought relief under subsection
26 4 of Rule 60(b) on the grounds that the judgement is void, the
27 judgement is or is not void is a conclusion of law. Export Group 54
28 F.3d at 1469("we review de novo, a district courts ruling upon a
Rule 60(b)(4) motion to set aside a judgement as void, because the
question of validity of a judgement is a legal one) see also Hicklin
CSC Logic; inc 283 Mont 298, 301, 940 P.2d 447, 449(1997).

1 Prosecution knew about(3 @ 15 to 17) and # 2 25) and allowed perjured
2 testimony to infect the trial and did not inform the Court or Defense
3 Counsel of the perjured testimony being give. The prosecutor had no jurisdiction
4 to try the case without replacing the inadmissible statements with material
5 evidence that proved the same facts(2 @ 28; 3 @ 5), or they failed to prove
6 every element of the charging document.

7 A civil action took place for placing false information in the criminal
8 Justice System that resulted in the alleged victim and her Mother both denying
9 statements made under oath in State District Court(9 @ 19 - 21) and affirmed
10 were truthful in forensic interviews(9 @ 22 - 25), given to the Police and
11 Attorney General(9 @ 22 - 25).

12 They also denied statements made in forensic Interviews(2 @ 30), including
13 those use for charging. In the Information fo Leave(Appendix A, Page 4). These
14 witnesses freely admitted under oath that they committed obstruction of Justice,
15 perjury and wittness tampering(9 2 14- 28).

16 The Jury did not follow the Jury instructions in No. 21, as used in Count
17 1 of the information which charged Pierce with the offense of Sexual Intercourse
18 without consent. The term "without consent" means the victim is incapable of
19 consent because she was less than 16 years of age(6 @ 20) and (5 @ 22).

20 The Jury did not follow the instruction in No. 25 "The State has alleged in
21 Count II of the information which charges the defendent with the offense of
22 Sexual Assault. The term "without consent" means that the victim is incapable
23 of consent because she was less than 14 years of age and the offender is 3 or
24 more years older than the victim(5 @ 34).

25 Jury instuctions 19 and 23 both state "that on or about and between April
26 4, 2006 and April 2, 2008, the Defendant subjected M.R. to Sexual conduct and/or
27 Sexual Intercourse. The jury disregarded these charging dates(5 @ 15 & 27).

28 However, after the jury deliberated all the evidence and filed their written
29 verdict, then responded to the following statements verbally: Question 1: to the
30 offense of Sexual Intercourse against M.R., we find the Defendant guilty? "Yes".
31 Question 2: To the offense of Sexual Intercourse without consent at the time of
32 the commission of the offense, was M.R. listed as 16 years of age and was the
33 Defendant four or more years older than M.R.? "Yes".(6 @ 13)(Appendix E, page 2)
34 Question 3: To the offense of Sexual Assault against M.R., we find the
35 Defendant guilty. Question 4: To the offense of Sexual Assault at the time of
36 the commission of the offense was M.R. less than 16 years old and was the
37 Defendant three or more years older than M.R.? "Yes".

38 So, the unanimous verdict of the jury was that the State did not prove
39 beyond a reasonable doubt that any offense too place as charged, on or about,
40 between April 4, 2006 and April 2, 2008(4 @ 22 to 37). Being as M.R.'s
41 Sixteenth brithday was , 2014.

1 The jury verdict places the commission of the offenses to have taken
2 place at the specific time of M.R.'s birth on , 2014, in order to M.R.
3 to be at age 16 for one offense and less than 16 for the other. This places
4 the commission of an offense 343 days after the jury verdict was placed. Nor
5 does it prove that any crime took place between April 4, 2006 and April 2, 2008,
6 as charged. Nor was either charge proven "without consent". This verbal verdict
7 also placed the commission of an offense 112 days after Pierce was already in
8 in prison for the commission of the offenses, which proves actual innocence.

9 The jury was instructed if the State did not prove every element beyond
10 a reasonable doubt, they should have found the Defendant not guilty(5 @ 20).

11 DISCUSSION

12 As was addressed, the lack of probable cause was addressed in post-
13 conviction, ground 3, Post-conviction appeal, Claim 4, as well as the denied
14 Motion for release on O.R., pending the outcome of appeal that the State
15 failed to respond to. No probable cause was also raised in a re-hearing Motion
16 and a Motion to dismiss, and Supreme Court Habeas Corpus, Sentence Review and
17 Federal District Court.

18 In the case of DC 12-29, the State filed their Leave to file an information
19 (appendix A, page 2)(page 1 @ 20) on 8/17/2012 and after being duly sworn upon
20 oath, believed probable cause existed.

21 On 2/15/2013, the State filed document 79(Pgae 2 @ 1-7)(Doc 79)(appendix
22 K, page 2) and claimed that "never the less, for other reasons, the State finds
23 both the transcripts and recordings of both forensic interviews to be inadmissible
24 at trial.

25 The Montana Supreme Court held that: It is not required that
26 information in the affidavit supporting a charge, which might later
27 be found inadmissible at trial...be excised before the determination
of probable cause is made, if at trial, the State could not prove it's
case against Holt with admissible evidence, Holt could move to dismiss
at the close of the State's case-in-chief and such motion would have
to be granted. State v Holt 2006 Mont 151, 332 Mont 426, 139 P.3d 819 P.29.

28 Also on 2/15/2013, the State filed leave to file an amended information(Doc 89).
29 Relying on the previously filed probable cause(page 2 @ 17)(Doc 89)(Appendix L,
30 page 1).

