

* * * * NO.18-9561 * * * *

* * IN THE SUPREME COURT OF THE UNITED STATES * *

In Re Benny Stewart

Petitioner

V.

Tim Fox, Attorney General and The State of Montana Respondents

* * * PETITION FOR REHEARING * * *

BENNY STEWART # 3007159
3800 Ulm North Frontage Road
Great Falls, Montana 59404

GROUNDS PRESENTED

I. Judicial Bias

II. Potential Judicial Bias

III. Judicial Bias -- Fraud on the Court

Judge Newman served as an advocate for the State in the very case that he adjudicated. Judge Newman reviewed application for search warrant and then issued a search warrant that did comply with the U.S. Constitution Fourth Amendment. A significant personal involvement in a critical decision in the accusatory process. It set in motion a host of constitutional violations which he allowed at trial, (Actual Bias.) He also reviewed an application for leave to file an information by affidavit, then he granted leave to file an information charging with the offence that led to a conviction, a significant personal involvement in a critical decision in the accusatory process. Judge Newman sat in judgement in petitioner's trial where he guided the proceeding to a conviction. Actual bias and potential bias is too high to be constitutionally tolerable.

Petitioner did not have a fair trial in a fair tribunal by an impartial judge, the basic requirement for due process.

A disinterested and neutral judge would have adhered to the U.S. Constitution requirements and the constitutional violations would not have occurred. He would have recused from petitioner's trial after having been a part of the accusatory process. There was no forensic evidence, only speculation and hearsay. The sole basis of the trial was speculation and hearsay. A disinterested and neutral judge would have dismissed the charge.

The facts underlying petitioner's claim could not have been discovered previously through the exercise of due diligence and if proven and reviewed in the light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found petitioner guilty of the underlying offense.

Judge Brad Newman, formerly a prosecutor turned elected judge, campaigned on his record as prosecutor for prosecuting more sex offenders than his opponents and that he would do the same as judge. By the very nature of the offense in which the petitioner is charged, Judge Newman could not be wholly disinterested in the petitioner's case.

Due process guarantees an absence of actual bias on the part of a judge. Bias is easy to attribute to others and difficult to discern in oneself. To establish an enforceable and workable framework, the U.S. Supreme Court's precedents apply an objective standard that, in the usual case, avoids having to determine whether actual bias is present. The Court asks not whether a judge harbors an actual subjective bias, but instead whether, as an objective matter, the average judge in his position is likely to be neutral, or whether there is an unconstitutional potential for bias. An unconstitutional potential for bias exists when the same person serves as both the accuser and the adjudicator in a case.

This objective risk of bias is reflected in the due process maxim that no man can be a judge in his own case and no man is permitted to try cases where he has an interest in the outcome. An unconstitutional failure to recuse constitutes structural error that is "not amendable" to harmless-error review. (Kennedy, J. joined by Ginsburg, Bryer, Sotomayor, and Kayken, JJ.)

HARMLESS ERROR -- STRUCTURAL ERROR -- Headnote:

Some error should not be deemed harmless beyond a reasonable doubt. these errors have come to be known as structural errors. The purpose of the structural error doctrine is to ensure insistence on certain basic, constitutional guarantees that should define the framework of any criminal trial. Thus, the defining feature of a structural error is that it affects the framework within which the trial proceeds, rather than being simply an error in the trial itself. For the same reason, a structural error defies analysis by harmless error standards. (Kennedy, J. joined by Roberts, Ch. J., and Thomas, Ginsburg, Sotomayor, and Gorsuch, JJ.)

The Due Process Clause has been implemented by objective standards that do not require proof of actual bias to justify recusal of a judge. In Defining standards, a court asks whether, under a realistic appraisal of psychological tendencies and human weakness, the interest poses such a risk of actual bias or prejudgment that the practice must be forbidden if the guarantee of due process is to be adequately implemented. (Kennedy, J., joined by Stevens, Slouter, Ginsburg, and Breyer, JJ,)

L Ed Digest: Judges § 10

A judge shall avoid impropriety and the appearance of impropriety. A test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality and competence is impaired. (Kennedy, J., joined by Stevens, Souter, Ginsburg, and Breyer, JJ.)

L Ed Digest: Constitutional Law § 843

Every procedure which would offer a possible temptation to the average man as a judge to forget the burden of proof required to convict the defendant, or which might lead him not to hold the balance nice, clear, and true between the State and the accused, denies the latter due process of law. (Kennedy, J., joined by Stevens, Souter, Ginsburg, and breyer, JJ.)

IN RE Murchison 99LED 942,349 US 133 (1955)
Caperton V. A.T. Massey coal Co. 173 LED 2d 1208, 556 U.S. 868 (2009)
Treeance Williams V. Pennsylvania 136S.CT. 1899;195 L.E.D. 2d 132;
U.S. 224 15-5040 (2016)
Micheal Damon Ripppo V. Renne Baker 137S CT 905;197 LED 2d 176 2017
US Lexis 1571; 85 US L.W. 4095 (2017)

REASONS FOR GRANTING PETITIONS

To the best of petitioners Knowledge, petitioner has complied with 28 USC § 2254, 28 USC § 2244, A.E.D.P.A and has cited clearly established United States Supreme Court precedent for purposes of A.E.D.P.A. review

Petitioner has shown that exceptional circumstances warrant the exercise of the Court's discretionary powers and that adequate relief cannot be obtained in any other form or from any other Court. To the best of petitioner's knowledge, petitioner has complied with the rules of this Court.

Petitioner can show by documentation that the search warrant is false and misleading and that Judge Brad Newman conspired with detectives and prosecutors to commit fraud on the Court in order to secure a conviction. The supporting documents have been requested from BATF, Butte Police Department and Butte City Business license Department.

It would be a miscarriage of justice if petition was not granted. Petitioner is innocent of the offense charged.

CONCLUSION

The petition for rehearing should be granted and the Writ of Habeas Corpas adjudicated on the merits to preserve fairness, integrity and public reputation of judicial proceedings.

Respectfully submitted, Benny Stewart
Benny Stewart

October 11, 2019