

20-56490
No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

MARIO ALLAN MONTANO, Petitioner,

v.

STATE OF MICHIGAN,
OAKLAND COUNTY CIRCUIT COURT JUDGE, Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
MICHIGAN SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

Mario Allan Montano, Petitioner

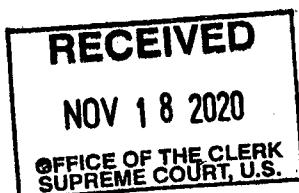
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November 9, 2020



QUESTION PRESENTED

The Michigan Supreme Court issued two orders against the Petitioner on October 5, 2020 in two uncontested cases that have resulted in the total deprivation of any ability for the Petitioner to litigate any existing or future matter in the Michigan Supreme Court. The questions presented are:

- I. Whether the Michigan Supreme Court violated its jurisdiction in issuing two orders dismissing the Petitioner's cases thus depriving the Petitioner of his right to equal protection under the law pursuant to U.S. Const. Amend. XIV § 1.
- II. Whether the Michigan Supreme Court violated its jurisdiction by issuing filing and court fee injunctions against the Petitioner depriving him of his right to equal protection under the law pursuant to U.S. Const. Amend. XIV § 1.

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. Mario Allan Montano, Petitioner and a man naturally born in the United States.
2. State of Michigan, Oakland County Circuit Court Judge.¹

¹ The Honorable Kameshia D. Gant currently holds this position. Beginning in January of 2020 her term expires and another judge will replace her relative to the Petitioner's cases.

LIST OF CASES

1. *Montano v. Montano*, No. 2012-802216-DO, 6th Mich. Cir. Ct. Judgment entered May 6, 2013.
2. *Wimmer v. Montano*, No. 2017-854298-PP, 6th Mich. Cir. Ct. Judgment entered June 20, 2017.
3. *In Re Montano*, No. 353802, Mich. Ct. App., Judgment entered July 14, 2020.
4. *In Re Montano*, No. 353957, Mich. Ct. App., Judgment entered August 11, 2020.
5. *In Re Montano*, Nos. 161475, 161670, Mich., Judgment entered October 5, 2020.
6. *In Re Montano*, Nos. 161622, 161848, Mich., Judgment entered October 5, 2020.

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Appendix D - Decisions of the Mich. Ct. App. Denying Petitioner's Motion to Waive Fees in No. 353957 (July 14, 2020)

Appendix E - Decision of the Mich. Ct. App. Denying Petitioner's Motion for Reconsideration of Order Denying a Fee Waiver in No. 353957 (July 28, 2020)

Appendix F - Decision of the Mich. Ct. App. to Dismiss the Case and Sanction the Petitioner in No. 353957 (August 11, 2020)

Appendix G - Decision of Mich. to Dismiss the Case and Issue a Filing Injunction against the Petitioner in Nos. 161475, 161670 (October 5, 2020)

Appendix H - Decision of Mich. to Dismiss the Case and Issue a Filing Injunction against the Petitioner in Nos. 161622, 161848 (October 5, 2020)

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IN THE SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

The unpublished judgments from the Michigan Supreme Court, the highest court in Michigan, to be addressed are:

1. Decision Dismissing case Nos. 161475, 161670 and issuing a filing injunction against the Petitioner on October 5, 2020 (Appendix G); and
2. Decision Dismissing case Nos. 161622, 161848 and issuing a filing injunction against the Petitioner on October 5, 2020 (Appendix H).

The unpublished judgments from the Michigan Court of Appeals to be addressed are:

1. Decision to Dismiss the Case and Sanction the Petitioner in No. 353802 on July 14, 2020. (Appendix C)
2. Decision to Dismiss the Case and Sanction the Petitioner in No. 353957 on August 11, 2020. (Appendix F)

JURISDICTION

The decisions from Mich. to be reviewed were issued on October 5, 2020 and are found in Appendices G-H. This Petition is timely filed per Rule 13. The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

“All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. **No State** shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; **nor deny to any person within its jurisdiction the equal protection of the laws.**” U.S. Const. Amend. XIV § 1.

