

TABLE OF CONTENTS

	Page
TABLE OF CONTENTS	i
TABLE OF AUTHORITIES	ii-iii
JURISDICTION	iv
APPELLANT	iv
APPELLEES	iv
OPENING BRIEF, FACTS AND LAW	1-20
ADDENDUM TO OPENING BRIEF	1Ad 1
SECOND ADDENDUM TO OPENING BRIEF	2Ad 1
BRIEF AND EXHIBITS IN SUPPORT OF APPEAL	v
DISTRICT COURT FILES OF IMMEDIATE RELEVANCE	vi
APPENDICES:	vii
A. Dusky, U.S.S.Ct. Ability to stand trial controlling law. Table of Contents- Exhibits of Caregiver Negligence	
B. Table of Contents- Exhibits of Mental Health [Illness]	
C. Table of Contents- Exhibits of Diagnosis	
D. Table of Contents- Exhibits of Memory Loss	
E. Table of Contents- Exhibits of Medications	
Conclusion and Relief20

TABLE OF AUTHORITIES

Controlling Caselaw	Page
Barrett v Principi, 363 F.3d 1316,1321(Fed. Cir. 2004)	11
Blackledge v Allison, 431 US 63,69, 97 S.Ct 1621(1977)	12
Brady v Maryland, 373 US 83,87, 83 S.Ct 1194 (1963)	2,3,11
Collins v Virginia, 584 US 586,606, 138 S.Ct 1663(2018)	2Ad 1
Dusky v United States, 362 US 402, 138 S.Ct 788(1960)	7,10
Giglio v United States, 450 US 150,153-55, 92 S.Ct. 763(1972)	1Ad 2
Hazel-Atlas Glass Co. v Hartford-Empire Co, 332 US 238,244, 64S.Ct997(1944)	1Ad 3
Koon v U.S., 518 US 81,100, 116 S.Ct 2035(1996)	1Ad 3
Napue v Illinois, 360 US 264,269, 79 S.Ct 1173(1959)	1Ad 2
Power v McDonough, 2024 US Dist Lexis 90363	15
State v Austad, 187 Mont. 70, 78-79,641 P.2d 1373(Mont. 1982)	7,10
State v Campbell, 278 Mont. 236, 247, 924 P.2d 1304(Mont. 1996).	8
State v Lehrkamp, 2017 MT 203, ¶15	4
State v Severson, 2024 MT 276, P 43	4
Strickland v Washington, 466 US 668,687,694, 104 S.Ct 2052(1984)	3,11
United States v Bagley, 473 US 667,674-676, 105 S.Ct 3375(1985)	4,11,12,
United States v Beggerly, 524 US 38,47, 118 S.Ct 1862(1998)	.1Ad 2,3
United States v Dominguez-Benitez, 542 US 74,82,124 S.Ct 2333(2004)	4,11,12
United States v Estate of Stonehill, 660 F.3d 415,443(9th Cir 2011)	1Ad 3
United States v Hyde, 520 US 670, 117 S.Ct 1630(1997).	12
United States v Sierra Pac Indus., 882 F.3d 1157,1167-68(9th Cir 2017)	1Ad 2,3,
Wood v Milyard, 566 US 463,466, 132 S.Ct 1826(2012)	1Ad 2

OTHER AUTHORITIES

Montana Codes Annotated¹

- §46-14-101. Mental disease or disorder
- §46-14-102. Evidence of Mental disease or disorder...
- §46-14-103. Mental Disease or disorder...disability excluding fitness to proceed.
- §46-14-206. Report of Examination.
- §46-14-202. Examination of Defendant.
- §14-14-221. Determination of fitness to proceed — effect of finding of unfitness— expenses.
 - (3)(a) committing court shall, within 90 days....review fitness to proceed.

(B) ...lack fitness to proceed...proceedings must be dismissed.

- §49-1-201. Right to State Protection.
- §49-2-301. Retaliation prohibited.
- §49-2-308. Discrimination by the State.
- §49-2-402. "Reasonable" to be strictly construed.
- §53-21-101— §53-21-199. Mentally Ill.

Part 1. Treatment of the Seriously Mentally Ill.

