

ORIGINAL

FILED

07/03/2025

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: OP 25-0469

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. OP 25-0469

BLAINE ALLEN GIACHINO

FILED

Petitioner,

JUL 03 2025

v.

Bowen Greenwood
Clerk of Supreme Court
State of Montana

TWENTY FIRST JUDICIAL DISTRICT COURT, RAVALLI COUNTY,
HON. JENNIFER B. LINT,

Respondent.

PETITION FOR WRIT OF SUPERVISORY CONTROL

Blaine Allen Giachino
Appearing without an attorney
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STANDARD OF REIVEW

Petitioner moves this Court to exercise supervisory control pursuant to Montana Rule of Appellate Procedure 14(3) and reverse the Order Denying Waiver of Fees and Costs. A writ of supervisory control is an appropriate remedy when a case involves purely legal questions and urgent factors are present. Mont. R. App. P. 14(3), *Barrus v. Mont. First Jud. Dist. Ct.*, 2020 MT 14, ¶ 17, 398 Mont. 353, 456 P.3d 577.

Such a case also requires one of the following factors to be present: (1) The district court must be proceeding under a mistake of law causing gross injustice; (2) the case involves constitutional issues of statewide importance; or (3) at issue is the grant or denial of a motion for substitution in a criminal case. Mont. R. App. P. 14(3)(a)-(c). The sole issue in this case— whether a District Court can deny a Waiver of Fees and Costs for an appeal of an implied consent drivers' license suspension, is a purely legal question. MCA § § 61-8-1016(4)(c)(1) (2023), 61-8-1017, 25-10-404.

Here, the question at issue is a purely legal question, and urgency factors are present. Here, the district court is proceeding under a mistake of law that is causing gross injustice. Furthermore, Petitioner, because his filing was not accepted due to

denial of the Waiver of Fees and Costs, has no remedy on appeal. In sum, this case qualifies for a writ of supervisory control.

PROCEDURAL HISTORY

On May 30th, 2025, Petitioner was arrested for Driving under the Influence 1st Offense, a violation of MCA § 61-8-1002(1)(a). The Trooper of the Montana Highway Patrol seized the Petitioner's drivers' license, claiming a refusal to submit to tests. MCA § 61-8-1016(4)(c)(i). As of the date of this filing, Petitioner has received no discovery concerning the alleged implied consent refusal. On June 7th, 2025, Petitioner appeared before Ravalli County Justice Court Judge Scott Burlingham, entered not guilty pleas, and was appointed a public defender. Following the arraignment, Petitioner was determined to be eligible for services by the Montana Office of State Public Defender.

On June 18th, 2025, Petitioner filed a Petition to appeal the administrative drivers' license suspension arising from the alleged May 30th DUI. **Exhibit 1.** At present and at the time of the filing of the Petition, Petitioner is unemployed and has less than \$100 to his name. Along with the Petition, Petitioner completed and filed a "Statement of Inability to Pay Court Costs and Fees," and a proposed "Order Regarding Statement of Inability to Pay Costs and Fees," two standard forms published by Montana Legal Services Association for the benefit of self-represented litigants. **Exhibit 2.**

As justification, Petitioner marked the first box “I am represented by an entity that provides free legal services to low-income persons,” as Petitioner is being represented by the Montana Office of State Public Defender on the collateral criminal case. On June 19th, 2025, District Judge Jennifer B. Lint issued an Order Denying Waiver of Fees and Costs. In the Order, Judge Lint provided as the reason for denial “Petitioning for license reinstatement is a voluntary proceeding.” June 19th Order on Inability to Pay Court Costs and Fees. **Exhibit 3.**

On June 26th, to provide justification for the Waiver of Fees and Costs, Petitioner filed a new Statement of Inability to Pay Court Costs and Fees, providing complete income and expense information rather than checking one of the boxes on the first page of the Statement of Inability to Pay. **Exhibit 4.** The same day, the new Statement of Inability to Pay Court Costs and Fees was summarily rejected by the clerk, and the case closed. On July 1st, Petitioner filed this Writ of Supervisory Control seeking relief from the court’s order denying Waiver of Fees and Costs

STATEMENT OF THE ISSUE

Can a District Court deny a Waiver of Fees and Costs for a “voluntary proceeding,” including an appeal of an implied consent administrative driver’s license suspension?

ARGUMENT

I. The District Court Erred by Denying Petitioner’s Waiver of Fees and Costs Without Justification from Statute or Precedent

The Montana Constitution provides that:

“Courts of justice shall be open to every person, and speedy remedy afforded for every injury of person, property, or character . . . Right and justice shall be administered without sale, denial, or delay.”

Mont. Const. Art. II § 16

Montana, since its early history as a Territory, has provided litigants with the ability to commence an action without the prepayment of costs for those unable to pay. *Deschamps v. Mont. Twenty-First Jud. Dist. Ct.*, 2024 MT 15, ¶ 14, 415 Mont. 94, 542 P.3d 392. The Montana Legislature has enacted and amended MCA § 25-10-404, which provides the statutory framework for the waiver of fees and costs and directs the Montana Department of Justice to furnish a form for litigants to apply for a fee waiver. *Deschamps*, ¶ 15.