“No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, **nor be deprived of life, liberty, or property, without due process of law**; nor shall private property be taken for public use, without just compensation.” U.S. Const. Amend. V.

STATEMENT OF THE CASE

BACKGROUND

The Honorable Kameshia D. Gant was appointed to the State of Michigan, 6th Judicial Circuit Court for the County of Oakland by Governor Gretchen Whitmer on April 30, 2019. Judge Gant became a State of Michigan, Oakland County Circuit Court Judge (“**the Respondent**”) on April 30, 2019. The Respondent was assigned to the case of *Montano v. Montano*² (“2012-802216-DO”) and the case of *Wimmer v. Montano*³ (“2017-854298-PP”) on May 4, 2019. The Petitioner is a litigant in both of these cases.

PROCEEDINGS AND FACTS

MICHIGAN SUPREME COURT GRANTS FEE WAIVER (3-18-20)

The Petitioner initiated the application case of *Wimmer v. Montano*⁴ (“**MSC 161121**”) with the Michigan Supreme Court (“**MSC**”) on March 16, 2020. Petitioner’s Motion to Waive Fees was entered with MSC 161121 on March 16, 2020. The Motion to Waive Fees provided irrefutable evidence that the Petitioner had been receiving federal financial assistance to purchase health insurance under the Affordable Care Act a/k/a Obamacare since January 1, 2020. Chief Justice McCormack of the MSC issued an order granted the Petitioner a waiver of fees in MSC 161121 on March 18, 2020.

² *Montano v. Montano*, 2012-802216-DO (6th Mich. Cir. Ct. March 28, 2013).

³ *Wimmer v. Montano*, 2017-854298-PP (6th Mich. Cir. Ct. June 20, 2017).

⁴ *Wimmer v. Montano*, 161121 (Mich. May 26, 2020).

MICHIGAN COURT OF APPEALS ACTIONS

The Petitioner filed a Complaint for Superintending Control against the Respondent and a Motion to Waive Fees with the Michigan Court of Appeals (“COA”) on June 11, 2020. The Motion to Waive Fees provided irrefutable evidence that the Petitioner had been receiving federal financial assistance to purchase health insurance under Obamacare since January 1, 2020. The case of *In Re Montano*⁵ (“COA 353802”) was initiated on June 11, 2020. The Respondent has not filed a single document in COA 353802 since the case was initiated. COA 353802 is an uncontested case.

The Honorable Elizabeth Gleicher of the COA (“**Judge Gleicher**”) issued an order denying the Petitioner’s motion to waive fees in COA 353802 on June 16, 2020 (Appendix A). The Petitioner was required to pay the conditionally waived court fees by July 7, 2020 based on the order. Failure to do so would result in a dismissal of the complaint.

The Petitioner filed an interlocutory application for leave to appeal Judge Gleicher’s order along with a Motion to Waive Fees with the MSC on June 16, 2020. The Motion to Waive Fees provided evidence that the Petitioner receives financial assistance under Obamacare. The interlocutory application case of *In Re Montano*⁶ (“MSC 161475”) was initiated with the MSC on June 16, 2020. The Respondent has not filed a single document in MSC 161475 since the case was initiated. MSC 161475 is an uncontested case. The Petitioner filed a notice of filing the application for leave to appeal with COA 353802 on June 16, 2020.

Judge Gleicher issued an order denying the Petitioner’s motion for reconsideration of the order denying a fee waiver in COA 353802 on June 23, 2020 (Appendix B).

⁵ *In Re Montano*, 353802 (Mich. Ct. App. July 14, 2020).

⁶ *In Re Montano*, 161475 (Mich. October 5, 2020).

The Petitioner filed a Complaint for Superintending Control against the Respondent and a Motion to Waive Fees with the COA on June 25, 2020. The Motion to Waive Fees provided evidence that the Petitioner receives financial assistance under Obamacare. The case of *In Re Montano*⁷ (“COA 353957”) was initiated on June 25, 2020. The Respondent has not filed a single document in COA 353957 since the case was initiated. COA 353957 is an uncontested case.