- §101 Purpose.
- §122 Petition for Commitment
- §124 Detention of respondent pending hearing or trial— jail prohibited.
- §129 Emergency situation—petition—detention.
- §130 Transfer or commitment to mental health facility from other institutions.
- §133 Transfer to nonstate facilities.
- §141 Civil and legal rights of person committed.

Rules of Civil Procedure:

- Federal: Rule 36. Request for Information.
- Montana: Rule 12(b) and 12(h). State waiving issues.
 - Rule 60(d)(3). Fraud on the Court.

Code of Federal Regulations:

- 28 CFR § 35.178 State Immunity.
- 28 CFR § 35.152 Jails, detention and correctional facilities.
- 28 CFR § 35.108 Definition of Disability.

AMERICANS WITH DISABILITIES ACT OF 1990: Title I, II, and III.

- 42 USC §12102. Definition of Disability..
- §12131. Definitions. (1) Public entity.
 - (A) Any State or Local government.
- §12132. Discrimination.
- §12182. Prohibition of Discrimination by public accommodations.
- §12133. Enforcement.
- §12188. Enforcement.
- §12202. State Immunity.

Montana Human Rights Act: 49-1-101 et seq.

CONSTITUTIONAL RIGHTS:

- U.S. Constitution: 1st, 4th, 5th, 6th, 8th, 14th Amendment violations.
- Montana Constitution: Declaration of Rights, Art.II §§, 17,20,24,28.

JURISDICTION

The Appellant, Scott Wayne Ellison hereby comes forth with presentation of t this appeal from the Eighth Judicial District Court decision of a Petition for Post Conviction Relief, with the Supreme Court of the State of Montana obtaining jurisdiction to hear this appeal as proper and Lawful.

The Court obtains it's Appellate Jurisdiction from both statutory law, as well as constitutional law from the Montana Constitution.

The Montana Legislature codified the courts jurisdiction under MCA: §3-2-203, Appellate Jurisdiction.

The 1972 Montana Constitution granted Appellate Jurisdiction, under Article VII, Section 2, Supreme Court Jurisdiction.

Venue for this appeal is thus proper for this appeal to the Supreme Court of the State of Montana.

APPELLANT

Scott Wayne Ellison, is a prisoner in the Montana State Prison in Deer Lodge, Montana, and brings forth this Petition based on the facts of this matter and the controlling authority cited herein, which clearly demonstrates that the Appellants Statutory and Constitutional rights have been violated, Thusly which the court then has the obligation, to properly review and decide, that based on the facts and law presented, Ellison is entitled to the relief requested, due to his documented and waived Mental illness and Traumatic Brain Injury, which the Federal Government has confirmed, causing memory loss, and unreasonable behavior which Ellison can NOT control or remember. Thus the State could not claim the required Mensa Rea, or mentalstate for a citizen to be convicted, was present, and which now requires the relief requested by a military veteran, who should be in a Veterans Hospital and not prison, as a burden to the taxpaying public.

APPEELEEES

The State of Montana, has wrongfully convicted the Appellant, and the State Capital is in Helena Montana, and is home to the Montana Executive Branch [Governor]; the Legislative Branch [House and Senate]; and the Supreme Court of Montana, the Highest Court for the Judicial Branch. In the Montana State Government, the laws to be abided by are ratified by the Governor, House and Senate, and in which the Montana Courts have the obligation to strictly adhere to. The Courts must also strictly adhere to Federal Law, as required by the Supremacy Clause of the U.S Constitution. MSP Warden Salmonsens, must release Ellison upon a legal ruling.

Scott Wayne Ellison, #3027301
700 Conley Lake Road
Deer Lodge, MT 59722

In the
SUPREME COURT FOR THE STATE OF MONTANA

SCOTT WAYNE ELLISON,
Petitioner-Appellant,
-vs-
THE STATE OF MONTANA,
JIM SALMONSEN,
Respondent-Appellee's

Cause No.: DA 25-0172
APPELLANT'S
OPENING
BRIEF
~~CONTAINING~~
STATEMENT OF FACTS AND LAW

Comes now, Scott Wayne Ellison, the Appellant in this Appeal for Post Conviction Relief, with the assistance of another, due to the documented severe mental and emotional disorders, and inability to differentiate between reality and hallucinations, as shown by the Mental Health records from the United States Air Force and the Veterans Administration. These records conclusively demonstrate that the Appellant was mentally unfit to stand trial by law; and that the current convictions are illegal under Montana Law, and should be vacated with the proper relief herein granted. See MCA: §53-21-101, et seq., Treatment of the Seriously Mentally Ill.