31 On 3/15/2013, the Court granted the States Motion for leave to file an amended
32 information,(Doc 89) affirming the perviously filed probable cause(page 2 @ 19)
33 (Doc 120)(Appendix R, page 3).

34 On April 15, 2013, the Court ordered the States Motion for leave to file
35 a second amended information and reaffirmed the original probable cause(page 2
@ 23)(Doc 152).

36 Therefore, based on State v Holt, paragraphs 3 - 9 and 11 have to be excised
37 out, due to the prosecutor finding the 2nd forensic interview statements used,
inadmissible at trial.(Page 2 @ 30 - 37)(Page 3 @ 1 - 4)(Appendix A, page 4)
(Doc 1 of Dc 12-29)

1 In the second example, we can then examine State v Nanoff, Supreme
Court case of State v Nanoff 160 Mt 344.

2
3 Therefore, based on the Supreme Court holding in State v Holt 2006 MT 151,
4 332 Mont 426, 139 P.3d 819 P.22 the Supreme Court held is not required that
5 information in the affidavit supporting a charge, which might later be found
6 to be inadmissible at trial...be excised before a determination of probable
7 cause is made. If at trial...the State could not prove its case against Holt with
8 admissible evidence, Holt could move to dismiss at the close of the State's
9 case-in-chief and such motion would have to be granted.

10 Following the Supreme Court holding in Holt, the new charging document
11 looks like the following, in part:

12 #3 On February 16, 2012, a forensic interview was conducted with M.R. at the
13 Butte Child Advocacy Center. On June 8, 2012, a second interview was
14 conducted with M.R. at the First Step in Missoula (Appendix A, page 2 @ #3).
15 (reflect to Doc 79: "for other reasons, the State finds that both the
16 transcripts and recordings of both of the victims interviews to be inadmissible
17 at trial.") (Appendix K, page 2 @ #6).

18 #3: Excised out due to prosecutor finding inadmissible at trial.

19 #4: Excised out due to prosecutor finding inadmissible at trial.

20 #5: Excised out due to prosecutor finding inadmissible at trial.

21 #6: Excised out due to prosecutor finding inadmissible at trial.

22 #7: Excised out due to prosecutor finding inadmissible at trial.

23 #8: Excised out due to prosecutor finding inadmissible at trial.

24 #9: Excised out due to prosecutor finding inadmissible at trial.

#10: Malissa confronted Pierce about what M.R. had told her. Pierce denied
that he had ever touched M.R.

#11: Excised out due to prosecutor finding inadmissible at trial.

16 In Frank v Delaware 438 US 154, 98 S.Ct 2074, 57 L.Ed.2d 667(1978) L.Ed HN
17 (6): Whether the Fourth or the Fourteenth Amendments, and the derivative
18 exclusionary similar rule made applicable to States under Mapp v Ohio 374 US
19 643(1961), even mandate that the defendant be permitted to attack the veracity
20 of a warrant affidavit after the warrant has been issued and executed, is a
21 question that encounters conflicting values. The Bulwork of Fourth Amendment
22 protections of course is the warrant Clause, requiring that absent certain
23 exceptions, in certain circumstances, a challenge to a warrant clause itself,
24 which surely takes affidavits good faith as its premises, "no warrant shall
Issue, but upon probable cause, supported by oath and affirmation." Judge
Frankel, in the United State v Halsey 257, 1002, 1005(S.D.N.Y. 1996)(Aff'd
Docket No: 31369(CA2 June 12, 1967)(Unreported) put the matter simply: "When
the Fourth Amendment demands a factual showing sufficient to comprise probable
cause, the obvious assumption is that there will be a truthful showing.

Because it is the magistrate who must determine independently whether
there is probable cause.. Johnson v United States 333, US 10,

1 13-14(1948); Jones v United States 363 US 257, 270-271(1960).

2 It would be an unthinkable imposition upon his authority if
3 a warrant affidavit revealed after the fact, to contain
4 deliberately or recklessly false statements, were to stand beyond
5 impeachment.

6 The Supreme Court has held that(HN11); where the defendant
7 makes a substantial preliminary showing that false statements
8 knowingly and intentionally or with reckless disregard for the
9 truth, was included by the affidavit in the warrant affidavit,
10 and the allegedly false statements is necessary to the finding
11 of probable cause. The Fourth Amendment requires that a hearing
12 be held at the defendant's request. In the event that at the hearing
13 the affidavits false material set to one side, that affidavits
14 remaining contents is insufficient to establish probable cause
15 the warrant must be voided and the fruits of the (search/seizure)
16 excluded to the same extent as if probable cause was lacking on
17 the face of the affidavit: Franks v Delaware 438 US 154 S.Ct 2674,
18 57 L.Ed.2d 967(1978).

19 According to the Montana Judges Deskbook Rule 300.302 states:
20 The orders of the court are not binding if the court does not have
21 jurisdiction.

22 We cannot uphold warrants which are not based on probable
23 cause and probable cause cannot be established by the use of
24 incorrect information. from all the facts appearing in the record,
25 it is apparent the warrant was not based on probable cause since
26 the testimony given to support the warrant was incorrect. See
27 State v Nanoff 160 Mont 334.

28 If there is no probable cause due to incorrect information
then the court is without subject matter jurisdiction and
jurisdiction cannot be waived, and the court is under a continuing
duty to dismiss an action whenever it appears that the court lacks
jurisdiction. Augustine v United States 704 F.2d 1074, 1077(9th
cir 1983).