The Honorable Christopher M. Murray of the COA (“**Chief Judge Murray**”) issued an order dismissing 353802 based on the Petitioner’s failure to pay court fees on July 14, 2020 (Appendix C). Chief Judge Murray’s Order sanctioned the Petitioner \$750 payable to the Clerk for a vexations and frivolous complaint pursuant to MCR 7.216 (C)(1). Chief Judge Murray ordered the clerk to reject all Petitioner filings into non-criminal cases until the sanctions were paid pursuant to MCR 7.216(A)(10).

Judge Gleicher issued an order denying the Petitioner’s motion to waive fees in COA 353957 on July 14, 2020 (Appendix D). The Petitioner was required to pay the conditionally waived court fees by August 4, 2020 based on the order. Failure to do so would result in a dismissal of the complaint.

The Petitioner filed an interlocutory application for leave to appeal Judge Gleicher’s order along with a Motion to Waive Fees with the MSC on July 15, 2020. The Motion to Waive Fees provided evidence that the Petitioner receives financial assistance under Obamacare. The interlocutory application case of *In Re Montano*⁸ (“MSC 161622”) was initiated with the MSC on July 15, 2020. The Respondent has not filed a single document in MSC 161622 since the case was initiated. MSC 161622 is an uncontested case. The Petitioner filed a notice of filing the application for leave to appeal with COA 353957 on July 15, 2020.

⁷ *In Re Montano*, 353957 (Mich. Ct. App. August 11, 2020).

⁸ *In Re Montano*, 161622 (Mich. October 5, 2020).

The Petitioner filed an application for leave to appeal Chief Judge Murray's order dismissing COA 353802⁹ and a Motion to waive fees with the MSC on July 19, 2020. The Motion to Waive Fees provided evidence that the Petitioner receives financial assistance under Obamacare. The application case of *In Re Montano*¹⁰ ("MSC 161475-670") was initiated with the MSC on July 19, 2020.¹¹ The Respondent has not filed a single document in MSC 161475-670 since the case was initiated. MSC 161475-670 is an uncontested case.

Judge Gleicher issued an order denying the Petitioner's motion for reconsideration of the order denying a fee waiver in COA 353957 on July 28, 2020 (Appendix E).

Chief Judge Murray issued an order dismissing 353957 based on the Petitioner's failure to pay court fees on August 11, 2020 (Appendix F). Chief Judge Murray's Order sanctioned the Petitioner \$750 payable to the Clerk for a vexations and frivolous complaint pursuant to MCR 7.216 (C)(1). Chief Judge Murray ordered the clerk to reject all Petitioner filings into non-criminal cases until the sanctions were paid.

The Petitioner had filed two uncontested cases with the COA as of August 11, 2020 resulting in the following:

1. Denial of court fee waivers in both cases;
2. Dismissal of both cases;
3. Sanctions totaling \$1,500 payable to the Clerk; and
4. A filing injunction requiring the Clerk to reject all filings till the sanctions were paid.

Chief Justice McCormack had affirmed that the Petitioner was indigent and could not afford sanctions of \$1500 based on her order on March 18, 2020. The effect

⁹ Appendix D.

¹⁰ *In Re Montano*, 161475, 161670 (Mich. October 5, 2020).

¹¹ The Interlocutory application case and the new filing were combined into one case by the clerk.

of the orders against the Petitioner meant that he had been deprived of any ability to litigate or defend himself in all non-criminal matters in the COA because he was too poor to pay the sanctions.

The Petitioner filed an application for leave to appeal Chief Judge Murray's order dismissing COA 353957¹² and a Motion to waive fees with the MSC on August 11, 2020. The Motion to Waive Fees provided evidence that the Petitioner receives financial assistance under Obamacare. The application case of *In Re Montano*¹³ ("MSC 161622-848") was initiated with the MSC on August 11, 2020.¹⁴ The Respondent has not filed a single document in MSC 161622-848 since the case was initiated. MSC 161622-848 is an uncontested case.

