

FILED

DEC - 6 2024

Bowen Greenwood
Clerk of Supreme Court
State of Montana

FILED

12/06/2024

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: DA 24-0625

Filing a Notice of Appeal

The Montana Supreme Court has adopted revisions to the Rules of Appellate Procedure. Rule 4(2) now requires a notice of appeal to be filed in the office of the Clerk of the Supreme Court. If you are appealing an order of the District Court, your appeal must substantially comply with the attached Form 1, M.R.App.P.

IN THE SUPREME COURT OF THE STATE OF MONTANA

Supreme Court Cause No. DA 24-0625

Mark Eugene Benton,
Appellant,

v.

MT 13th Judicial Dist. Court,
Appellee.

NOTICE OF APPEAL

NOTICE is given that Benton, the Appellant above-named and who is the (plaintiff/petitioner) in that cause of action filed in the 13th Judicial District, in and for the County of YELL, as Cause No. NOV-23-1856, hereby appeals to the Supreme Court of the State of Montana from the final judgment or order entered in such action on the 28 day of OCT, 24.

THE APPELLANT FURTHER CERTIFIES:

1. That this appeal is/is not subject to the mediation process required by M. R. App. P. 7. If subject to mediation, the money judgment being sought is/is not less than \$5,000.
2. That this appeal is/is not an appeal from an order certified as final under M. R. Civ. P. 54(b). If this is such an appeal, a true copy of the District Court's certification order is attached hereto as Exhibit "A."
3. That the notice required by M. R. App. P. 27 has been or will be given, within 11 days of the date hereof, to the Supreme Court and to the Montana Attorney General with respect to a challenge to the constitutionality of any act of the Montana Legislature.
4. That all available transcripts of the proceedings in this cause have been/have not been ordered from the court reporter contemporaneously with the filing of this notice of appeal. If all available transcripts have not been ordered, that Appellant has complied with the provisions of M. R. App. P. 8(3) contemporaneously with the filing of this notice of appeal.
5. That included herewith is the filing fee prescribed by statute, or the affidavit to proceed without payment of the required filing fee prescribed in the Appendix of Forms as Form 3.

Dated this 2nd day of DEC., 24.

Mark E. Benton, pro se
Appellant

CERTIFICATE OF SERVICE

I hereby certify that I have filed a true and accurate copy of the foregoing NOTICE OF APPEAL with the Clerk of the Montana Supreme Court; and that I have served true and accurate copies of the foregoing NOTICE OF APPEAL upon the Clerk of the District Court, each attorney of record, and each party not represented by an attorney in the above-referenced District Court action, as follows:

(list name and address of the Clerk of the District Court and each attorney or party served).

Dated this 2nd day of DEC., 24.

Mark E. Benton, por se
Appellant

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IN THE SUPREME COURT OF MONTANA

MARK EUGENE BENTON, pro se
Petitioner

Cause No.

v.

STATE OF MONTANA,
Respondent

NOTICE OF APPEAL AND REQUEST
FOR NEW TRIAL

Comes now the petitioner, Mark E. Benton, pro se, and appeals to the Supreme Court, the decision in Cause No. DV-23-1156, pursuant to § 46-21-203, MCA.

This Court has Jurisdiction pursuant to Mont. Const. Art. VII, § 2(2); and Mont. R. App. P. 14(3)(a).

I, Mark Eugene Benton declare that I am entitled to relief under the following:

CLAIM #1

EX POST FACTO CLAUSE

I was found guilty of FAILURE TO REGISTER on dec. 23, 2022.

My original charge of FELONY INCEST was brought in 2005, under the 2003 guidelines for registration.

The Montana law states; if "I", the petitioner complete the 10 years without reoffending, the "duty to register would expire."

The Montana Legislature adopted the SVORA registration in 1997, under the registration act of 1995 the sex offender shall be released of registering by it automatically expiring as long as the offender did not violate the law by failing to register or committing a new felony offense.

The state of Montana increased the punishment of my registration requirements by retroactively increasing restrictions under the SVORA as amended, violating the EX POST FACTO CLAUSE of Mont Const. Art. II, § 31, applied to a registrant whose duty to register would have expired in April of 2015 under the former law. The statutory scheme effectively functioned as additional punishment. (State v. Peralta, 2022 MT 201, State v. Hinman, 2023 MT 116, 412 Mont. 434, 530 P.3d, 1271, 2023 Mont. LEXIS 627, (Mont. 2023))

Montana Const. Art. II, § 31 because: (1) they do 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 prior conviction more burdensome, but apply only to a current sexual conviction. (State v. Anderson, 2008 MT 116)

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CLAIM #1 (cont.)