2ND EXAMPLE OF FAILED TO PROVE ELEMENT

21 The States charging document #4(appendix A, page 2 & 3) Topic:
22 Missoula Wingate testimony versus charging document(see paragraph
23 4 of Doc 1 of Dc 12-29): M.R stated that after the initial time that
24 he touched her while playing video games, Pierce continued to touch
25 her sexually. M.R. traveled to Missoula with Pierce, her grandma,
26 and her brothers, and stayed at the Wingate Hotel. During the night,
27 M.R was in bed positioned in the middle between Pierce and Grandma,
28 while in bed Pierce grabbed M.R's hand and made M.R. touch his
penis, Pierce was wearing boxer shorts and there was a hole in his
bowers that enabled M.R to touch him. Pierce's penis was hard, M.R.
was scared; M.R. woke grandma up and asked if she could go sleep
with her brother.

M.R. maintains she has knowledge as to Pierce's alleged claims
regarding statements she made to...police(Appendix G, page 7)

1 Now we examine what was testified to at trial. (See TR 4/23/13
2 @ 58, line 7) (Appendix Q, Page 2).

3 Q: Okay; I'd like you to slowly tell the jury what happened at
4 the Wingate.

5 A: We were at the wingate and we went swimming and we got there,
6 we would first put on our swimsuits and get ready to go to
7 the waterslide, and I put my swimsuit on, and he said my
8 boobs looked good in my swimsuit. We got back to the hotel,
9 and I cuddled in the bed with my grandma and Robert, and
10 she was turned over and she was on her side, and I, facing
11 Robert, my back to my grandma and he began to suck on my
12 boobs."

13 M.R. maintains she has knowledge as to her trial testimony.
14 (appendix G, page 7).

15 Prosecutor's knew of this perjury and M.R. knew she was committing
16 perjury. Prosecutors failed to #4 of the Information for leave to
17 file.

18 State charging document statement #5 (appendix A, Page 3) Topic:
19 Kalispell: "On another occasion M.R. traveled with Pierce, her
20 grandma and brothers to Kalispell and stayed at a hotel. While at
21 at the hotel, M.R. got her swimsuit on to go swimming. Pierce
22 stated to M.R. that "you look hot". M.R. went swimming and then
23 ate dinner. Later that night M.R. again in bed positioned between
24 grandma and Pierce. During this time Pierce pulled down M.R.'s night-
25 gown and "suck" M.R.'s "boobs". Pierce also touched M.R.'s crotch
26 on the outside. M.R. woke grandma up and went to sleep on the other
27 side of grandma away from Pierce.

28 M.R. maintains she has knowledge as to Pierce's alleged claims regarding
29 statements that she made to... police (Appendix G, page 7)

30 We now examine what was testified to at trial (TR 4/23/13 at 61)
31 (Appendix Q, page 3)

32 A: we were in Kalispell going to the Columbia Falls waterpark,
33 during the summer, towards the end of summer, and we got there
34 and, once again, we put our swimsuits on right away, and we
35 go to the pool to play.

36 Q: Did Robert say anything to you?

37 A: No, we went down to the pool, we went and ate dinner, and then
38 that night, I was laying there, he put his penis on me and
39 touched my boobs.

40 Q: Did he ever try to make you touch him?

41 A: He tried.

42 Q: When was that? What trip was that?

43 A: Kalispell

44 Q: How did that happen?

45 A: He grabbed my hand and put it down there.

46 M.R. maintains she has knowledge as to her trial testimony.
47 (appendix G, page 7).

48 Prosecutors knew of this perjury and M.R. knew she was committing
49 perjury.

1 If there is no probable cause due to incorrect information then the Court
2 is without subject matter jurisdiction and jurisdiction cannot be waived, and
3 the Court is under a continuing duty to dismiss an action whenever it appears
4 that the Court lacks jurisdiction. Augustine v United States 704 F.2d 1074, 1077.

5 In United States v Martinez-Garcia 397 F.3d 1205 US App. LEXIS 2236: A hearing
6 pursuant to Frank v Delaware allows a defendant to challenge the sufficiency of
7 an affidavit supporting a warrant if he or she makes a substantial preliminary
8 showing both that law enforcement officers made false statements or omissions
9 knowing and intentionally, or with reckless disregard for the truth and that
10 the statement of omission was necessary to the finding of probable cause.
11 438 US at 155-56; United States v Senchenko 133 F.3d 1153, 1158(9th cir 1998).

12 A defendant is entitled to a hearing to determine the sufficiency of the
13 supporting warrant if he or she make a substantial preliminary showing that
14 (1) the affidavit contains intentionally or recklessly false statements or
15 misleading omissions, and (2) the affidavit cannot support a finding of probable
16 cause without the allegedly false information. United States v Reeves
17 210 F.3d 1041, 1044(9th cir 2000); See also Franks 438 US at 171-72.

18 EXAMPLE THREE OF FAILURE TO PROVE EVERY ELEMENT

19 The United States Supreme Court held that: When confronted by seemingly
20 inconsistent answers to the interrogatories of a special verdict; a Court had
21 a duty under the fair reading of them. id at 119. A court is obligated to try
22 to reconcile the jury findings by exegesis. If necessary, id, only in the
23 cause of fatal inconsistencies may the Court remand for a new trial. Gallick v
24 Baltimore & Orr Co 372 US 108, 110, 9 L.Ed.2d 618, 83 S.Ct 659(1963)

25 In Diasonics Inc v Acuson Corp 1993 US Dist Lexis 8871(9th Cir 1993) the
26 court held: The Seventh Amendment obligation on Courts is not to recast factual
27 findings of the jury...and is based on the notion that juries are not bound by
28 what seems inescapable logic to judges. Indu Craft 47 F.3d at 497(citation
29 omitted). If, However, the jury answers cannot be harmonized rationally, the
30 judgement must be vacated and new trial ordered. See also Richardson v Suzuki
31 Motor Co. 868 F.3d 1226, 1238-39(fed cir 1989); Floyd v Laws 929 F.2d 1390(9th
32 Cir 1991).

