

No. 20-6488

IN THE
SUPREME COURT OF THE UNITED STATES

MARIO ALLAN MONTANO, APPLICANT,

v.

OAKLAND COUNTY CIRCUIT COURT JUDGE, RESPONDENT.

ON APPLICATION TO THE
MICHIGAN SUPREME COURT

EMERGENCY APPLICATION FOR A STAY PENDING THE
DISPOSITION OF THE PETITION FOR WRIT OF CERTIORARI

Mario Allan Montano
Applicant, In Pro Se
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Little River, SC 29566
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December 7, 2020



LIST OF PARTIES

Pursuant to Supreme Court Rule 14, the following is a list of all parties to the proceeding in the court whose judgment is sought to be reviewed:

1. APPLICANT - Mario Allan Montano, a man naturally born in the United States.
2. RESPONDENT - State of Michigan, Oakland County Circuit Court Judge, c/o Honorable Kameshia D. Gant.

LIST OF CASES

1. *Wimmer v. Montano*, 2017-854298-PP (6th Mich. Cir. Ct. June 20, 2017). Judgment entered on June 20, 2017.
2. *In Re Montano*, 353392 (Mich. Ct. App. June 16, 2020). Order entered on June 16, 2020.
3. *In Re Montano*, 161499 (Mich. October 5, 2020). Order entered on October 5, 2020.

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Appendix B Decision of the Michigan Supreme Court Dismissing No. 161499 on October 5, 2020.

Appendix C Applicant's Motion for a Stay of Execution filed with the Michigan Supreme Court on December 6, 2020.

Appendix D The Michigan Supreme Court's rejection of the Applicant's Motion in Appendix C on December 7, 2020.

Appendix E Decision of the Michigan Supreme Court to grant the Applicant a Court Fee waiver on No. 161121 on March 18, 2020.

Appendix F Record of Michigan Supreme Court Case No. 161499.¹

TABLE OF AUTHORITIES CITED

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¹ Redacted to eliminate entries that are not part of Case 161499 and to hide details of irrelevant correspondences and miscellaneous filings for focus.

IN THE
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EMERGENCY APPLICATION FOR A STAY PENDING THE DISPOSITION OF A
PETITION FOR WRIT OF CERTIORARI

To the HONORABLE BRETT M. KAVANAGH, Associate Justice of the Supreme Court of the United States of America and Circuit Justice for the 6th Circuit:

OPINION BELOW

The Applicant seeks a stay of execution of the following unpublished decision by the Michigan Supreme Court (“**MSC**”), the court of last resort in the State of Michigan pending disposition of the Petition for Writ of Certiorari.

1. Dismissal of Case No. 161499 on October 5, 2020 (Appendix B).

JURISDICTION

The Applicant filed a Petition for Writ of Certiorari appealing the dismissal of No. 161499 with the Supreme Court of the United States (“**the Court**”) on November 17, 2020. The case of *Mario Allan Montano v. Oakland County Circuit Court Judge*² (“**this case**”) was docketed with the Court on December 1, 2020.

The Applicant filed a motion for a stay of execution of the MSC dismissal of No. 161499 on December 6, 2020 (Appendix C). The Clerk of the MSC rejected the Applicant’s motion based on the very order he was attempting to stay on December 7, 2020 (Appendix D). The MSC has effectively denied a stay of execution by not entertaining the Applicant’s motion.

This Court may grant the requested stay of execution pursuant to Rule 23.1. This application is presented to this Court pursuant to Rule 23.2 and 28 U.S.C. §2101(f). The Applicant

² *Mario Allan Montano v. Oakland County Circuit Court Judge*, No. 20-6488 (US).

has shown his attempt and failure to obtain a stay from the only state court who could grant such a stay meeting the expectations in Rule 23.3.

This Court has jurisdiction and all expectations have been met for this Court to issue a ruling on this application for a stay of execution.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. U.S. Const. Amend. V
2. U.S. Const. Amend. XIV § 1

STATEMENT OF THE CASE

The Honorable Kameshia D. Gant (“**the Respondent**”) was assigned to the case of *Wimmer v. Montano* (“**2017-854298-PP**”) on May 4, 2019.

Chief Justice Bridget M. McCormack of the MSC issued an order granting the Applicant a waiver of filing fees in the case of *Wimmer v. Montano*³ (“**No. 161121**”) on March 18, 2020 (Appendix E). The fee to file a regular motion in the MSC is \$75 pursuant to MCL 600.244(1)(d). By issuing such an order, Chief Justice McCormack affirmed that the Applicant could not afford \$75 to pay for a motion fee.