Due to the Appellant's memory loss and lapses concerning the 'alleged incidents' of criminal behavior, and the fact that the documentation confirms this; and the negligence of his then wife, who was ordering his medications from two separate sources, and only supplying the Appellant with a small amount of medication.

It is documented herein that the Appellant's then wife, was being paid to be his 'care-giver', and that the Appellant relied on her to maintain the Appellant's Health and Welfare, and to make decisions for the Appellant.

It is documented from the record and the Appellant, that his wife told him to admit to the alleged crimes, whether they happened or not. The Appellant has no memory of the incidents, except for what she told him to say to authorities.

The Appellant will cite law in coordination with the facts that the Appellant, should never have been brought to trial, and that the Court could not claim 'Subject Matter Jurisdiction' over a mentally ill citizen of the State of Montana, as defined by state and federal law, as cited herein, as follows.

The Appellant Ellison was never legally fit to stand trial, as defined by Law, as demanded under Title 46, Chapter 14, Mental Competency of the Accused.

Under MCA: §46-14-101, Mental disease or disorder - purpose - definition, the law states:

(1) The Purpose of this section is to provide a legal standard of mental disease or disorder under which the information gained from examination of the defendant, pursuant to part 2 of this chapter, regarding a defendant's mental condition is applied. The court shall apply this standard.

(a) in any determination regarding:

- (i) a defendant's fitness to proceed and stand trial;
- (ii) whether the defendant had, at the time that the offense was committed, a particular state of mind that is an essential element of the offense, and

(b) at sentencing when a defendant has been convicted on a verdict of guilty or a plea of guilty or nolo contendere and claims that at the time of commission of the offense for which the defendant was convicted, the defendant was unable to appreciate the criminality of the defendant's behavior or to conform the defendant's behavior to the requirements of the law.

(2)

- (a) As used in this chapter, "mental disease or disorder" means an organic, mental, or emotional disorder that is manifested by a substantial disturbance in behavior, feeling, thinking, or judgment to such an extent that the person requires care, treatment, and rehabilitation.

Under MCA: §46-14-102, Evidence of mental disease or disorder or developmental disability admissible to prove state of mind, the law states:

"Evidence that the defendant suffered from a mental disease or disorder or developmental disease is admissible to prove that the defendant did or did not have a state of mind that is an element of the offense."

Under MCA: §46-14-103, Mental disease or disorder or developmental disability excluding fitness to proceed, states:

"A person who, as a result of mental disease or disorder or developmental disability is unable to understand the proceedings against the person to assist in the person's own defense may not be tried, convicted, or sentenced for the commission of an offense so long as the incapability endures."

The State of Montana was well aware of the Appellant's Mental disorder, and the cause of the disorder. Cascade County had records of the Appellant's Traumatic Brain Injury and inability to remember anything that was occurring. The State should have ordered a mental examination for fitness to stand trial under MCA: §§46-14-202 through §46-14-221, as demanded by law. See *Brady v Maryland*, 373 US 83, 83 S.Ct. 1194 (1963).

The Appellant's Defense Counsel was also aware of the Appellant's Mental Health Disability and inability to remember what was being alleged, which these attorney's were prejudicially ineffective, for not requesting a mental health, fitness to proceed examination of the Appellant. This clearly meets both prongs of *Strickland v Washington*, 466 US 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984), at 687; that defense counsel's performance was negligent, and thus "prejudiced" Mr. Ellison by this failure.

("To prove prejudice under both Brady and Strickland, a defendant must show "a reasonably probability" of a different outcome.") See United States v Dominguez-Benitez, 542 US 74, 82, 124 S.Ct. 2333, 159 L.Ed.2d 157(2004); United States v Bagley, 473 US 667, 682, 105 S.Ct 3375, 87 L.Ed.2d.481 (1985); See in State v Severson, 2024 MT 276, P43; and State v Lehrkamp, 2017 MT 203, ¶15.