33 Fed.R.Civ.P Rule 49(b)(4) and Mont.R.Civ.P. Rule 49(b)(4) states: When the
34 answers are inconsistent with the general verdict, Judgment must not be entered:
35 instead the Court must direct the jury to further consider it's answers and
36 verdict, or must order a new trial.

37 On April 15, 2013, the State filed document 153: Second Amended
38 information and claimed: On or about April 4, 2006 and April 2,
39 2008, the Defendant...purposely or knowingly engaged in Sexual
40 intercourse with M.R.)Born in April 1998), without M.R.'s consent
41 (Appendix C, pages 1 & 2).

42 Count 1

43 Sexual Intercourse without consent, a felony; as specified in Mont.

1 Code Ann. 45-5-503: On or about, between April 4, 2006 and April 2, 2008,
the Defendant, Robert Pierce, DOB _____, purposely or knowingly
2 engaged in Sexual Intercourse with M.R.(Born in April 1998), without M.R.'s
consent. This offense is punishable by the provisions of Mont. Code Ann. 45-
3 5-503(3), by a term of imprisonment of not less than 4 years, and nor more than
life, and a fine not to exceed \$50,000.
4

5 Count II

6 Sexual Assault, a felony, as specified in Mont. Code Ann. 45-5-502(1) and
(3): On of about, between April 4, 2006 and April 2, 2008, The Defendant,
Robert Pierce, DOB _____, knowingly subjected M.R.(Born April 1998) to
7 Sexual contact without M.R.'s consent. This offense is punishable of not less
than 4 years and not more than 100 years and a fine not to exceed \$50,000.
8 (Appendix C, page 2)

9 On April 25, 2013, the jury was provided the following jury instruction:
INSTRUCTION 11: Defendant is charged in Count 1 of the Information with the
10 crime of Sexual Intercourse without consent, in violation of Mont. Code Ann.
45-5-503. On or about a period of time on or between April 4, 2006 and April
11 2, 2008, the Defendant is charged in Count II of the Information with the crime
of Sexual Assault, in violation of Mont. Code ann. 45-5-502, on or about a
12 period of time on or between April 4, 2006 and April 2, 2008. In order to find
the Defendant guilty, it is necessary for the prosecution to prove beyond a
13 reasonable doubt that the commission of the specific act or acts constituting
the crime within the period alleged. Also in order to find the Defendant
14 guilty, you must unanimously agree upon the commission of the same specific
act or acts constituting the crime within the period alleged. It is not necessary
15 that the particular act or acts committed agreed upon, be stated in the
verdict.(Appendix D, page 1).
16

17 INSTRUCTION 19: To convict the Defendant of Sexual Intercourse without
consent, as alleged in Count 1 of the Information, the State must prove
the following elements:
18

- 19 1: That on or about and between April 4, 2006 and April 2, 2008, the
Defendant subjected M.R. to sexual intercourse; and
- 20 2: The act of Sexual Intercourse was without consent of M.R.; and
- 21 3: The Defendant acted knowingly.

22 If you find consideration of all the evidence that all of
these elements have been proved beyond a reasonable doubt, then
you should find the defendant guilty. If, on the other hand,
you find from your consideration of all the evidence that any of
23 these elements has not been proved beyond a reasonable doubt, then
you should find the defendant not guilty.(Appendix D, page 2).
24

25 INSTRUCTION 21: As used in Count 1 of the Information which charges
the Defendant with the offense of Sexual Intercourse without
consent, the term "without consent" means: The victim is incapable
26 of consent because she was less than 16 years old(Appendix D, page
2).

1 INSTRUCTION 23: To convict the defendant of sexual assault as
2 alleged in Count II of the Information, the State must prove the
3 following elements:

- 4 1: That on or about and between April 4, 2006 and April 2, 2008,
5 the Defendant subjected M.R. to sexual contact:
6 2: The act of sexual contact was without consent of M.R.; and
7 3: The Defendant acted knowingly.

8 If you find from your consideration of the evidence and
9 all of these elements has been proved beyond a reasonable doubt,
10 then you should find the defendant guilty.

11 If, on the other hand, you find from your consideration of
12 the evidence, that any of these elements has not been proved
13 beyond a reasonable doubt, then you should find the Defendant
14 not guilty. (Appendix D, Page 3)

15 INSTRUCTION 25: As used in Count II of the Information which
16 charges the defendant with the offense of sexual assault, the
17 term "without consent" means; the victim is incapable of consent
18 because she was less than 14 years old and the offender is 3
19 or more years older than the victim (Appendix D, page 3)
20 (See MCA 2015: MCA 45-5-502(5)(a)(ii) less than 14 years old
21 and the offender is 3 or more years older than the victim) is
22 not in the Amended information.