MICHIGAN SUPREME COURT ACTIONS

All Petitioner court fees had been conditionally waived in all MSC cases pending a decision on the motions to waive fees as of August 11, 2020.

The MSC had not ruled on any of the motions to waive fees relative to the two MSC Cases as of October 5, 2020. The MSC had not ruled on the interlocutory questions regarding the denial of fee waivers in the two associated COA cases as of October 5, 2020. Chief Justice McCormack issued two orders dismissing MSC Cases 161475-670, and 161662-848 based on the Petitioner not paying filing fees in the cases on October 5, 2020 (Appendices G-H). Chief Justice McCormack issued an order instructing the Clerk not to accept any filings from the Petitioner till he paid sanctions levied in other cases ("Filing Injunction"). Chief Justice McCormack issued orders in both cases stating the Petitioner would be deprived of a conditional waiver of fees when he files a

¹² Appendix F.

¹³ *In Re Montano*, 161622, 161848 (Mich. October 5, 2020).

¹⁴ The Interlocutory application case and the new filing were combined into one case by the clerk.

motion to waive fees in all future cases (“**Fee Waiver Injunction**”). Both orders do not cite any legal authority for the orders having been issued.

Chief Justice McCormack knew that the Petitioner was indigent based on an order she had previously issued on March 18, 2020. Based on the two orders issued on October 5, 2020, Chief Justice McCormack deprived the Petitioner of any means to file pleadings to defend himself or litigate in the Michigan Supreme Court in all current and future cases.

REASONS FOR GRANTING THE PETITION

The Petitioner has been deprived of rights and property in the COA and the MSC based on rulings in uncontested cases. The information below will show that these rights were denied based on violations by the state courts of the Petitioner’s rights pursuant to U.S. Const. Amend. V and U.S. Const. Amend. XIV § 1.

COA DEPRIVATION OF PETITIONER RIGHTS

DEPRIVATION OF PETITIONER’S RIGHT TO A WAIVER OF FEES

The Petitioner filed a motion to waive fees in COA cases 353802 and 353957. Each of those motions provided irrefutable evidence that the Petitioner had been receiving federal financial assistance to purchase health care under the Affordable Care Act a/k/a Obamacare.

The Michigan Court of Appeals Internal Operating Procedure, IOP 7.219(G)-2 states, “A party may move to waive fees owing to the Court by filing a motion conforming to MCR 7.211 that is accompanied by an affidavit disclosing the reason for the inability to pay the fee. Under MCR 2.002(C), receipt of public assistance requires the suspension of the fees.”

The Petitioner had properly filed a motion to waive fees and affidavit as required pursuant to IOP 7.219(G)-2 in both COA cases at the time of case initiation.

“For purposes of this rule, means-tested public assistance includes but is not limited to any other federal, state, or locally administered means-tested income or benefit.” MCR 2.002(C)(6).

Federal assistance to purchase healthcare under Obamacare is based on the income of those who obtain health insurance via Obamacare. The federal assistance received by the Petitioner meets the expectations in MCR 2.002(C)(6). The COA was required to grant the Petitioner a fee waiver in COA Cases 353802 and 353957. The Petitioner was entitled to a fee waiver in both cases.

Judge Gleicher's denials of the fee waivers and the motions for reconsideration of the orders denying fee waivers in Appendices A, B, D, E deprived the Petitioner of his right to a fee waiver. Judge Gleicher deprived the Petitioner of equal protection under the law pursuant to U.S. Const. Amend. XIV § 1.

The proper relief for the deprivation of the Petitioner's right to a fee waiver is an order setting aside all of the orders issued by Judge Gleicher denying fee waivers and the entry of a new order in each case granting the Petitioner a fee waiver.