The Appellant, Ellison, was clearly prejudiced by both State and defense counsel for denying Ellison a mental health examination, which would clearly show he was and still is unfit to stand trial due to the Traumatic Brain Injury which occurred while the Appellant was serving his country in the Military. The Appellant's wife, as his caregiver, was responsible for maintaining his Health and Safety, to himself and others. She failed to maintain his medication and in fact, was getting the Appellant's medication, of legal 'Meth' Methylphenidate, doubled, and only supplying the Appellant with just enough so that he was not able to remember or comprehend his day to day activity. Where the doubled up 'Meth' went to was never found.

This alone demanded a Competency examination of the Appellant, to establish Appellant Ellison's fitness to proceed, which by motion should have been filed by either the State or Defense Counsel. See MCA: §46-14-202, Examination of defendant.

- (1) If the defendant or the defendant's counsel files a written motion requesting an examination or if the issue of the defendant's fitness to proceed is raised by the court, prosecution, or defense counsel; the court shall appoint at least one qualified psychiatrist, licensed clinical psychologist, or advanced practice registered nurse, who may be or include the superintendent, to examine and report upon the defendant's mental condition.
- (2) The court may order the defendant to be committed to a hospital or other suitable facility for the purpose of the examination for a period not exceeding 60 days or a longer period that the court determines to be necessary for the purpose and may direct that a qualified, licensed clinical psychologist, or advanced practice registered nurse retained by the defendant be permitted to witness and participate in the examination.

(3) In the examination, any method may be employed that is accepted by the medical or psychological profession for the examination of those alleged to be suffering from mental disease or disorder.

(4)

(a) The cost incurred for an examination ordered under subsection (2) must be paid as follows:

(i) if the issue of the defendant's fitness to proceed was raised by the court or the examination was requested by the prosecution, the cost of the examination and other associated expenses must be paid by the court or, in district court proceedings, by the office of court administrator, except as provided in subsection (4)(a)(iv);

(ii) if the examination was requested by the defendant or the defendant's counsel, the cost of the examination and other associated expenses must be paid by the defendant or, if the defendant was represented by an attorney pursuant to the Montana Public Defender Act, Title 47, chapter 1, by the office of state public defender, except as provided by subsection (4)(a)(iv);

(iii) if the examination was jointly requested by the prosecution and defense, the cost of the examination and other associated expenses must be divided and paid equally by the court or, in district court proceedings, by the office of court administrator, and the defendant or, if the defendant was represented by an attorney assigned pursuant to the Montana Public Defender Act, Title 47, chapter 1, by the office of state public defender, except as provided in subsection (4)(a)(iv).

Montana Law is unambiguous concerning fitness to proceed at MCA: §46-14-221. Determination of fitness to proceed- effect of finding of unfitness- expenses.

(1) The issue of the defendant's fitness to proceed may be raised by the court, by the defendant or the defendant's counsel, or by the prosecutor. When the issue is raised, it must be determined by the court. If neither the prosecutor nor the defendant's counsel contest the finding of the report filed under 46-14-206, the court may make the determination on the basis of the report. If the finding is contested, the court shall hold a hearing on the issue.

(2)

(a) If the court determines that the defendant lacks fitness to proceed, the proceeding against the defendant must be suspended, except as provided in subsection (4), and the court shall commit the defendant to the custody of the director of the department of public health and human services to be placed in an appropriate mental health facility, as defined in 53-20-102, or residential facility, as defined in 53-20-102, of the department of public health and human services for as long as the unfitness endures or until disposition of the defendant is made pursuant to this section, whichever occurs first.

(3)

(a) The committing court shall, within 90 days of commitment, review the defendant's fitness to proceed. If the court finds that the defendant is still unfit to proceed and that it does not appear that the defendant will become fit to proceed within the reasonably foreseeable future,

the proceeding against the defendant must be dismissed, except as provided in subsection (4).

- (b) If the court determines that the defendant lacks fitness to proceed because the defendant has a mental disorder, the proceeding against the defendant must be dismissed and the prosecutor shall petition the court in the manner provided in Title 53, chapter 21, to determine the disposition of the defendant pursuant to those provisions.

