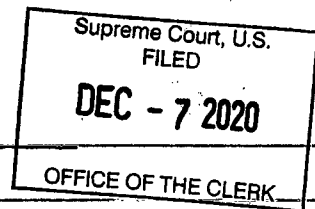


No. 20-893



In The
Supreme Court of the United States

Duane Ronald Belanus - Petitioner,

VS.

State of Montana - Respondent.

On Petition For A Writ Of
Certiorari To The Montana Supreme
Court

Petition For A Writ Of Certiorari

Pro Se
Duane Ronald Belanus
AO # 3003449
Montana State Prison
700 Conley Lake Road
Deer Lodge, MT 59722

T) Question Presented

Does Montana's specifically designated death penalty sentencing structure imposed without notice in non-death, no serious bodily injury, first-time offender cases, to increase the severity of punishment authorized by a defendant's charged offense through judicial fact-finding beyond the jury's finding of facts, violate the 5th, 6th, 8th, and 14th Amendments?

II) List of Parties

Petitioner -

Pro Se

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Respondents -

State of Montana

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IV) Petition for Writ of Certiorari

Petitioner respectfully Prays that a Writ of Certiorari issue to review and correct the judgment below from the Montana Supreme Court (Appendix A and Appendix B).

V) Opinions Below

The Orders denying M. Bellemus's State Habeas Corpus Petitions asserting a facially invalid, illegal, unconstitutional, and factually erroneous sentences of imprisonment in the state prison for Counts (I), (II), and (III) were decided on July 21st, 2020. The Order for Counts (I) and (II) is found at (Appx. A) and for Count (III), is found at (Appx. B).

VII) Jurisdiction

The date on which the Montana Supreme Court entered its Orders was July 21st, 2020 (Appx. A) and (Appx. B). Mr. Belanus did not receive a response upon his third filing (Appx. C).

The jurisdiction of this Court is invoked under 28 U.S.C. 1257(a). The resolution of Mr. Belanus's Federal question affects the State Court judgment pertaining to sentencing customs and practices which are in conflict with and violative of clearly established United States Supreme Court precedent. The Judgments sought to be reviewed are found at (Appendix A and B) which is inextricably intertwined with filing (Appx. C).

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VIII) Constitutional and Statutory Provisions Involved

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VIII) Constitutional and Statutory Provisions Involved, Cont.

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(3) Rules:

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IX) Statement of the Case

On September 21st, 2010, Mr.

Bellemus invoked Direct Appeal was

decided; and on August 24th and 25th,

2020, Mr. Bellemus invoked Direct Appeal

Sentence Review proceedings were decided,

statutorily designating Mr. Bellemus' criminal direct appellate review proceedings as 'final'.

The stage in the proceedings brought before the

United States Supreme Court where the federal

question has been raised and called into

question, is during Montana's State Habeas

Corpus proceedings before the Montana Supreme

Court, before Mr. Bellemus' Direct Appeal

Sentence Review proceedings were decided. The

decision of the Montana Supreme Court denying

Mr. Bellemus' State Habeas Corpus proceedings was

on July 21st, 2020.

Mr. Belanus's State Habeas Corpus Petitions provided now, in light of clearly established United States Supreme Court precedent, the sentences of imprisonment in the state prison imposed under Counts (I), (II), and (III) in this case are facially invalid, unconstitutional, and factually erroneous. The responses by the Montana Supreme Court (Appx. A and B) to deny Mr. Belanus's Federal Claims (Appx. D and E), ruled that Mr. Belanus was sentenced under Montana's Death Penalty (Appx. B); that Mr. Belanus's claims were a decade too late (Appx. A), and that Mr. Belanus should have raised the claims on Direct

Appeal (Appx. B).

The Montana Supreme Court denied Mr. Belanus's Federal claims and procedurally barred Mr. Belanus's petitions. Mr. Belanus was completely unaware that he was sentenced under Montana's Death Penalty, until the Montana Supreme Court issued its ruling on July 21st, 2020 (Appx. B); as Mr. Belanus was not provided notice, and his sentencing judgment made no reference to using Montana's Death Penalty sentencing authority to impose punishment. Montana's sentencing courts conduct judicial fact-finding beyond the facts found by a jury (and beyond those admitted by a defendant) to impose enhanced and extended terms of

Punishment in the ~~state~~ prison, excepting
what the jury's guilty verdict authorizes
and what the charging ~~state~~ authorizes,
by saying ~~that~~ ^{the} death penalty
is ~~not~~ ^{not} authorizing to impose any
punishment in a case in violation of
the 5th, 6th, 8th, and 14th Amendments and
in violation of clearly established U.S.
Supreme Court precedent requiring
consistency.