DEPRIVATION OF PROPERTY AND EQUAL PROTECTION UNDER THE LAW

The Petitioner had filed interlocutory applications against the orders denying the fee waivers initiating MSC Cases 161475 and 161620. The COA was aware that the interlocutory applications had been filed based on the record of the related COA cases.

"Discretionary Review. The Supreme Court may review by appeal a case pending in the Court of Appeals or after decision by the Court of Appeals. (see MCR 7.305) " MCR 7.303(B)(1).

The MSC had discretionary review jurisdiction over the COA's orders denying a fee waiver in COA 353802 as of July 14, 2020 and in COA 353957 as of August 11, 2020 pursuant to MCR 7.303(B)(1). The MSC had not reviewed any of the applications or issued any orders in the interlocutory application cases when Chief Judge Murray issued his orders dismissing COA cases 353802 and 353957 (Appendices C and F).

“Appeal After Court of Appeals Decision. If leave to appeal is denied after a decision of the Court of Appeals, the Court of Appeals decision becomes the final adjudication and may be enforced in accordance with its terms. If leave to appeal is granted, jurisdiction over the case is vested in the Supreme Court, and subchapter 7.300 applies.” MCR 7.305(H)(3).

The orders denying the fee waivers issued by Judge Gleicher were not final and could not be enforced by the COA because the MSC had jurisdiction over the orders pursuant to MCR 7.303(B)(1) and MCR 7.305(H)(3). Chief Judge Murray’s orders dismissing cases 353802 and 353957 executed on orders that had not been disposed of. Chief Judge Murray’s orders dismissing the cases therefore violated jurisdiction in MCR 7.303(B)(1) and MCR 7.305(H)(3).

Each of the orders issued sanctions against the Petitioner in the amount of \$750 pursuant to MCR 7.216(C)(1). The Respondent had not filed a single document into each of the two COA cases since their initiation and had not experienced any financial damages.

“Damages may not exceed actual damages and expenses incurred by the opposing party because of the vexatious appeal or proceeding, including reasonable attorney fees, and punitive damages in an added amount not exceeding the actual damages.” MCR 7.216(C)(2).

Even if Chief Judge Murray had jurisdiction to issue the orders dismissing the cases, he had no basis for issuing sanctions in the amount of \$750 since the Respondent did not suffer any financial damage pursuant to MCR 7.216(C)(2). The criteria in MCR 7.216(C)(1)(a) or (b) to claim a vexatious proceeding were not met. Under MCR 7.211(C)(8), the COA has no jurisdiction to issue sanctions in a dismissed case.

Each of the orders states that the Clerk must reject all Petitioner filings until the sanctions are paid pursuant to MCR 7.216(A)(10). MCR 8.119(C) provides the only times when a Clerk may reject a litigant’s filings. The payment of a sanction to the clerk is not a basis for rejecting filings pursuant to MCR 8.119(C). MCR 7.216(A)(10) provides general powers to issue orders to the COA. The legal expectations in the specific MCR 8.119(C) conflict with the general authority

in MCR 7.216(A)(10) relative to the Clerk rejecting filings based on a litigant not paying a sanction.

Under the doctrine of *In Pari Materia*, the more specific authority governs over the more general authority when there is a conflict. See *Reynolds v Hasbany MD PLLC*, 323 Mich App 426, ___ (2018) (finding that where two statutes contain jurisdictional conflict, the more specific statute must be interpreted as intending to constitute an exception to the more general statute). MCR 8.119(C) governs filing rejection over MCR 7.216(A)(10). Even if Chief Judge Murray had jurisdiction to dismiss the two cases, he DID NOT have jurisdiction to issue an order for the Clerk to reject Petitioner filings pursuant to MCR 8.119(C).

The Petitioner has not paid the \$1,500 in sanctions to the Clerk of the COA. Chief Judge Murray's issuance of the orders in COA cases 353802 and 353957 deprived the Petitioner of equal protection under the law pursuant to U.S. Const. Amend. XIV § 1 as well as depriving the Petitioner of property under U.S. Const. Amend. V.