Mario Allan Montano (“**the Applicant**”) filed a Complaint for Writ of Superintending Control of the Respondent and a Motion to Waive Fees with the Michigan Court of Appeals (“**COA**”) on April 9, 2020. The Motion to Waive Fees contained the same evidence that Chief Justice McCormack had seen to grant the Applicant a fee waiver on March 18, 2020. The case of *Wimmer v. Montano* (“**No. 353392**”) was initiated with the COA on April 9, 2020. The

³ *Wimmer v. Montano*, 161121 (Mich. May 26, 2020).

Respondent has not filed a document or contested No. 353392 in any fashion since the initiation of the case.

The Honorable Elizabeth L. Gleicher (“**Judge Gleicher**”) issued an order denying the Applicant’s motion to waive fees in No. 353392 on April 21, 2020. The Honorable Christopher M. Murray (“**Chief Judge Murray**”) conducted a de Novo review of the Motion to Waive fees and issued an order denying a fee waiver in No. 353392 on April 28, 2020. The order stated that the Applicant was required to pay fees within 21 days, or the pleadings would be dismissed.

Judge Gleicher and Chief Judge Murray’s orders conflicted with Chief Justice McCormack’s earlier granting of the waiver of fees to the Applicant. The Applicant could not afford the fees as affirmed by Chief Justice McCormack and did not pay them. Chief Judge Murray issued an order dismissing No. 353392 for the Applicant’s failure to pay fees on June 16, 2020 (Appendix A). The Applicant disagreed with both Judge Gleicher’s and Chief Judge Murray’s orders denying the waiver of Court fees and the dismissal result.

The Applicant filed an application for leave to appeal the No. 353392 dismissal order and a Motion to Waive Fees (“**Fee Mot.**”) with the MSC on June 19, 2020. The case of *In Re Montano* (“**No. 161499**”) was initiated with the MSC on June 19, 2020. The record of No. 161499 is presented in Appendix F.⁴

As seen in the record the application for leave to appeal was filed in No. 161499 without collecting any court fees from the Applicant on June 19, 2020. The record specifically states that if the Motion to Waive Fees is denied, the Applicant would be required to pay the fees.⁵ As seen in the record, the Respondent has not filed a document into or contested No. 161499 since the day it was initiated. As seen in the record, the MSC failed entirely to issue an order regarding the

⁴ Please note that the highlighted order shown in Appendix F, p. 1, Event 71 IS NOT part of the record of 161499.

⁵ Appendix F at 1, Event 61.

Motion to Waive Fees. The Applicant has never been required to pay fees in No. 161499 since an order denying the Motion to Waive Fees was never issued. The record shows that there are no other pleadings or motions filed in No. 161499 after June 19, 2020. Chief Justice McCormack issued an order dismissing No. 161499 on October 5, 2020 (Appendix B).

The order shows that the case was dismissed because the Applicant had not paid fees. The Petition for Writ of Certiorari and even the record clearly shows that the Applicant was not responsible for paying any fees as of October 5, 2020. The basis for dismissal is in error. Chief Justice McCormack also required the Applicant to pay sanctions issued against him totaling \$1,500 in other cases in order for the Clerk of the Court to accept any filings in the MSC in non-criminal cases.

Chief Justice McCormack was very aware that the Applicant could not afford \$75 for court filings much less sanctions totaling \$1,500. The Petition shows that the MSC did not have any jurisdiction to issue orders in No. 161499 since court fees had not been paid or the motion to waive fees decided. Chief Justice McCormack issued an order against the Applicant without jurisdiction in an uncontested case depriving the Applicant of any ability to litigate in any non-criminal case in the Michigan Supreme Court.

The order issued by Chief Justice McCormack deprived the Applicant of property without due process violating U.S. Const. Amend. V. The order also deprived the Applicant of equal protection under the law pursuant to U.S. Const. Amend. XIV § 1.

REASONS FOR GRANTING THE APPLICATION

The Petition for Writ of Certiorari associated with this case is straightforward and clearly shows that the Applicant was denied constitutional rights by the MSC without any jurisdiction to issue orders in an uncontested case. The errant actions by the court of last resort has completely deprived the Applicant of any ability to litigate matters in the Michigan Supreme Court in non-criminal cases. This deprivation of a poor citizen to even defend himself in any court of law is a travesty of justice and even more so with the court of last resort in the state of Michigan.