X) Consideration Governing Review

The Montana Supreme Court has ruled that its Sentencing Courts can use judicial fact-finding under Montana's Death Penalty sentencing scheme to find facts/elements (beyond the facts found by a jury), that either exist or do not exist, to impose a sentence greater than the jury's guilty verdict authorizes, in direct conflict and violation of *In re Bonner*, *Board of Pardons v. Allen*, *Rutledge v. United States*, *Jones v. United States*, *Apprendi v. New Jersey*, *Ring v. Arizona*, *Blakely v. Washington*, *United States v. Booker*, *Cunningham v. California*, *Mongiataga v. Hawaii*, *Alleyne v. United States*, and *Lynch v. Arizona*; thereby

Requiring Constitutional protection pursuant to the 5th, 6th, 8th, and 14th Amendments.

Exposing every first-time felony

offender case to a possible death sentence

without Notice, by ~~Neuroscience~~ Denouncing

cases performing unreviewed judicial

fact-finding to impose a greater sentence

of punishment authorized under ~~Neuroscience~~

Death Penalty Sentencing Scheme, ~~Neuroscience~~ the

conscious and is a fundamentally defective

sentencing structure.

XI) Index To Appendices

Appendix A - July 21st, 2020 Order Denying and Dismissing State Habeas Corpus for Counts (I) and (II)

Appendix B - July 21st, 2020 Order Denying and Dismissing State Habeas Corpus for Count (III)

Appendix C - Unanswered leave to Seek State Habeas Corpus upon judicial fact-finding imposing an enhanced and extended punishment for the protection of society

Appendix D - Petition for State Habeas Corpus for Counts (I) and (II)

Appendix E - Petition for State Habeas Corpus for Count (III)

Appendix F - Montana Statutes pertaining to the arguments submitted in this Petition

XII) Reasons For Granting The Writ

1) Montana's Judicial Fact-Finding, To Find Facts Beyond Those Found And Determined By A Jury, Is Used To Increase The Severity Of Punishment Beyond That Which The Jury's Verdict Authorized In Violation Of The Fifth, Sixth, Eighth, and Fourteenth Amendments.

(A) Mr. Belenus was sentenced to a punishment not authorized by statute, beyond that which Mr. Belenus' jury's verdict authorized, and beyond what Montana's legislation intended, by the sentencing court's unconstitutional finding of facts beyond those found by Mr. Belenus' jury.

Mr. Belenus' sentencing court exercised judicial fact-finding to find and determine serious bodily injury (beyond Mr. Belenus' jury's finding of bodily injury) in order to sentence

Mr. Belenus under Montana's Death Penalty in this

non-death, no serious bodily injury,
first-time offender case under Counts (I)
and (II) in violation of *In re Bonner*, 151 U.S.
242 (1894); *Board of Pardons v. Allen*, 482 U.S.
369 (1987); *Rutledge v. United States*, 517 U.S.
292 (1996); *Jones v. United States*, 526 U.S. 227
(1999); *Apprendi v. New Jersey*, 530 U.S. 466
(2000); *Blakely v. Washington*, 542 U.S. 296
(2004); *United States v. Booker*, 543 U.S. 220
(2005); *Cunningham v. California*, 549 U.S. 270
(2007); *Mouginaga v. Hawaii*, 549 U.S. 1191
(2007); *Alleyne v. United States*, 570 U.S. 99 (2013).

Mr. Blomus was sentenced to "life in prison"
for Counts (I) and (II), a sentence not authorized
by statute (*Rutledge*); constituting a cruel and
unusual punishment when the sentence of "life in

prison" for Counts (I) and (II) was imposed by the sentencing court's fact-finding of serious bodily injury beyond the jury's finding of bodily injury in violation of Jones, Apprendi, Blakely, Booker, Cunningham, Alleyne, MCA 46-1-401, Mangosotea and the 5th, 6th, 8th, and 14th Amendments.

