

Mark E. Benton, Pro se
2099272
50 Crossroads Dr.
Shelby, MT 59474

IN THE SUPREME COURT
OF THE
STATE OF MONTANA

Mark Eugene Benton, pro se
Petitioner

v.
D.J. Godfrey, Warden
Respondent

Cause No. OP-24-0648

JUDICIAL NOTICE OF
NEWLY AVAILABLE EVIDENCE

Comes now the petitioner, Mark E. Benton, (Benton), pro se, and moves this Honorable Court take Judicial Notice of this "Newly Available Exculpatory Evidence."

Newly Available Evidence is "evidence that is newly discovered or previously unavailable despite the exercise of due diligence." Mann v. United States, 2020 US Dist. LEXIS 15442 at 4.

As you can see, the Prosecutor moved the Court (Judge Harris), to revoke Benton's probation for violating a court ordered GPS provision. (Exhibit A)

Due Process would then require one to ask, "Why was Benton on GPS to be violated?"

After several attempts to acquire the information on the Dec. 31, 2020 arrest and illegal search and seizure that was dismissed on March 19, 2021, Cause No. CR-2020-1281. please note the "notation" in exhibit B, upper right hand.

The petitioner is currently waiting for transcripts from Cause No. CR-2020-1281. Please note Exhibit C, City of Billings Police report from the search that was performed on Dec. 31, 2020.

Benton's Due Process was non-existent as the arrest, search and confinement began with an arrest on Dec. 31, 2020 that was dismissed, and held in custody through Dec. 23, 2022 for a total of 627 days.

Through the dismissed arrest of Dec. 31, 2020 which Judge Harris signed the warrant, then dismissed the unlawful Fourth Amendment search by probation and parole officers, and through the revocation hearing, (There was no revocation hearing), then sat as the accusatory Judge, adjudicated the EX POST FACTO CLAUSE case that is currently before the Court and dismissed the Post Conviction with PREJUDICE.

Once the probation arrest was dismissed on Mar. 19, 2021, Benton should have rightfully been released back to probation and another hearing held in regard to the new Failure to Register charge. Benton has been revoked and placed back into prison without the benefit of a proper revocation hearing, pursuant to §46-23-1012(4), MCA.

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A[plaintiff] may also base a due process claim on his "Constitutional right to be free from continued detention after it was ~~or~~ should have been known that the detainee was entitled to release." see Lee v. City of Los Angeles, 250 F.3d 668, 683 (9th Cir. 1998).

When probation officers performed the unlawful arrest and illegal search and seizure on Dec. 31, 2020, Cause No. CR-20-1281, they took \$2000.00 out of one of the safes that was unlawfully opened. This was Benton's rent money and in February Benton was forced to downsize into a smaller apartment which is recorded at Alternatives Pretrial Services. Alternatives refuse to answer requests-for-information.

Charging documents say that I moved in Feb. of 2020.

One must then ask, "If Benton moved in Feb. of 2020, whose house did probation search on Dec. 31, 2020."

Police Department records show that Benton updated registry in September.

Signed this Nov. 8, 2024.

Mark E. Benton, pro se