The Applicant is deprived of his right to due process under the law without this Honorable Court issuing a stay of execution of the order dismissing No. 161499. Justice requires this stay of execution.

CONCLUSION

The evidence, facts, impact and legal authority overwhelmingly require that a stay of execution of the decision by the Michigan Supreme Court in Appendix B pending the disposition of the Petition for a Writ for Certiorari in this case be issued. The Applicant prays that this Court will grant him the needed and justified stay of execution.

Respectfully submitted,



Mario Allan Montano, Applicant
Date: December 7, 2020

No. 20-6488

IN THE SUPREME COURT OF THE UNITED STATES

MARIO ALLAN MONTANO, Applicant,

v.

OAKLAND COUNTY CIRCUIT COURT JUDGE, Respondent.

APPENDIX

Appendix A

Court of Appeals, State of Michigan

ORDER

In re Montano

Docket No. **353392**

LC No. **2017-854298-PP**

Christopher M. Murray, Chief Judge, acting under MCR 7.201(B)(3), orders:

The complaint for superintending control is DISMISSED for failure to pursue the case in conformity with the rules. MCR 7.201(B)(3) and 7.216(A)(10). Plaintiff has failed to correct the defect in this filing by paying to the Clerk of the Court the \$375 entry fee and the \$25 e-filing system fee. Dismissal is without prejudice to whatever other relief may be available consistent with the Court Rules.

The motion for change of venue filed on April 9, 2020, is withdrawn in accordance with plaintiff's request.



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on



JUN 16 2020

Date



Chief Clerk

Appendix B

Order

Michigan Supreme Court
Lansing, Michigan

October 5, 2020

Bridget M. McCormack,
Chief Justice

161499

David F. Viviano,
Chief Justice Pro Tem

In re MONTANO.

Stephen J. Markman
Brian K. Zahra
Richard H. Bernstein
Elizabeth T. Clement
Megan K. Cavanagh,
Justices

MARIO ALLAN MONTANO,
Plaintiff-Appellant,

SC: 161499
COA: 353392
Oakland CC: 2017-854298-PP

OAKLAND COUNTY CIRCUIT COURT
JUDGE,
Defendant-Appellee.

On order of the Chief Justice, the application for leave to appeal is administratively dismissed for the failure of plaintiff-appellant to pay the outstanding fees. The clerk of the Court shall not to accept further filings from the plaintiff-appellant in any civil matter until the sanctions ordered by this Court in No. 161152, *IW v MM* (\$500.00) and No. 161299, *Montano v Court of Appeals* (\$1,000.00) are paid in full.



I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

October 5, 2020


Clerk

Appendix C

MICHIGAN SUPREME COURT

IN RE MONTANO

MSC: 161499

COA. 353392

Hon. Christopher M. Murray

6th Judicial Circuit (Oakland County)

Trial Ct. No: 2017-854298-PP

Hon. Kameshia D. Gant

**MOTION TO STAY THE EXECUTION OF THIS COURT'S
ORDER PENDING DISPOSITION OF A PETITION FOR WRIT
OF CERTIORARI**

NOW COMES the Plaintiff-Appellant, MARIO ALLAN MONTANO for his Motion to Stay the Execution of this Court's Order Pending Disposition of a Petition for Writ of Certiorari states as follows:

1. Chief Justice McCormack issued an order in MSC 161121 granting the Plaintiff-Appellant ("Plaintiff") a fee waiver on March 18, 2020.
2. Chief Justice McCormack determined the Plaintiff was too poor to afford motion fees of \$75 or more.
3. This case has been uncontested since the day it was initiated.
4. This Court issued an order dismissing ("Dismiss Order") this case on October 5, 2020 (Exhibit 1).
5. The order requires the Plaintiff to pay sanctions of \$1500 to the Clerk of this Court that he cannot afford.
6. The order states that the Clerk must reject all Plaintiff filings in all non-criminal matters till the sanctions are paid.

WHEREFORE the Plaintiff-Appellant, MARIO ALLAN MONTANO hereby requests this Honorable Court to:

- A. Enter an order granting this motion.
- B. Enter an order to stay the execution of the Dismiss Order pending the Disposition of the Petition for Writ of Certiorari with SCOTUS.
- C. Grant the Plaintiff-Appellant any other relief this Court deems appropriate.

I declare that the statements above are true to the best of my information, knowledge and belief.