23 Because the jury may have interpreted the challenged presumption
24 as conclusive, like the presumption in Morissette v United States,
25 343 US 246, 96 L.Ed. 288, L.Ed.2d 854, 98 S.Ct 1881, and because
26 either interpretation would have violated the fourteenth Amendment's
27 requirement that the State prove every element of the criminal
28 offense beyond a reasonable doubt, the instruction is unconstitutional.
See Sandstrom v Montana 442 US 150(1979)

After hearing all the evidence between April 22, 2013 and
April 25, 2013, the jury deliberated all the evidence and determined
that the State failed to prove the elements beyond a reasonable doubt
and; that being duly impaneled and sworn to try the issues in the
above-entitled cause, enter the following unanimous verdict:

Question 1: To the offense of sexual intercourse without consent
against M.R., we find the defendant Guilty.

Question 2: To the offense of sexual intercourse without consent
at the time of the commission of the offense, was
M.R. listed as sixteen years of age and was the defendant
four or more years older than M.R.? Yes.

Question 3: To the offense of sexual assault against M.R., we
find the defendant guilty.

Question 4: To the offense of sexual assault at the time of the
commission of the offense, was M.R. less than sixteen
year of age, and the defendant three or more years
older than M.R.? Yes.

A fundamental principle of our criminal justice system is
that the State prove every element of the charged offense beyond
a reasonable doubt. State v Daniels 2011 MT 278, 426, 265 P.3d
621(Daniels 133)

1 Montana Code Annotated 45-5-503(3)(a) states: if the victim
2 is less than 16 years old and the offender is four or more years
3 older than the victim.

4 The jury's unanimous verbal verdict was that M.R. was at
5 age 16 and not less than 16 years of age. Therefore the State
6 failed to prove a violation of this State law.

7 The jury's verbal verdict of less than 16 years of age,
8 does not necessarily equal less than 14 years of age as shown
9 in INSTRUCTION 25 (and found in 45-5-502(5)(a)(ii)), but not in
10 45-5-502(3)(a) as charged in the Second Amended Information.
11 (appendix C, page 2) and (appendix D, page 3)

12 The United States Supreme Court has explicitly held that
13 "The due process Clause protects the accused against conviction
14 except on proof beyond a reasonable doubt of every fact necessary
15 to constitute the crime with which he is charged." In Re Winship
16 392 US 538, 363-64, 90 S.Ct(480) 1068, 1072-73, 25 L.Ed.2d 126(1976)

17 Judgement of the court

18 "It is the judgement of this Court that the Defendant Robert
19 Pierce, is guilty of the offense of Count 1, sexual Intercourse
20 without consent, a felony, in violation of section 45-5-503 sub
21 (3) and sub (5) of the Montana Code Annotated, as charged in
22 the State's Second Amended Information(not 45-5-503(1) and (3)(a)
23 as charged in the States Second Amended Information(doc 153)
24 for count 1?) and as evidenced by the jury's unanimous verdict
25 in this case. (At age 16 years and not less than 16 years?)

26 It is the further judgement of the court that the defendant,
27 Robert Pierce, is guilty of the offense of count II, sexual assault,
28 a felony, in violation of Section 45-5-502 Sub (1) and sub (3)(but
29 not 45-5-502(5)(a)(ii) as instructed by the age guideline of "less
30 than 14 years old?" of the Montana Code Annotated, as charged
31 in the States Second Amended Information, and as evidenced by
32 the unanimous jury verdict in this case(Appendix F, page 1)

33 It is Hornbook law that this court cannot second-guess a
34 trier of fact who has heard the testimony, scrutinized the witness
35 and noted their demeanor and behavior on the witness stand. (Jeffreis
36 v United States, 215 F.2d 225, 226(9th cir 2954); See Perez v
37 US 297 F.2d 648-649(9th cir); United States v Johnson 1946, 327
38 US 106, 112, 66 S.Ct 464, 90 L.Ed.2d 562.

39 In Document 81 of DC 12-29, the State documented that the
40 "incident took place upstairs in the defendants Residence, that
41 is the basis for the Counts I & II."

42 Thereby placing both counts for the same occurrence. MCA
43 46-11-410(2)(a) precludes the State from convicting of both sexual
44 intercourse and sexual assault, when the charges arose from the
45 same attack as alleged in the Information. See State v Williams
46 2010 Mont LEXIS 70, 2010 Mt 258, 355 Mont 354 225 P.3d.

47 Based on Montana Rule of Civil procedure, Rule 49(B)(4),
48 when the answers are inconsistent with each other and one or
49 more is also inconsistent with the general verdict, Judgement

1 must not be entered. If the judgement must not be entered, the
2 judgement is void, and void thing is no thing, It has no legal
3 effect whatsoever, and no right whatever can be obtained under
4 it or grow out of it. In the law, it is that same thing as if
5 the "void thing" has never existed. McLain v McLain 2017 US Dist
6 LEXIS 36122.

7 Mr. Pierce was diligent

8 Mr. Pierce attempted to be diligent in raising the claims
9 of no probable cause and no subject matter jurisdiction in the
10 court system prior to filing this Rules 60(b)(4) appeal Opening
11 Brief.

12 On 1/23/17, the Appellant filed a motion for new trial
13 (with the attachments not scanned) as document 241, which was
14 denied on 1/23/2017 in document 242, The issues was raised in
15 a filing for post conviction relief (Attachments not scanned in
16 as there is a large volume of exhibits) which was denied on 6/7/2018
17 as document 19. This issue was raised in claim 3. The issue was
18 then raised as claim 4 of the post conviction appeal in DA 18-
19 0404, filed July 13, 2018 and remained unaddressed. A motion to
20 dismiss was filed in the Montana Supreme Court. On 1/28/2019
21 it was sent to the 2nd judicial district court by the Montana
22 Supreme Court because, based on State v Holt 2006 Mt 151, 332
23 Mont 426, 139 P.3d 819 P.29, it would have to be granted.