The Appellant has shown the court the medical records, which verify his mental disorder caused by the Traumatic Brain Injury in the military, which causes his memory lapses and suicidal tendency at all times. This physical mental disorder can never be repaired, and is clear grounds for the court to vacate the underlying criminal charges. Charges that are unjust and unfair to a United States veteran, who cannot remember the crimes charged and only said what his wife told him to say, to admit wrongs he cannot remember. The Traumatic Brain Injury causes a form of amnesia and thusly the charges must be vacated by law, as held by both the Montana and U.S. Supreme Courts.

The Montana Supreme Court held in *State v Austad*, 197 Mont. 70, 78-79, 641 P.2d 1373 (Mont. 1982); which established the 'Dusky Standard' in Montana, See *Dusky v United States* (1960), 362 US 402, 80 S.Ct. 788, 4 L.Ed.2d 824; is sufficient in a case of any type of amnesia criminal case.

"The Dusky standard has been applied in the majority of federal cases in which a criminal defendant claimed amnesia rendered him unfit to stand trial."

Here the record is conclusive that the Appellant was unfit to stand trial, and even now he is unsure 'why' he is incarcerated, and becomes incoherent and suicidal without medication. And even then is (1) incapable of understanding the facts of his case, the nature of the charges against him, and understanding procedural and legal issues, or how to properly express them; (2) incapable of comprehending counsel pre-trial or being able to make rational and informed decisions upon counsel's advise; (3) incapable of communicating rationally and coherently.

The Appellant is the ultimate 'Yes Man', and will agree to anything presented, and not remember it the next day. Medical records confirm this inability to hold a thought or a memory, whether long term or short term for more than a few hours. The medical records confirm this inability to differentiate between what is reality, hallucination and 'implanted' false memory by suggestion, as done by his wife.

"In failing to obtain a psychological evaluation to establish that Campbell [like Ellison here] was unfit to stand trial"; See State v Campbell, 278 Mont. 236, 247, 924 P.2d 1304 (Mont. 1996). Counsel failed to evaluate the alleged victims, or object to the presentence sexual offender evaluation, without having the prior examination for fitness to stand trial.

The Appellant's Mental Health Disorders, as an ADA military veteran, are to be protected by law, as held in MCA:§49-1-201; Right to State Protection.

"Every person while within the jurisdiction of this State is entitled to its protection."

The Montana Commission on Human Rights has been notified of the State's negligence here.

Treatment of the Seriously Mentally Ill, under Montana Code Annotated are:

§§53-21-101 - 53-21-199

§53-21-122 - Petition for Commitment- filing of- initial hearing on.

§53-21-124 - Detention of respondent pending hearing or trial- jail prohibited.

§53-21-129 - Emergency situation- petition- detention.

§53-21-107 - Abuse and neglect of persons admitted to mental health facility prohibited- reporting- investigations.

§53-21-130 - Transfer or commitment mental health facility from other institutions.

§53-21-133 - Transfer to nonstate facilities.

§53-21-141 - Civil and legal rights of person committed.

The Appellant was unfit to stand trial as defined by federal and state statute below, as a mentally disabled veteran.

The following statutes and caselaw forbid the Appellant, as a defendant from standing trial.

MCA: §46-14-221(3)

(3)

(a) The committing court shall, within 90 days of commitment, review the defendant's fitness to proceed. If the court finds that the defendant is still unfit to proceed and that it does not appear that the defendant will become fit to proceed within the reasonably foreseeable future, the proceeding against the defendant must be dismissed, except as provided in subsection (4).

(b) If the court determines that the defendant lacks fitness to proceed because the defendant has a mental disorder, the proceeding against the defendant must be dismissed and the prosecutor shall petition the court in the manner provided in Title 53, chapter 21, to determine the disposition of the defendant pursuant to those provisions.

(c) If the court determines that the defendant lacks fitness to proceed because the defendant has a developmental disability as defined in 53-20-102, the proceeding against the defendant must be dismissed and the prosecutor shall petition the court in the manner provided in Title 53, chapter 20, to determine the disposition of the defendant pursuant to those provisions.

"has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding, and whether he has a rational as well as factual understanding of the proceedings against him."

State v Austad, 197 Mont. 70, 79, 641 P.2d 1373 (Mont. 1982). Citing Dusky v United States, 362 US 402, 80 S.Ct. 788, 4 L.Ed.2d 824(1960).