The 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 created a conclusive presumption forbidding prosecution, and any punishment when the limitation period was extended after the expiration date has passed... (Tipton v. Mont. Thirteenth Judicial Dist. Court, 2013, MT 164) overview

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

Under Montana Constitution, citizens have a right to be free from retroactive punishment. If the people, through their Legislation, wish to create harsh and long lasting consequences for certain crimes, they may do so, but, 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) at 25

The SVORA Montana law also altered the ten year requirement: the duty to register would "expire" after ten years only as long as the registrant did not reoffend by failing to register or committing a new felony offense within that ten year registration period. (State v. Hinman, 2023 MT 116) at 7

The duty to register would expire ten years after the initial date of registration. (State v. Hinman, 2023 MT 116) at 5

The Montana Supreme Court has supervisory control over all other courts in Montana, and may on a case-by-case basis, supervise another court through a Writ of Supervisory Control Mont. Const. Art. VII, §2(2); Mont. R. App. P. 14(3)...

Alleged violations of the Ex Post Facto Clauses of the United States and Montana Constitution are constitutional questions over which the court exercises plenary review. (Tipton v. Mont. Thirteenth Judicial Dist. Court, 2018 MT 164) at 9

Montana Code Ann. 31-2-109 states that no law contained in any of the statutes of Montana is retroactive unless expressly so declared. This rule creates a strong presumption that laws do not have a retroactive effect unless the Montana Legislature specifically states otherwise. (Tipton) at 13

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CLAIM #2

INEFFECTIVE ASSISTANCE OF COUNSEL

During the court proceedings, the appointed Public Defender David Garfield, failed to research Bentons criminal conviction of Felony Incest to know if the State controlled subject matter jurisdiction.

To establish prejudice from deficient performance of counsel, a defendant must show that there is a reasonable probability that, but for, counsels unprofessional errors, the result of the proceedings would have been different. Lafler v. Cooper, 566 US 156) at 163

"A lawyer who fails adequately to investigate, and introduce into evidence, [information] that demonstrates his clients actual innocence, or that raises sufficient doubt as to the question to undermine the confidence in the verdict, renders deficient performance." (Lord v. Wood, 184, F.3d 1083) at 1093

CLAIM #3

PROSECUTORIAL MISCONDUCT

Mont. R. Prof. Conduct rule 3.8 states The prosecutor in a criminal case (a) shall refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause.

(h) when the prosecutor knows of clear and convincing evidence establishing that the defendant in the prosecutors jurisdiction was convicted of an offense that the defendant did not commit, the prosecutor will seek to remedy the conviction.

§2-18-103, MCA: (1) Elected officials of the Judicial branch; just cause may include, but is not limited to, an actual violation of an established agency standard, procedure, legitimate order, policy, or labor agreement, failure to meet applicable professional standards, criminal misconduct, negligence, ETC.

The prosecutor, through indifference or negligence, failed to fully investigate the petitioners 2005 conviction for Felony Incest to learn of the SVORA registration commitment being fulfilled and the subsequently being released from the register automatically in 2015. Through prosecutorial misconduct, did deliberately cause harm to an innocent civilian to gain a conviction.

Therefore, the petitioner, Mark E. Benton, pro se, prays the Supreme Court will overturn the decision of the lower court and dismiss the Failure to Register Dc-21-0438, pursuant to the EX POST FACTO CLAUSE of retroactive punishment.

Signed this 3rd day of Dec., 2024.

Mark E. Benton, pro se



CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on this 2nd day of December, 2024

I served a true and correct copy of the foregoing:

NOTICE OF APPEAL

upon:

Recipient 1: MONTANA SUPREME COURT

PO BOX 201401
HELENA, MT 59620-1401


STATE OF MONTANA
Recipient 2: ATTORNEY GENERAL

PO BOX 203003
HELENA, MT 59620-3003

Recipient 3: _____

Recipient 4: _____

By submitting same to a designated civilian employee of the Department of Corrections for prompt processing and mailing by authorized prison personnel within the facility mail room, with sufficient first class postage affixed, and it shall be deemed filed as of the above date.

SIGNATURE: 

PRINT: MARK E. BENTON, pro se, *pro se*

ADDRESS: 50 CROSSROADS DR.

SHELBY, MT 59474