24 It was denied by judge Whelan. The issue was also raised
25 in the Supreme Court, second separate appendix on February 23,
26 2019 and a motion for re-hearing on June 3, 2019. The issue was
27 further raised in the Supreme Court Habeas Corpus on September
28 23, 2019 in OR-19-0952, which was wrongfully denied claiming the
29 the issued should have been raised in the post conviction appeal,
30 which they were. The habeas was denied on October 2, 2020 .

The issue was also raised in the Montana Federal District
Court as claim IX, filed on 1/8/2020 in CV-19-058-BU-BMM-KLD and
supplimented in document 21 filed 3/22/2021. The issue of no
probable cause was also raised during a Sentence review having
on 8/14/2020, that there could be no equity of sentencing if there
was no probable cause to go to trial. The Sentence Review failed
adhere to their own rules and statutes as signed by the governor
(Doc 271, filed 8/17/2020)

Because the district court lacked probable cause and subject
matter jurisdiction to take Mr. Pierce to trial, trial testimony
was based on false evidence and perjury and the verbal verdict
of the jury claimed the commission of offense to be 343 days after
their verdict and 111 days after Mr. Pierce was already in prison,
Mr. Pierce was not duly convicted.

The United State Constitution, Amendment 13, ratified in
1865 states: Neither slavery nor involuntary servitude, except
as a punishment for crime whereof the party shall have been duly
convicted shall exist within the United States, or any place subject
to their jurisdiction.

Involuntary servitude. The condition of one forced to labor-
for pay or not- for another, coercion or imprisonment: Blacks
Law Dictionary, Ninth Edition; West, page 1493.

1 Montana Code Annotated 45-5-303: Aggravated kidnapping:(1)
2 a person commits the offense of aggravated kidnapping if the person
3 knowingly or threatening without lawful authority, restrains another
4 person ~~secretly~~ or treating(e) to hold in a condition of involuntary
5 servitude.

6 Mr. Pierce was accused of the crime, but never duly convicted
7 as charged, however, the Montana Justice system clearly kidnapped
8 Mr. Piece while violating the United States Constiton, Amendments
9 4, 5, 6, 7, 8, 13 and 14.

10 STRUCTURAL ERROR INFECTED THE VOID JUDGEMENT

11 When Daniel Guzylski filed document 1: States Motion for Leave
12 for Information and affidavit in support on 8/17/2012, he documented
13 on page 1: Daniel Guzylski, an assistant Attorney General for the
14 State of Montana moves the Court for leave to file an Information
15 and After being duly sworn upon oath, alleges, based on information
16 and belief that defendant has committed the offenses of...The
17 following facts provide probable cause to believe that the Defendant
18 Robert Pierce, has committed the alleged offenses(Appendix A,
19 Page 1)"after being duly sworn upon oath."

20 The State's primary witnesses/alleged victims admitted to
21 committing perjury in the Montana District Court on 12/11/2015
22 and Federal District Court on 12/18/2025 and changed statements
23 between the charging documents and trial; The two witnesses claimed
24 in their complaint answers:

25 4) I do not know whether these paragraphs in the complaint are
26 true or not true, I deny them(Appendix O, page 7)

27 Statements testified to in state court and denied in Federal
28 court include(paragraph 8, appendix P, page 3)(4/23/2013 @ 208):
29 "At all times relevant hereto and in all times mentioned, respondents
30 Bill Sather and Malissa Rassakka were friends and had dated each
31 others.(Testified to under oath in state court and denied under
32 oath and deposed in federal court on 2/18/2015).

33 Paragraph 71: "Respondent M.R's testimony was much different.
34 she testified: "And then the next couple of days, I got a phone
35 call from Anthony. First he texted me and we got into a fight
36 and he called me and I answered. He told me that I'm a liar because
37 I said "touched" and told my mom molested."(Testified to under
38 oath on 4/23/2013 and denied under oath and deposed on 12/18/2015)(See
39 4/23/13, page 91, line 15).(appendix P, page 27)

40 Paragraph 72: Have you had much communication with Anthony?
41 (MR) "no, I talked to him after when he texted me and said that
42 he was going to slit my throat if I proceeded, and I needed a
43 liar detector test."(testified under oath on 4/23/2013 and denied
44 under oath and deposed on 12/18/2015)(4/23/2013, page 92, line
45 3).(Appendix P, page 27)

46 Paragraph 74: "Do you know if he had occasion, and if you
47 don't know this answer, then I don't want you to speculate, but
48 do you know whether or not he talked to Robert after talking to
49 you?"(MR) "he did talk to Robert."(testified to under oath on 4/23/2013
50 in state court and denied under oath and deposed on 12/18/2015)(4/23/13
51 page 91, line 24)(Appendix P, pages 27 & 28).