Dated: December 6, 2020

/s/Mario Allan Montano

Mario Allan Montano
Plaintiff-Appellant

Appendix D

almontano29582@gmail.com

From: info@truefiling.com
Sent: Monday, December 7, 2020 6:54 AM
To: almontano29582@gmail.com
Subject: MiFILE: Filing Rejected Notification – MI Supreme Court Case No. 161499

The Michigan Supreme Court has rejected your document filed into Case No. 161499, IN RE MONTANO.

Filing Details

Rejection Reason: The MSC Clerk's Office rejected this bundle for the reasons stated in the Court's 10-05-2020 order. Moreover, the case is closed; no further filings will be accepted.

Document Type: Motion - Regular

Filing Name: Motion for a Stay Pending SCOTUS Disposition

Filed By: Montano, Mario (Pro Se)

From: Mario Montano

You should contact the Court if you need further explanation.

*****This e-mail was sent from an unattended e-mail mailbox. Replies to this e-mail will be rejected. *****

MiFILE is the Michigan judiciary's electronic-filing system for filing and serving documents online. This system is available 24 hours a day, 7 days a week.

Home page: <https://mifile.courts.michigan.gov/>

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Appendix E

Order

Michigan Supreme Court
Lansing, Michigan

March 18, 2020

Bridget M. McCormack,
Chief Justice

161121(37)

David F. Viviano,
Chief Justice Pro Tem

IVY ALICE WIMMER, f/k/a IVY ALICE
MONTANO,
Plaintiff-Appellee,

Stephen J. Markman
Brian K. Zahra
Richard H. Bernstein
Elizabeth T. Clement
Megan K. Cavanagh,
Justices

v

MARIO ALLAN MONTANO,
Defendant-Appellant.

SC: 161121
COA: 351762
Oakland CC: 2012-802216-DO

On order of the Chief Justice, the motion of defendant-appellant to waive the filing fees is GRANTED in this case only.



I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

March 18, 2020

A handwritten signature of Larry S. Royster.

Clerk

Appendix F

06/19/2020 61 SCt: Application for Leave to SCt
Supreme Court No: 161499
Answer Due: 07/17/2020
For Party: 1
Filed By Pro Per
Comments: 161499; Docketed without fees to determine PLAT's entitlement to fee waiver. If MSC denies fee waiver, PLAT will be invoiced for application fee (\$375.00)

06/19/2020 62 SCt Motion: Waive Fees
Party: 1
Filed by Pro Per

06/19/2020 63 SCt Case Caption
Proof Of Service Date: 06/19/2020

06/22/2020 64 SCt Correspondence Received
Proof Of Service Date: 06/22/2020
Filed By Pro Per
Comments: "Request for objections to assumptions regarding [PL-AT's] court fees"

06/23/2020 65 SCt Correspondence Received
Proof Of Service Date: 06/23/2020
Filed By Pro Per
Comments: "Objection to Deprivation of a Free Motion Filing by the Chief Clerk" - 161273

06/24/2020 66 SCt Correspondence Received
Proof Of Service Date: 06/24/2020
Filed By Pro Per
Comments: Correspondence re 5-28-2020 rejection of motion filed without payment of fees - 161273

06/26/2020 67 SCt Correspondence Received
Proof Of Service Date: 06/29/2020
Filed By Pro Per
Comments: Correspondence re rejected complaint

06/28/2020 68 SCt Correspondence Received
Proof Of Service Date: 06/29/2020
Filed By Pro Per
Comments: Correspondence re rejected filings

06/29/2020 69 SCt Correspondence Received
Proof Of Service Date: 06/30/2020
Filed By Pro Per
Comments: Correspondence re rejected complaints for superintending control

06/30/2020 70 SCt: Miscellaneous Filing
Filing Date: 06/30/2020
For Party: 1 MONTANO MARIO ALLAN PL
Filed By Pro Per
Comments: Stipulation "to dismiss any case where this court denies a fee waiver"

07/08/2020 71 SCt Order: Miscellaneous Order - See Comments
View document in PDF format
Comments: Administrative dismiss interlocutory apps and motions in Nos. 161273-4 for failure to pay the filing fees per the 5-28-2020 order.

10/05/2020 72 SCt Order: Close/Fail Pay Fees

[View document in PDF format](#)

Comments: Administratively closed for failure to pay fees. Clerk shall not accept filings from AT in any civil matter until sanctions ordered in Nos. 161152 & 161299 are fully paid.

10/29/2020 75 File Closed-Out

File Location: F

11/12/2020 76 SCt Correspondence Received

Proof Of Service Date: 11/12/2020

Filed By Pro Per

Comments: Notice of filing stay of execution with SCOTUS

Case Listing Complete