Appellant Ellison will never be fit to stand trial-

"In failing to obtain a psychological evaluation to establish that Campbell [like Scott Wayne Ellison here] was unfit to stand trial, and these deficiencies in counsel's performance prejudiced him and deprived him of a fair trial." Id Austad at 79.

The court abused it's discretion, where the Appellant is disabled under 53-20-102 MCA; by having a mentally incompetent to stand trial.

The Appellant's Mental Illness prevents him from recognizing the difference between reality and hallucinations, as documented by the federal government by the Veterans Hospital reports prior to, and after he was arrested.

The Appellant's 'mental illness' impaired the attorney client relationship as held in *Barret v Principi*, 363 F.3d 1316, 1321 (Fed. Cir. 2004):

- "1) direct results of a mental illness that rendered him... incapable of rational thought or deliberate decisionmaking, or incapable of handling his own affairs or unable to function in society, and when he is represented by counsel
- 2) the mental illness impaired the attorney-client relationship."

The Appellant has shown the negligence and prejudice by his attorney and the State, while qualifying as violations of United States Supreme Court, clearly established case law; under *Strickland v Washington*, 466 US 668, 694, 80 L.Ed.2d 674, 104 S.Ct. 2052 (1984), for Ineffective Assistance of Counsel; and *Brady v Maryland*, 373 US 83, 10 L.Ed.2d 215, 83 S.Ct. 1194 (1963), for suppression of known exculpatory evidence to the court by both.

Under *United States v Bagley*, 473 US 667, 682, 87 L.Ed.2d 481, 105 S.Ct. 3375 (1985), the courts have adopted the prejudice standard of *Strickland*, for claims under *Brady*. See *United States v Domínguez-Benitez*, 542 US 74, 82, 124 S.Ct. 2333 (2004).

The Appellant's "substantial rights" have clearly been affected by both the State of Montana, and the Appellant's defense counsel, who ignored the Appellant's documented mental illness, which clearly prejudiced the Appellant.

It is shown that there is "a reasonably probability" of a different outcome had the court been made aware of the Appellant's past and present mental illness, as a veteran of a foreign War. See United States v Dominguez-Benitez, 542 US 74, 82, 124 S.Ct. 2333, 159 L.Ed.2d 157 (2004); United States v Bagley, 473 US 667, 682, 105 S.Ct. 3375, 87 L.Ed.2d 481 (1985).

The present conviction from the Appellant's not guilty plea, can not be reasonably held to pass the KVI test, for Knowingly, Voluntarily, or Intelligently as demanded by the Supreme Court controlling clearly established precedent; and without full awareness of the consequences. See Blackledge v Allison, 431 US 63, 69, 97 S.Ct. 1621 (1977); also ~~United States v~~ Hyde, 520 US 670, 117 S.Ct. 1630 (1997).

The Appellant was not legally fit to stand trial based on the fact that the State and defense counsel knew of the Appellant's known Mental Illness. The Appellant plead not guilty only after his then wife and caretaker had convinced the Appellant of his guilt and to tell the interviewing police officer what she wanted him to say-this is while the Appellant was still receiving his medication. It was only after the Cascade County Detention Center refused his medications that he was aware of her deception, but was mentally unable to assist his attorney who refused to have a mental health and disability test done, for the Appellant to stand trial.

The Appellant was brain-washed to completely depend on his 'Care Giver' wife. She controlled and directed the Appellant's life, thoughts and medication. The Appellant only admitted guilt because she directed him to, as a way of removing him from her life, and maintain his Veteran's and Military benefits.

Tasia Ellison wanted to be separated from a mentally ill husband. The Appellant does not remember any incidents, and believes that she implanted the memory, by suggestion. The Appellant had been 'programmed' to obey orders, which Tasia knew and used to her advantage. She grew to disrespect the Appellant after the Traumatic Brain Injury changed him. Tasia was retaliating against Scott for the eight years she 'had' to care for a mentally ill husband, the mental health records confirm this, which is strictly illegal, per MCA: §49-2-301 - Retaliation prohibited.

"It is an unlawful discriminatory practice for a person, educational institution, financial institution, or governmental entity or agency to discharge, expel, blacklist, or otherwise discriminate against an individual because the individual has opposed any practices forbidden under this chapter or because the individual has filed a complaint, testified, assisted, or participated in any manner in an investigation or proceeding under this chapter."

