FILED
07/14/2025
Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA
Case Number: OP 25-0499

Neil Lynn Nunes
50 Crossroads Drive
Shelby, MT 59474

ORIGINAL

FILED
JUL 14 2025
Bowen Greenwood
Clerk of Supreme Court
State of Montana

IN THE SUPREME COURT OF THE STATE OF MONTANA

NEIL LYNN NUNES, Petitioner, vs. WARDEN GODFREY, Respondent.	)	CAUSE NO. 25-0499 PETITION FOR WRIT OF HABEAS CORPUS

COMES NOW, the above-named Petitioner, Neil Nunes, by and through himself, pro se, and files with this Court this Petition For Writ Of Habeas Corpus.

PETITION

1.) Name of the state district court that entered judgment being challenged: Montana Ninth Judicial District Court.

2.) Date written judgment was entered or sentencing date: On or about April 12, 2021.

3.) What was the conviction: Tampering With Witness 45-7-206, MCA, 2 counts.

4.) What was the sentence imposed: 20 years MSP, 10 suspended.

5.) What was the plea: Not guilty.

6.) Was there appeal of the sentence or conviction: Yes, DA 21-0454.

7.) Was relief applied for to the Sentence Review Division: No.

8.) Did Petitioner file for writ of certiorari in the U.S. Supreme Court: No.

9.) Did Petitioner file for post conviction relief in state district court: Yes, DC-19-28, DC-19-31, and DC-20-01.

10.) Did the Petitioner appeal the denial of any post conviction relief: Yes.

11.) If the Petitioner did not appeal the denial of any post conviction, explain briefly why not: N/A.

12.) Has the Petitioner filed in the Montana Supreme Court a petition for writ of habeas corpus: Yes, OP 24-0244, and OP 21-0078.

BACKGROUND

On or about December 16th, 2019, the Petitioner had his current ongoing criminal charges amended, adding one count of Intimidation under § 45-5-203, MCA, and two counts of Tampering with a Witness under § 45-7-206, MCA, and one count Criminal Contempt under § 45-7-309, MCA. All new charges were based on an already charged P.M.F.A. that was directly related to an incident in which the Petitioner's ex-wife's new boyfriend pointed a gun at the Petitioner.

The State claimed that the Petitioner violated the Court's restraining order issued on the day the Petitioner was criminally charged with misdemeanor P.M.F.A., on December 11th, 2019. The Petitioner was never served said restraining order and the State

never provided proof that it was.

The Petitioner was convicted at trial.

LEGAL QUESTION(S)

1.) Did the trial court abuse it's discretion when it failed to specify it's reason(s) for a overly harsh sentence?

2.) Did the trial court properly interpret the statutory language of § 45-7-206, MCA?

3.) Dose the filing of a Leave To File Information, and the filing of Officially charged criminal allegations mean legal proceedings have been commenced (*emphasis added*)?

STANDARD OF REVIEW

This Court should review this Petition under the Plain Error Doctrine. Plain Error review requires a defendant to show an error that is (1) a clear and obvious one (2) that affects his substantial rights. If a Petitioner can demonstrate these elements, an appellant court, in its discretion, remedy the error. Since said error affects the fairness, integrity, and public reputation of judicial proceedings.

I. Trial Court Abused It's Discretion By Failing To Specify It's Reason(s) For The Imposition Of Overly Harsh Sentence, For A Crime Developed During Custodial Dispute, When Feelings Are Sensitive.

The Petitioner argues to this Court that the State's actions of overcharging an offense, or "upgrading" an offense, such as a "violation of a restraining order" to a more severe criminal charge such

as in this case, a charge of "Tampering with a Witness," based on the behavior of "slapping a counter" when a Father in a custodial duspute is upset is an extreme violation of the Petitioner's constitutional right to be free from cruel and unusual punishment. The court could have easily recognized that the Mother most likely sought charges as a means of manipulating the custodial dispute, and to harm her ex-husband. This is a reasonable possibility the court should have reached on its own prior to trial by jury, and once convicted, the court should have weighed all possibilities, and the correction of a criminal's behavior, not impose a life altering sentence which completely dismantles the Petitioner's life. The sentence, as well as the charges are simply disproportional to the crimnal act, and are not articulated in the records.

The Petitioner agrues that the legal reading of the violation of a restraining order statute, and the legal reading of Tampering with a witness clearly demonstrate the State's vindictive actions. Since the elements in Tampering with a Witness do not match the crime. Yet the elements of Violation of a Restraining Order much more closely meet the elements of the crime. Thus, demonstrating a vindictive prosecution not checked by the controling court.

The United States Supreme Court established a prophlactic rule of presumptive vindictiveness, requiring that whenever a judge imposes a more severe sentence upon a defendant, the reason for him doing so must affirmatively appear in the record. In this matter it does not, and clearly the crime does not match the sentence.

STATUTORY INTERPRETATION OF STATUTE

"45-7-206 Tampering with Witnesses and Informants. (1) A person commits the offense of tampering with witnesses and informants if, believing that an official proceeding or investigation is pending, or about to be instituted (*emphasis added*).

