

19 - 5242 ORIGINAL
No. 19 - 5242

IN THE
SUPREME COURT OF THE UNITED STATES

District of Columbia, D.C.

FILED
MAY 24 2019
OFFICE OF THE CLERK
SUPREME COURT, U.S.

Charles E. Clary — PETITIONER
(Your Name)

vs.

Tim Fox, Mike McGrath, et. al. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Montana Supreme Court, Ninth Judicial District Court, Toole County
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Charles E. Clary #3002068
(Your Name)

700 Conley Lake Rd.
(Address)

Deer Lodge Montana 59722
(City, State, Zip Code)

Not Prisoner
(Phone Number)

RECEIVED
JUN 3 - 2019
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SUPREME COURT, U.S.

QUESTION(S) PRESENTED

- 1) Does, Montana Constitution, Article 2, section 11, oath or affirmation decree, Second sentence vitiate, the predicated decree, Nullifying My vested right to the 4th amendment To the United States Constitution?
- 2) Is, an Author of a 3rd Tier affidavit by "Prosecuting Attorney" Who has no personal prior knowledge of any crime, legal or illegal To support, A summary Judgement of proof of an alleged crime? Constitution Sound? Is a criminal action? with no oath or affirmations from the complainant?
- 3) Is, a District Court Judge, In a non recorded, ex parte hearing with a 3rd tier affidavit, Acting as a One Judge, Grand Jury, indictment process, M.C.A. 46-11-201² pursuant to ~~verb text~~ subject matter, Regudging the accused guilty of committing a Felony? while simultaneously indicting the accused, legal or illegal To Sustain that same Judge as trial arbiter, Constitution Sound?
- 4) Is, that same District Court Judge, who usup an accused, Preliminary hearing, constitutionally sound, To support the accused full panoply of vested U.S. Constitution Rights?
- 5) Is, the same District Court Judge who usup an accused constitution right to be personally present at his Omnibus hearing, constitution sound, To support the District Court Judges action, Denying the accuse notification of a sentencing enhancement, Persistent Felony offender.
- 6) Is, after 36 months of being indicted, Fraudulently, Both state government actors, Prosecutor attorney and District Court Judge Dismiss the case, without prejudice, leaving the indictment alive for the duration of the statute of limitation To run out on the alleged crime Constitutionally Sound To Support the Judges actions?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Governor - Steve Bullock

Attorney General - Tim Fox

Chief Justice Montana Supreme Court - Mike McGraph.

All District Court Judges

All Municipal Magistrate Judge

All County Prosecuting Attorneys

All Defense Counsel Attorneys

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Montana Ninth Judicial District, Toole County No. DC-16-07
Motion and Affidavit in Support of Motion for Leave to file an Information

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TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Kalink vs Fletcher, 522 U.S. 118, 139 L.Ed. 2d 471, 118 S.Ct 502	
Pugh vs Gerstein, 420 U.S. 103, 43 L.Ed. 2d 54, 95 S.Ct 854	
United States vs Hughes, 201 F.Supp 615 (1962)	
United States vs Williams 504 U.S. 36 (1992)	
Connecticut Nat Bank vs Germain, 503 U.S. 249 (1992)	

STATUTES AND RULES

MCA, 45-7-202, False swearing
 MCA, 46-11-201, leave to file information with annotation notes
 MCA 26-10-803 Hearsay rules of evidence

Judicial Judges Canons Rule 2.12 subsection 5, b. recusal

OTHER 44 Am. Crim. L. Rev 829
 46 Baylor L. Rev 789

Montana Constitution, "Oath or affirmation", art. 3 sec 7 (1889)

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

[] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

[] reported at Tarrant County Supreme Court; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

The opinion of the Tarrant County Ninth District court appears at Appendix _____ to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

JURISDICTION

[] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

[] No petition for rehearing was timely filed in my case.

[] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[] For cases from **state courts**:

The date on which the highest state court decided my case was 4/16/2019.
A copy of that decision appears at Appendix A.

[] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

4th Amendment to United States Constitution, as defined in

KALINA - VS FLETCHER 522 U.S. 118

13, 14 amendment - Due process, Equal protection

Montana Coded Annotated Statute

M.C.A. 45-7-202, a) b) c) False Swearing

M.C.A. 46-11-201, 2) Leave to file Information

M.C.A. 26-10-803, 8) Rules of Evidence

STATEMENT OF THE CASE

A) ON 3/16/16 A third tier Affidavit, Charging document was filed with Teton County, Clerk of Court. Cause No. DC-16-007 that affidavit was sign by the author, Actor County prosecutor, Meekle Raph on 3/17/16.

B) ON 3/17/16 Judge Olson, in a non-recorded ex parte production by procedural, as defined in verb text subject matter, M.C.A., 46-11-201(2) Makes an independent determination that an offense has been committed by the accused, Grants leave to file information, back to Judge Olson bench for trial.

C) As the prosecutors dragged out trial date, I dismissed my first Public Defender, for violating my fast on Speedy Trial Rights, on denying my right to be present at my Omnibus hearing.

Second appointed counselor who coercively pressurized to me for my signature on a Plea Agreement. In collusion with the prosecution, See Appendix E which was missing from the copy that I was coerced into falsely signing.

D) Judge Olson Nullified the coerced Plea Agreement, setting a Jury Trial date on 2/25/19, a Bench Trial on 2/12/19. Then on 2/21/19 Judge Olson, order the case Dismissed without prejudice, usurpation of my right to trial.

E) Montana unconstitutional indictment process is valid until the State Statute of Limitation runs out for that alleged crime.

Montana Constitution

Oath or Affirmation: The provision of Art. III, sec. 7, 1889 Mont. Const., that no warrant shall issue without probable cause, supported by oath, prevents arbitrary accusations by requiring affidavits of truthfulness to facts constituting probable cause, avoids false issues, and guarantees to the citizen that no warrant of seizure of his person can lawfully issue except upon such probable cause, supported by the oath of someone. But being a formal matter, the support by oath or affirmation can be waived, and, if the verification can be waived, the illegality of a warrant issued upon an unverified information can also be waived. State ex rel. Nolan v. Brantly, 20 M 173, 50 P 410 (1897).

But being a formal matter, waiver clause, permits Montana Judicial Branch to suspend the U.S. Constitution. When charging an accused with a Felony

REASONS FOR GRANTING THE PETITION

- 1) To force Montana To comply, with U.S. 4th Amend. Constitution
- 2) To ensure an accused right to unbiased Arbitrator in an adversary Preliminary hearing.
- 3) To be personally present at these Omnibus Hearing
- 4) To be tried by a unbiased arbitrator. Not by the same Judge who has indicted the accuse because that Judge Believe the accused has committed a crime
- 5) Review Montana Supreme Court, precedence case law, 3rd 1162 affidavit, Summary Judgement of Proof, by Prosecutor, as complaining witness, who has NO personal prior knowledge, of a crime. M.C.A. 45-7-202 a) b) c) False Swearing to charge an accused with a Felony
- 6) So an accused will have access to his federal Bill of Rights, and Due process Equal protection to the U.S. Constitution
- 7) To force the Judicial Branch To charge a person with a Felony off of a oath base statement. Not Hearsay.

Montana. Oath or Affirmation, Art 3 sec 7 (1889) Second Sentence, "But being a formal matter, Annulment. Supplant the United States Constitution Amendment. For an Accused, alleged of committing a Felony Crime. Constitutional Rights To apply or be excised.

CONCLUSION

The petition for a writ of certiorari should be granted. To reinstate the U.S. Constitution in the State of Montana Constitution.

Respectfully submitted,

Charles Charley

Date: May 8, 2019