See MCA: §49-2-308, Discrimination by the state.

(1) It is an unlawful discriminatory practice for the state or any of its political subdivisions:

(a) to refuse, withhold from, or deny to a person any local, state, or federal funds, services, goods, facilities, advantages, or privileges because of race, creed, religion, sex, marital status, color, age, physical or mental disability, or national origin, unless based on reasonable grounds;

- (b) to publish, circulate, issue, display, post, or mail a written or printed communication, notice or advertisement which states or implies that any local, state, or federal funds, services, goods, facilities, advantages, or privileges of the office or agency will be refused, withheld from, or denied to a person of a certain race, creed, religion, sex, marital status, color, age, physical or mental disability, or national origin or that the patronage of a person of a particular race, creed, religion, sex, marital status, color, age, or national origin or possessing a physical or mental disability is unwelcome or not desired or solicited, unless based on reasonable grounds;
- (c) to refuse employment to a person, or bar a person from employment, or to discriminate against a person in compensation or in a term, condition, or privilege of employment because of that person's political beliefs. However, this prohibition does not apply to policymaking positions on the immediate staff of an elected officer of the executive branch provided for in Article VI, section 1, of the Montana Constitution, to the appointment by the governor of a director of a principal department provided for in Article VI, section 7, of the Montana Constitution, or to the immediate staff of the majority and minority leadership of the Montana legislature.

("research shows that veterans who have been deployed are more likely than civilians to experience mental health conditions or cognitive injuries." See, e.g. RAND, Veterans mental health issues (2023); [http://www.rand.org/healthcare/projects/navigating-mental-health-care-for-veterans.](http://www.rand.org/healthcare/projects/navigating-mental-health-care-for-veterans)") Powers v. McDonough, 2024 U.S. Dist. Lexis 90963.

The Appellant's mental illness was manifested during military service and was apparently triggered by the stress of his wife's failure to escort and attend the required mental and medical appointments and also her failure to maintain the Appellant's proper medication, which she was 'doubling' up on from the V.A. and the Air Force—most notably the 'Meth' drugs [Methylphenidate; Ritalin; Concerta; Amphetamine/Dextroamphetamine].

Tasia stopped giving the daily required written instructions for each day and left him at home without his medications and without a cognizable purpose, which caused his mental breakdown and malfunctions from the Traumatic Brain Injury. and to 'think and act' contrary to allowed actions.

The Appellant's underlying charges should be vacated and the Appellant should rightfully be placed in the care of the Doris Miller V.A. Medical Center in Waco, Texas, close to his family, and relieving Montana of this unlawful burden.

MCA: §49-2-402 "Reasonable" to be strictly construed."Any grounds urged as a "reasonable" basis for an exemption under any section of this chapter shall be strictly construed."

28 CFR § 35.108 Definition of "disability."

(a)

(1) Disability means, with respect to an individual:

(i) A physical or mental impairment; that substantially limits one or more of the major life activities of of such individual;

(ii) A record of such an impairment; or

(iii) Being regarded as having such an impairment as described in paragraph (f) of this section.

(b)

(1) Physical or mental impairment means:

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems, such as:
neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, immune, circulatory, hemic, lymphatic, skin, and endocrine; or

(ii) Any mental or psychological disorder such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disability..

(2) Physical or mental impairment includes... orthopedic... intellectual disabilities... emotional illness... specific learning disability, and Attention Deficit Hyperactivity Disorder...

(c)

(1) Major life activities include; but are not limited to:

(i) Caring for oneself, performing manual task... sleeping, walking, standing, sitting... learning, reading, concentrating, thinking, writing, communicating, and interacting with others.

28 CFR § 35.178 State immunity.

"A state shall not be immune under the eleventh amendment to the Constitution of the United States from an action in Federal or State court of competent jurisdiction for a violation of the requirements of this Act.

28 CFR § 35.152 Jails, detention and correctional facilities, and community correctional facilities.

(a) General. This section applies to public entities that are responsible for the operation or management of adult and juvenile justice jails, detention and correctional facilities, and community correctional facilities, either directly or through contractual, licensing, or other arrangements with public or private entities, in whole or in part, including private correctional facilities.