1 False statements made to police, investigators and prosecutors
2 include paragraphs 69, 70(Appendix P, page 26) paragraph 73(appendix
3 P, page 27), Paragraphs 75, 76 and 77(appendix P, page 28), paragraphs
4 80, 82 and 83(appendix p, page 29) and paragraph 84(appendix
5 P, page 30)

6 In paragraph 84, these witnesses also admitted to copying
7 each others police reports(appendix P, page 30, as relates to
8 appendix P, pages 18, 19, 20 and 21,)

9 Then on April 7, 2016, in a response from Daniel Guzylnski
10 to the Office of Disciplinary Counsel, Jon moog gave the attorney's
11 response: "While Mr. Guzylnski admits he had trouble tracking your
12 allegations, he states that he does not recall anytime during
13 the case, including appearances before the court and jury, in
14 which he was dishonest in any way. Further, the prosecution
15 believed then, as it does now, that the victim testified truthfully
16 in this matter(Appendix B, age 2)

17 If the prosecutor believed that the victim testified truthfully
18 in the matter, then he knew he filed charges with false statements
19 and no probable cause and if he believed the charging statements
20 as claimed then he suborned to perjury and provided false information
21 to the office of Disciplinary Counsel.(Appendix B, page 2)(Appendix
22 A, Page 1)

23 Because Montana Code Annotated 46-18-243(c)(b) states: Victim
24 does not include a person who accountable for the crime or accountable
25 for a crime arising from the the same transaction. Mr. Pierce
26 not only does not have a victim, but he is the true victim in
27 DC 12-29, as the State Attorney General kidnapped him under MCA
28 45-5-303(1)(e)

fraud infected the court

29 Fraud on the Court(1810): In a judicial proceeding, a lawyer
30 or partys misconduct so serious that it undermines or is intended
31 to undermine the integrity of the proceedings, Examples are bribery
32 of a juror and the introduction of fabricated evidence.-Blacks
33 Law Dictionary, West publishing, Garner, Ninth Edition, page
34 732.

35 Intrinsic Fraud(1832) is deception that pertains to an issue
36 involved in an original action. Examples include the use of fabricated
37 evidence, a false return of service, perjured testimony and false
38 receipts or other commercial documents.-Blacks Law Dictionary,
39 West publishing, Garner, Ninth Edition, page 733.

40 Mr. Pierce had a right to be free from constuctive fraud:
41 In order to make a prima facie case of constructive fraud, a Plaintiff
42 must establish the following elements:

43 1) A representation: Example(Doc 1): "on another occasion M.R
44 traveled with Pierce, her grandma and her brothers to Kalispell
45 and stayed at a hotel. While at the hotel M.R. got her swimsuit
46 on to go swimming. Pierce stated to M.R. that "you look Hot"
47 M.R. went swimming and then ate dinner. Later that night, M.R.
48 was again in bed postitioned between grandma and Pierce. During
49 this time Pierce pulled down M.R.'s nightgown and "suck" M.R.'s
50 "boobs". Pierce touched M.R.'s crotch area on the outside. M.R.'s
51 woke grandma up and went and slept on the other side of grandma

1 away from Pierce(Appendix A, page 3 paragraph 5)

2 2) a falsity of representation: "We were in Kalispell going to
3 the Columbia Falls waterpark during the summer; towards the end
4 of summer, and we got there, and once again, we put on our swimsuits
5 on right away to go down to the pool to play(appendix Q, page 3
6 @ 61, line 21)

7 Q: Did Robert say anything to you?

8 A: No, we went down to the pool, we went and ate dinner, and that
9 that night I was, once again, laying there, he put his penis on
10 on me and he was touching my boobs.

11 Q: Did he ever try to have you touch him?

12 A; He tried.

13 Q: When was that? what trip was that?

14 A: Kalispell.

15 Q: How did he do that?

16 A: He grabbed my hand and put it down there.

17 Q: How did you react to this?

18 A: I moved my hand and I went and laid with my brother(Appendix
19 Q, page 3 @ 62, line 1)

20 3) Materiality of the representation: "M.R. maintains...she has
21 knowledge regarding statements made to Police(Appendix G, page
22 7 @ #2)

23 4) The speakers knowledge of the falsity of the representation
24 or ignorance of the truth: M.R maintains she has knowledge as to...her
25 trail testimony.(Appendix G, page 7 @ #2)

26 5) The speakers intent that it should relied on:"when In have
27 and important interview like that, it's my practice to go through
28 there and, for my own work product, to number the statements made
and to catalog those statements, so I know what was is said."(Appendix
S, page 3, line 8)

6) The hearers ignorance of the falsity of the representation:
In this example, numbers used by the prosecution in his work product
were: 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 89(c), 90, 92, 94,
95, and 98; "Never the less, for other reasons the state finds
that both the transcripts of the victims interviews and the recordings
of the victims interviews to be inadmissible at trial(appendix
K, page 2 #6, last paragraph.)

7) The hearers reliance on the representation In ODC file number
15-178, the Attorney response was "further, the prosecution
believed then as it does now, that the victim testified truthfully
in this matter.(appendix B, page 2)

8) The hearers right to rely on the representation;" Daniel Guzynski,
an assistant Attorney General moves the court for leave to file
an Information and, after first being duly sworn upon oath,
based on Information and belief that Defendant has committed
the offenses of Count I and II. The following facts provide
probable cause to believe that the Defendant Robert Pierce has
committed the alleged offenses."(Appendix A page 1)

9) consequences and proximate injury was caused by reliance on
the representation: "It is the judgement of this court that the
Defendant, Robert Pierce is guilty of the offenses of Court I,
sexual intercourse without consent, a felony, in violation of
setion 45-5-503 sub (1) and sub (3) of the Montana Code annotated,

1 as charged in the State's Second Amended Information and as evidenced
2 by the jury's unanimous verdict in this case(Appendix F, Pgae 1,
line 3).