MCA § 25-10-404 provides that:

- (1) Except as provided in subsections (3) and (6), a person may request a waiver of fees by filing an affidavit, supported by a financial statement, stating that

the person has a good cause of action or defense and is unable to pay the costs or procure security to secure the cause of action or defense.

Subsection 6, relating to the waiver of costs for persons under Department of Corrections custody is not relevant to this case. Subsection 3 provides that a person may skip the financial statement if they are represented by an entity providing free legal services to low-income persons. MCA § 25-10-404(3). Petitioner filed his Statement of Inability to Pay Costs and Fees pursuant to subsection 3.

The statute further provides that:

Except as provided in subsections (2) and (6), upon issuance of an order of the court or administrative tribunal approving a request for waiver of fees, the person may commence and prosecute or defend an action in any of the courts and administrative tribunals of this state and the officers of the courts and administrative tribunals shall issue and serve all writs and perform all services in the action without demanding or receiving their fees in advance, except the fees under 25-1-201(1)(d) and (1)(r).

Reading this statute, the Legislature has exempted certain fees from the scope of a Fee Waiver. Those fees include preparing copies of papers on file for criminal and civil cases, and for the filing of any pleading by fax. MCA § 25-1-201(1)(d), (1)(r). By the plain text of the statute, “Voluntary proceeding[s]” are not exempted from a Waiver of Fees and Costs.

In addition, most civil proceedings are “voluntary,” from an unhappy spouse petitioning for a divorce, to an individual seeking to collect money owed. “Cause of action,” in the plain text of the statute, would be referring to the class of litigants

who are initiating an action, as opposed to those responding and defending against an action. Thus, the statute contemplates, by its plain text, that litigants who initiate an action, by their voluntary choice, are entitled to a Waiver of Fees and Costs upon a proper showing of inability to pay.

In summary, the Montana Legislature, as indicated by the plain text of the relevant statutes, has not made any distinction regarding civil actions entitled to waiver of costs, including those that are “voluntary.” Thus, the District Court is operating under an error of law, and has denied Petitioner a Waiver of Fees and Costs that he is entitled to under law.

II. The *Ultra Vires* Denial of Petitioner’s Waiver of Fees and Costs has Caused a Gross Injustice

Montana’s Implied Consent law authorizes law enforcement officers to request a driver submit to tests to detect the presence of alcohol and/or drugs when the officer has particularized suspicion that the driver has driven or was in actual physical control of a motor vehicle while under the influence of drugs and/or alcohol. MCA § 61-8-1016(1)-(2) The statute further directs law enforcement officers to seize a driver’s license upon a refusal to submit to the tests, and give the individual notice of the suspension, along with their right to a hearing. MCA § 61-8-1016(4)(c)(i)-(ii). The right to a hearing of the suspension includes judicial determination of whether the officer had a proper basis for requesting a test, along

with whether the petitioner failed to submit to one or more tests. MCA § 61-8-1017.

The administrative license suspension is a summary proceeding, generally conducted by law enforcement officers during booking and on the road. The right to appeal the administrative suspension provides a process where a detached and neutral magistrate may determine whether proper grounds exist for the suspension. In addition, the right to appeal provides the only avenue for any meaningful adversarial testing of the State's allegations against the licensee.

Petitioner is indigent and has been denied a Waiver of Fees and Costs. As a result, the Petitioner has been deprived of the opportunity for judicial review of the administrative license suspension. Thus, the deprivation of judicial review based on an *ultra vires* application of MCA § 25-10-404 has caused a gross injustice.

CONCLUSION

The District Court has denied Petitioner's Waiver of Fees and Costs and has justified the denial without any support in statute or precedent. The *ultra vires* denial prevents Petitioner, who is indigent, without a way to exercise his right to appeal his drivers' license suspension. This Court should (1) grant this Petition (2) order the District Court to retroactively reverse its June 19th Order on Inability to Pay Court Costs and Fees, so that Petitioner's Petition to Reinstate Driving

Privileges will have a filing date within the 30-day window allowed for appeal, and
(3) order any other relief just and necessary.

DATED this 1st Day of July, 2025

A handwritten signature in blue ink, reading "Blaine Allen Giachino", written over a horizontal line.

Blaine Allen Giachino, Petitioner

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this Petition is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double-spaced except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word for Windows is 1,622 words, excluding certificate of service and certificate of compliance.

A handwritten signature in blue ink, reading "Blaine Allen Giachino", written over a horizontal line.

Blaine Allen Giachino

CERTIFICATE OF SERVICE

I, Blaine Allen Giachino, hereby certify that I have served true and accurate copies of the foregoing Petition - Writ to the following on 07-01-2025:

William "Bill" Fulbright (Govt Attorney)
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Representing: MT DOJ/Motor Vehicle Div.
Service Method: Conventional

Hon. Jennifer B. Lint (Respondent)
205 Bedford St. Ste. B
Hamilton, MT 59840
Representing: Self-Represented
Service Method: Conventional



Blaine Allen Giachino