

Robert S. Pierce A# 3013080
700 Conley Lake Road
Deer Lodge, Mt 59722

IN THE MONTANA SUPREME COURT
STATE OF MONTANA

ROBERT S. PIERCE,

Petitioner,

vs.

STATE OF MONTANA,

Respondent.

Cause No: 24-0390

Motion to deny extensions
to the State for Responses
to Appeal of "deemed denied"
60(b) Appeal, due to committing
Fraud in DA-18-0404.

COMES NOW, Robert S. Pierce, Pro se in the above action with this Motion to deny extensions to the State for responses to Appeal of "deemed Denied" 60(b) Appeal, due to committing Fraud in DA 18-0404.

The Attorney General's Office and specifically Mardel Ployhar preformed fraudulent misrepresentation of the record available to the Butte Judge in the 2nd Judicial District Court and the 3rd Judicial District Court that had the Post-conviction Relief Petition exhibits, versus just the 22 page petition itself. Any circumstances and "malicious" and "oppressive" within these terms constituted Fraud.

The conduct of the Attorney General, constituted willful and wanton misconduct consisting of conscious breach of trust and intentional deception, flagrant breach of ethical canons of the legal profession, a studied and extended course of fraudulent misrepresentation, all with reckless disregard for the Rights and Interest of the Plaintiff herein, unjustified by any circumstances.

On 9/29/17, in DV 17-59, the State filed a Motion for extension of time:

The State requests additional time to respond to this matter as the Petition is voluminous, encompassing some several hundred pages of documents and the State is trying to sort through petitioners issues(Exhibit A).

On July 27, 2018, ADLC Clerk letter: I am in receipt of your letter dated 7-14-18. Regarding scanned documents. Judge Dayton informed me if documents are too large to scan and are available for review in the file, to follow the Clerk of Courts office procedure which is we do not scan vast exhibits. The public and or Court personel are able to view any and all documents in a file that are not marked confidential. If the case is appealed, we send the documents: by USPS so as the court will be able to view a complete file. Thank you.(exhibit B)

On January 30th, 2019 in DA 18-0404; Appellee Response to post conviction, page 12: Pierces petition and exhibits contained 459 pages(Exhibit C)
Page 13: The State filed a response in which it rebutted many of Pierce's factual contentions...and argued that all of his claims should be dismissed because they failed to state a claim and were not supported by evidence(exhibit D).

Also on January 30th, 2019 in DA 18-0404; Appellee Response page 30 footnote: "The State has scanned the petition and documents it received, which appear to be the same as the Petition in the District Court file, and it contains 459 pages.(Exhibit E)

Page 30: "The response from the Clerk of Court demonstrates that whether the exhibits are electronically scanned had no impact on Pierce's case, and the District Court's Memorandum and Order denying Petition for Post Conviction and Request for Counsel demonstrates that the Court was aware of and reviewed the documents that were not scanned(appellee's App A).

The District Court's conclusion that Pierce's claims were not supported by evidence does not mean that the Court did not have the voluminous documents Pierce filed. Instead, the Court denied Pierce's claims based on lack of evidence because Pierce failed to identify information in his voluminous documents that supported the conclusory allegations he made in his petition, "identify all facts supporting the grounds for relief set forth in the petition and have attached affidavits, records, or ther evidence establishing the extistance of those facts.(Exhibit F)

On 5/28/2019, in DA 18-0404, Opinion of the Court(Supreme) page 4 & 5: "Although Pierce attched numerous documents to his petition, none of the documents met the requirements of 46-21-104(1)(c) MCA² (2 footnote: In his brief- ing, Pierce assumes that because the Clerk of Court declined to scan his voluminous exhibits into the Court's electronic record, they were not considered by the Court. This assumption is incorrect, evidenced by a letter from the Clerk to Pierce, the documents did not need to be scanned in order for the Court to examine them)(Exhibit G)

On 3/19/2019 in DA 18-0404; Order: Pierce moves for dismissal contending that the filed charging documents were false. These arguments should have been presented, if appropriate for his appeal, within his opening and reply brief(exhibit H).

Also on 3/19/2019, Response to Motion to dismiss the underlying charges, page 2: "The proper way to seek reversal of his conviction is through a direct appeal or an appeal of the denial of a petition for post-conviction relief.

Any issues Pierce has concerning the filing of the charges against him should ~~should~~ have been raised in one of those two appeals. It appears that the issues he is raising in the motion to dismiss is related to issues he has raised in his post-conviction appeal.(exhibit I)

On 12/16/2021 the State filed a Notice of filing Documents Pursuant to Order dated September 14, 2021(Doc 23), CV 19-58-BU-RMM-KLD, page 9, Footnote 5: "The version of the petition for post-conviction Relief scanned into the District Court Record contains only the petition and is 22 pages long. Pierce filed over 400 pages of exhibits with the petition. According to the case register, the exhibits were not scanned due to the volume. The State is attaching it's scanned version, which contains the petition and the exhibits.

This 12/16/2021 filing, does not explain the January 30th 2019 filing in DA 18-0404, page 30(exhibit E) where the States scanned petition and documents appeared to be the same as the petition in the district court. Had the State made the claim that the district court record was on 22 pages and Pierce filed over 400 exhibits, back on January 30th, 2019, it would have match^{ed} Pierce's arguments he made that the 2nd judicial district court did not have the exhibit~~s~~

The court would have also not made the claim(exhibit G) on 5/28/2019 that "Pierce assumes that because the clerk of Court declined to scan his voluminous exhibits into the Court's electronic record, they were not considered by the court. This assumption is incorrect."

Because the State withheld that the 2nd Judicial district court only had 22 pages of document and the remaining 400 plus were in an envelope in the 3rd judicial district court and remained there "if the case is appealed" it could have changed the outcome of the post conviction appeal.

It is the duty of one who attempts to state truthfully what he actually tells, but also not to suppress any facts within his knowledge, which will materially change or alter the effect of the facts actually stated. To tell less than the whole truth may constitute a false fraudulent representation. A partial and fragmented disclosure of certain facts concerning an issue, accompanied by the willful concealment of material facts actually stated, is as much a fraud as an actual positive misrepresentation. 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 guilt. Ashcraft v Tennessee 327 US 274, 66 S.Ct 544, 90 L.Ed, 667.

Conclusion

Because the State Attorney General Office committed fraud by willful concealment of the fact the the 2nd judicial district Court only had 22 pages of post conviction petition and Pierce actual filed over 400 pages of exhibits. This proves the 2nd Judicial distict Court did not and could not comply with Mt.R.Civ.P. 10(c) which states that exhibits attached (when filed) are part of the brief. This acknowledgement could have and would have changed the outcome of DA 18-0404.

For these reasons, the state of Montana should not be allowed to drag out the case any further. It is huge waste of judicial economy to not rectify this fundamental miscarriage of justice. No American should be imprisoned for a crime alleged to be committed 343 days after an jury verdict, and 111 days after already being in prison.

Dated this 5th day of December, 2024.

Robert S Pierce
Robert S Pierce

CERTIFICATE OF SERVICE

I hereby certify that I have served true and accurate copies of forgoing upon Counsel of record, by first class, pre-paid US postal Service postage.

Service has been made the the Following:

Montana Attorney General
Mardel Ployhar-assistant attorney General
PO Box 201401
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Anaconda/Deer Lodge County
Attorney.
800 Main St
Anaconda, Mt. 59711

Dated this 5th day of December. 2024.

Robert S Pierce
Robert S. Pierce