3 Fraud renders judgement void See Stroll v Gottlieb 305 US 165
4 172, 59 S.Ct 165, 172, 59 S.Ct 134, 83 L.Ed 104(1983)(No collaterol
5 attack on Federal Courts jurisdiction allowed unless on grounds
6 that subject matter jurisdiction was based on fraud.)

7 If a Judge has no authority or jurisdiction, that person is
8 quite simply not a judge and has no more authority than any other
9 member of the general public. Brown v Gianforte, 2021 Mt 149; Potter
10 v District Court of the 16th Judicial District, 266 Mont 384;
11 Blodgett v Orzech 2012 Mt 134; State v Vickers, 1998 Mt 201;
12 Pinnow v Mont State fund 2007 Mt 332.

9 CONCLUSION

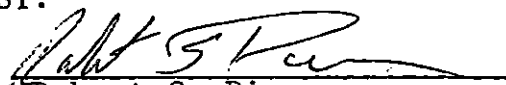
10 The appellant, would request that this Court remand back the
11 Rule 60(b)(4) to the District Court with an Order to grant the
12 Rule 60(b)(4) motion. Or the Supreme Court grant the Rule 60(b)(4)
13 because the District Court Judge is no more a judge than a member
14 of the general public, for the obvious reason that Pierce did not
15 Receive a trustworthy investigation nor fair trial, or judgement.

16 When the States case was started with the accusations being fabricated
17 and involved witness tampering, copying police reports, giving
18 false statements to investigators and prosecutors, going to trial
19 with no probable cause or subject matter jurisdiction, tried
20 under perjured testimony and false grooming evidence and the
21 jury found the commission of the offences to be 343 days after
22 their verdict was rendered and 112 days after the Pierce was
23 already in prison, and sentenced by a judge with no authority.

24 This warrents reversal of the conviction, immediate release
from an illegal incarceration and sentence and exhoneration of
criminal record.

When the jury made averbal verdict of "as sixteen years"
and "less that Sixteen years", that mean the Commission of an
offense had to take place at the moment of M.R.'s sixteenth birthday,
in 2014. It is impossible for this crime to have been taken place
as charged in 2006 to 2008. The verbal verdict placed the commission
of an offense to be 343 days after their verdict, 6 to 8 years
after the charging dates and 112 days after pierce was already
in prison. The only thing Pierce was found guilty of was "knowing",
for which there is NO STATE LAW AGAINST.

Dated this 27 day of October, 2024.


Robert S. Pierce

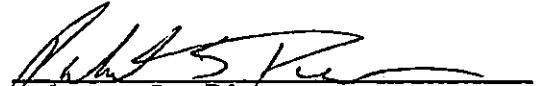
CERTIFICATE OF SERVICE

I do hereby certify that I have filed a true and accurate copy of the foregoing with the Clerk of the Montana Supreme court and that I have served true and accurate copies of the foregoing upon the Attorney General of the State of Montana, each attorney of record, and each party not represented by an attorney in the above-referenced action, as follows:

AUSTIN KNUDSEN-SUSPENDED FOR 90 DAYS
Montana Attorney General
Mardell Lynn Ployhar
Appellate Services Bureau
Attorney General's Office
215 North Sanders
P.O. Box 1401
Helena, Mt 59620-1401

Ben Krakowka-Resigned 8/30/24
Anaconda-Deer Lodge County
Attorney
800 South Main St.
Anaconda, Mt 59711

Dated this 27th day of October, 2024


Robert S. Pierce

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11(2), the document is typed with 10.5 characters per inch. Pursuant to Rule 11((4)(b)) the brief of less than 30 pages, and numbers 20 pages, not including table of authority, certificate of Service or Certificate of compliance. This document is typed in duplex format.

Dated this 27th day of October, 2024.


Robert S. Pierce

APPENDIX

On October 15, 2024, The Montana Supreme Court issued an order that appeared on Lexis/Nexis in DA 24-0390, Pierce v State, 2024 Mont. Lexis 1123, where it IS ORDERED that within thirty (30) days of the date of this order, Pierce shall file with the Clerk of this Court a revised brief containing the revisions necessary to comply with the Specified rule and that Pierce shall serve copies of the revised brief to all parties of record.

IT IS ORDERED that the time for any subsequent briefing contained in M.T.R.APP.P. 13 shall run from the date of filing the revised brief.

The Clerk is directed to provide a true copy of this order to the appellant and to all parties of record. Dated this 15th day of October, 2024.

As of the date of November 4, 2024, the Appellant has never received a true copy of the forementioned order from the Clerk of Court!

Mr. Pierce would not be aware of the 30 day extension granted by the court if he were not diligent about his case and had access to Lexis/Nexis. Willful concealment by the Clerk of Court of this order is as much a fraud as an actual positive misrepresentation. See *Equitable Life Ins. Co v Halsey Stuart & Co.* 312 US 410, 61 S.Ct 623, 85 L.Ed.2d 920, 1941.

Willful concealment of material facts has always been considered as evidence of guilty. *Ashcraft v Tennessee* 327 US 274, 66 S.Ct 544, 90 L.Ed 667.

To not provide a true copy of the Order to appellant, with the thirty (30) extension if willful concealment and appear to be a deliberate attempt to keep the Appellant from using this

Rule, and thereby depriving the Appealant the adequate right to address a fundamental miscarriage of justice in the Montana Justice System.

Mr. Pierce's case is laced with fraud without the Clerk of the Supreme Court also fraudulently concealing an Order from an Appealant.

DATED this 4th day of November, 2024.


Robert S. Pierce
Pro Se Appealant