(b) Discrimination prohibited.

(1) Public entities shall insure that qualified inmates or detainees with disabilities shall not, because a facility is inaccessible to or unusable by individuals with disabilities, be excluded from participation in, or be denied the benefits of, the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity.

The following are the applicable Congressional Statutes that are relevant for the courts review.

Title 42: Public Health and Welfare.

(§§ 12101-12213)

§ 12102. Definition of disability

§ 12131. Definition (Defining Public Entity)

(i) Public Entity. The term "public entity" means —

(A) Any State or local government

§ 12132. Discrimination

§ 12182. Prohibition of discrimination by public accommodations

(a) General rule. No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation.

(b) Construction.

(1) General prohibition.

(A) ~~Activities.~~

(ii) Participation in unequal benefit. It shall be discriminatory to afford an individual or class of individuals, on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements with the opportunity to participate in or benefit from a good, service, facility, privilege, advantage, or accommodation that is not equal to that afforded to other individuals.

The Appellant was not given the benefits of effective counsel, or fair tribunal.

§ 12202. State immunity.

"A State shall not be immune under the eleventh amendment to the Constitution of the United States from an action in [a] Federal or State court of competent jurisdiction for a violation of this Act. In any action against a State for a violation of the requirements of this Act, remedies including both at law and in equity are available for such a violation in action against any public or private entity other than a State."

§ 12203. Prohibition against retaliation and coercion.

- (a) Retaliation. No person shall discriminate against any individual because such individual has opposed any act or practice made unlawful by this Act or because such individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this Act.
- (b) Interference, coercion, or intimidation. It shall be unlawful to coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by this Act.
- (c) Remedies and procedures. The remedies and procedures available under sections 107, 203, and 308 of this Act [42 USCS §§ 12117, 12133, 12188] shall be available to aggrieved persons for violations of subsection (a) and (b), with respect to Title I; Title II, and Title III [42 USCS §§ 12111 et. seq., 12131 et. seq., 12181 et. seq.], respectively.

The Appellant's First, Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments have been clearly violated, as guaranteed by the United States Constitution; as well as the same Rights in the Montana Constitutions, Declaration of Rights; Article II, Sections §§11, 17, 24, 25, and 28.

Based on the Law presented here, in cooperation with the attached Brief and Exhibits in Support of Appeal there is just cause to vacate this matter.

Relief

The Appellant has no recollection or memory of the alleged crimes, and as such only request that based on the Law that his conviction be vacated and he be placed into the custody of the Doris Miller V.A. Medical Center in Waco, Texas for further treatment and care, close to his family, and relieving Montana of this unlawful burden.

Dated this 10th day of April, 2025.

Scott Wayne Ellison
Scott Wayne Ellison
Pro Se Appellant

CERTIFICATE OF COMPLIANCE

Per Rule 16(3) MT.R.A.P.


I, Scott Wayne Ellison, hereby certify that I am trying to comply with the Rules of Appellate Procedure to the best of my limited layman's ability.

I am only supplied with very antiquated typewriters, that are checked out to me on a daily bases, and I am Not given the same typewriter.

Due to this I am limited on what these typewriters can do, I am limited to 1½ spacing, and set tabs on most of them. I am limited to copies at the library, who many times is closed on the one day I have access, for approximately one hour only.

I do not have access to a proper legal library and must rely on others to assist me, and ask that you please construe this filing liberally, and not hold me to a lawyers standards, due to my limited access to the means offered others, who are Not incarcerated and file Pro se pleadings.

Dated this 10th day of April, 2025.


Scott Wayne Ellison
Pro Se Appellant

CERTIFICATE OF SERVICE

I certify that I filed this

Petition

Motion

Other Opening Brief Addendums and Appendices
[Name of document]

with the Clerk of the Montana Supreme Court and that I have mailed or hand delivered a copy to each attorney of record and any other party not represented by counsel as follows:

Austin Knudsen - Montana Attorney General
[Name of opposing counsel]

P.O. Box 201401

Helena, Mont. 59620-1401
[Address]

Counsel for State of Montana

[Other party representing himself or herself]

[Address]

DATED this 10th day of April, 2025.

Scott Wayne Ellison
[Signature]

Scott Wayne Ellison
[Print name]