The proper relief for the COA's violation of the Petitioner's rights is to set aside the orders issued by Chief Judge Murray on July 14, 2020 and August 11, 2020.

MICHIGAN SUPREME COURT DEPRIVATION OF PETITIONER RIGHTS

The MSC failed to issue an order regarding the Petitioner's two motions to waive fees in each of MSC cases 161475-670 and 161622-848. Each of the motions to waive fees provided irrefutable proof that the Petitioner had been receiving federal financial assistance under Obamacare since January 1, 2020.

The Internal Operating Procedures of the Michigan Supreme Court, IOP 7.300 do not directly address the criteria for granting a fee waiver in a case.

"Except where the Supreme Court operates differently than the Court of Appeals by statute or court rule, the Court of Appeals IOPs may be consulted to determine Supreme

Court practice and procedure on matters not specifically addressed in these IOPs" IOP 7.300 at 2.

Pursuant to IOP 7.219(G)-2 and MCR 2.002(C)(6), the MSC would have been required to grant the Petitioner a fee waiver in each case had the motions been reviewed. Based on this same premise, the MSC would have been compelled to reverse the COA orders denying fee waivers in the interlocutory application MSC cases 161475 and 161622.

The Petitioner's fees had been conditionally waived in MSC cases 161475-670 and 161622-848 as of October 5, 2020. The Petitioner had not paid any fees into those cases as of October 5, 2020. A decision on the motions to waive fees by the MSC was pending on October 5, 2020.

"A party who is unable to pay a filing fee may ask the Court to waive the fee by filing a motion and an affidavit disclosing the reason for that inability. There is no fee for filing the motion but, if the motion is denied, the party must pay the fee for the underlying filing." MCR 7.319(C).

As of October 5, 2020, the Petitioner had no obligation to pay any fees since his motions to waive fees had not been denied by the MSC pursuant to MCR 7.319(C).

"A motion may not be decided, or an order entered by the Court unless all required documents have been filed and the requisite fees have been paid." MCR 7.315(D).

Since the MSC had not issued an order on the motion to waive fees and the Petitioner had paid no fees, the MSC had no jurisdiction to issue an order in both cases pursuant to MCR 7.315(D) on October 5, 2020. The MSC cases were uncontested by the Respondent as of October 5, 2020. Chief Judge McCormack issued orders dismissing both cases, issuing a filing injunction and a fee waiver injunction in each case on October 5, 2020 (Appendices G-H). The orders state no legal authority for their issuance.

Chief Justice McCormack had absolutely no jurisdiction to issue a filing or fee waiver injunction in both cases. The basis for dismissing the cases was that the Petitioner had failed to

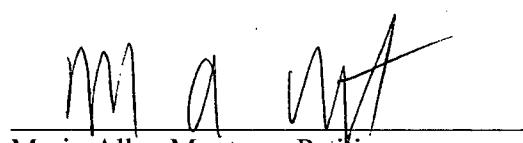
pay filing fees. The Petitioner had no obligation to pay filing fees. The MSC failed to issue orders to grant a fee waiver to the Petitioner in each case. Chief Justice McCormack did not have jurisdiction to issue both orders. Chief Justice McCormack's orders deprived the Petitioner of equal protection under the law pursuant to U.S. Const. Amend. XIV § 1.

The proper relief to these issues is to set aside both orders presented in Appendices G-H, re-open the cases and to enter an order granting a fee waiver in each of the cases.

CONCLUSION

The Petitioner has been deprived of his rights to litigate and defend himself in the Michigan Court of Appeals and Michigan Supreme Court by Court violations of his rights under the U.S Constitution. The Petitioner has been deprived of property in two uncontested cases in the COA in violation of the U.S. Constitution. The Petitioner has been egregiously harmed and is a victim of a travesty of injustice by the Michigan Court system without basis or merit.

The petition for a writ of certiorari should be granted. If this petition is not challenged, relief should simply be granted by this Court via summary disposition pursuant to Rule 16.1.
Respectfully submitted,



Mario Allan Montano, Petitioner

Date: November 9, 2020