Often when a defendant acts in ways that violate State criminal law, the State must demonstrate that the statutory construction of a law is not overly broad or incorrectly interpreted by the State court. Therefore, the State cannot claim a slight inkling of a violation of a state law, or narrow an edge for a criminal defendant to walk. That criminal defendant has no hope of being found not guilty of a crime. Essentially, to allow a government agency to show only a mere possibility that a communication would have occurred with governmental agents if the defendant's actions had not stopped that communication from occurring. Clearly, in a case where a criminal "victim" contacts law enforcement Officer's within minutes of an alleged act of witness tampering then the act of witness tampering did not occur, but merely was an attempt to witness tamper at best. Thus, the State agency has essentially been allowed to "water down" a criminal statute to a point where the statute is overly-broad, and no longer corresponding with the actual written interpretation of said law.

This Court is likely quite knowledgeable of the "possibility" standard. The "possibility" standard would weaken or eliminate the

independent force of the statutory requirement that the defendant, must intend to prevent communication with law enforcement, defining "law enforcement officer" as "an officer or employee of the government". Duncan v. Walker, 533 U.S. 167, 174, 121 S. Ct. 2120 150 L. Ed. 2d 251. Clearly the Court must give effect to "every clause and word of a statute." Ratzlaf v. U.S., 510 U.S. 135, 140-41, 114 S. Ct. 655, 126 (expressing particular reluctance to "treat statutory terms" as "surplusage" when the words describe an element of a crime.

II. Initiating of Criminal Proceedings.

"An affidavit, complaint, indictment, or information which accuses the defendant or accused with the commision of a specified crime or offense and states the crime or offense in sufficient particulars to advise the defendant or accused of the acts or omissions for which he is being brought into court; a count is an indictment or information charging two or more crimes or offenses. The popular understanding of the term "criminal charge" is "accusation," and it is freely so used in conversation and in the newspapers, but in legal phraselogy it is properly limited to such accusations as have taken shape in a prosecution. In the eye of the law, a person is charged with crime only when he is called upon in a legal proceeding (*emphasis added*). Ballentines Law Dictionary, Criminal Charge; See also United States v. Patterson, 150 U.S. 65, 68, 37 L. Ed., 1000, 14 S. Ct. 20.

"Praemunire - Originated from the exorbitant power claimed and exercised in England by the Pope of Rome, and it took its name from the words of the writ which initiated a prosecution (*emphasis added*). Ballentines Law Dictionary.

In this Petition For Writ Of Habeas Corpus, the Petitioner asks this Court to first reach the legal conclusion of what the term "pending legal proceeding" legally stands for, and at which time has the criminal proceeding reached the legal standard to have been "commenced," and no longer "capable of interference," or, i.e...when does the State go before a court impowered with judicial review of a Petition for Leave to file a criminal charge, and declare that the State has developed enough evidence as to establish said criminal charge. Furthermore, this Court must fully recognize that rules of evidence do not allow the State to depend its application for leave to file a criminal charge on the testimony of one "witness," or one "victim." The State must base its case on a preponderance of the evidence. Especially since the State has repeatedly, and in violation of a criminal defendant's rights to confront said criminal's victims pursued domestic violence cases when no victim can be found or when a victim cannot be found. This legal theory is reached simply based on the expectation that the State has developed its case to a point which the State can support it's criminal allegations with no victim present. The State cannot in one case claim itself capable of this type of conviction, and then claim to, as in this case, to have a case so vulnerable to damage from a criminal defen-

dant, that any comments or victim contact would disrupt it's case so adversly as to make the case untriable before a jury. The State cannot have its cake and eat it too. At which point does the scales of justice tip in favor of the protection of the constitutional rights of a criminal defendant? At some point that scale must tip away from a ambicious prosecutor's hopes for a higher position, and the State's massive resources. The State cannot be allowed to dirty the Courts via it's one way standard of the interpretation of the law.

Thus, the Petitioner asks this Court as what time does the term "commenced," and "legal proceeding" as listed in the statutory interpretation of Montana's Tampering with Witnesses § 45-7-206, MCA, engage? As in at what time has the legal proceeding begun? This question is a question which this Court has strict legal authority to decide since when a statute uses a broad term, it is necessary that the Court, as an instrument of government, fill in the factors which govern the proper determination of the questions presented. This determination is not conclusive on the Court's because it is a question of law, i.e...the legislative intention of the interpretation of the statute.

CLOSING

In closing the Petitioner PRAYS this Court to outright DISMISS the criminal conviction of the Petitioner, based on the constitutional violations.

AND/OR

ORDER further evidentiary proceedings in this matter.

DATED this 19th day of June, 2025.

Neil L. Nunes

CERTIFICATE OF SERVICE

I, Neil Nunes, hereby swear that a true and correct copy of this Petition For Writ Of Habeas Corpus was served on the following via U.S. Mail:

Austin Knudson
Montana Attorney General
P.O. Box 201401
Helena, MT 59620-1401

DATED this 19th day of June, 2025.

Neil L. Nunes