The punishment of life imprisonment under 45-5-503 and 45-5-503(3)(a) is lifetime registration as enacted into law by Montana's legislature (Rutledge); as Montana's legislature intentionally omitted and did not specify a place of imprisonment for the punishment of life imprisonment, and thereby providing

Mr. Belenus a Due Process protected liberty Interest guarantee to being sentenced to life imprisonment as lifetime registration, not life imprisonment as life in prison (In re Bonner, Allen).

Mr. Belenus and Mr. Belenus's jury were not provided Notice of a punishment of life in prison for Counts (I) and (II); and Mr. Belenus was not provided Notice for the protection of society element to increase and expose Mr. Belenus to a greater sentence than what the jury's verdict authorized in order to defend against it, in violation of In re Winship, 397 U.S. 358 (1970); Mulloney v. Wilbur, 421 U.S. 684 (1975). Mr. Belenus's jury did not find the fact for the protection of society for

the Court to impose a sentence greater than life imprisonment as lifetime registration to life "in prison" (Apprendi, Cunningham, Blakely, Booker, Jones, MCA 46-1-401, Mangoteaga); and thus, life "in prison" is void for the excess ("in prison") as it's life registration (In re Bonner, Allen, MCA 46-18-211).

Mr. Belanus was charged with the statutorily defined verbatim offenses of 45-5-503 and 45-5-503(3)(a), requiring relief; as Montana's Judicial fact-finding to expose and impose a sentence greater than that which the jury's verdict authorized and Montana's legislature intended, violates the 5th, 6th, 8th, and 14th Amendments requiring

correction by the granting of this petition
for a writ of Certiorari (reasoned by Appx. A).

(B) Mr. Belanus was sentenced beyond that which Mr. Belanus' jury's verdict authorized and arbitrarily sentenced in contradiction of Montana's statutorily commanding sentencing requirements, by the sentencing court's unconstitutional finding of facts beyond those found by Mr. Belanus' jury.

Mr. Belanus' sentencing court exercised judicial fact-finding to find and determine serious bodily injury (beyond Mr. Belanus' jury's finding of bodily injury) in order to sentence Mr. Belanus under Montana's Death Penalty in this non-death, no serious bodily injury, first-time offender case under Count (III) in violation of Jones, Apprendi, Blakely, Booker, Cunningham, Mourguet, and MCA 46-1-401.

Mr. Belanus was sentenced to "life in prison" for Count (III), "as provided in 46-18-301 through

46-18-310" (see MCA 45-5-303(2)),
Montana's Death Penalty Sentencing
Scheme, by the sentencing court's judicial
fact-finding of serious bodily injury beyond
the jury's finding of bodily injury (a
violation of Jones, Apprendi, Blackely, Booker,
Cunningham, Mangotea, MCA 46-1-401).

The punishment of life imprisonment
in the state prison under 45-5-303(2) is
a statutorily authorized sentence of
punishment that can only be imposed
by the Due Process Protected
Statutorily Commanding requirements,
"as provided in 46-18-301 through
46-18-310", guaranteed by the
5th and 14th Amendments, Mr. Blonius's

case does not meet any of the
statutorily mandated requirements
of "46-18-301 through 46-18-310", as
statutorily mandated by 45-5-303(2),
which would authorize the Sentencing
Court to impose the statutory
sentencing authority found under
"46-18-301 through 46-18-310".

The Sentencing Court arbitrarily
exercised judicial fact-finding to find facts
that are non-existent and beyond the facts
Mr. Beltrami's jury found, to impose a sentence
under Montana's Death Penalty in violation of
the 5th, 6th, 8th, and 14th Amendments; *Ring v.*
Arizona, 536 U.S. 584 (2002); *Jones*; *Blakely*; *Booker*;
Cunningham; *Apprendi*; *Mourning*; and MCA

46-1-401. Mr. Belanus was charged with the statutorily defined verbalism offense of 45-5-303(1)(c) causing bodily injury, Mr. Belanus' jury's verdict found that bodily injury occurred, and the jury's finding of bodily injury capped the maximum possible punishment under 45-5-303(2) at 10-years. The sentence authorized by the jury's guilty verdict solely without additional fact-finding of the statutorily defined verbalism charge of 45-5-303(1)(c) is 2-years under 45-5-303(2) by the jury's finding of no serious bodily injury (the jury's finding of bodily injury, not serious bodily injury).

"The 'statutory maximum' for Apprendi purposes is the maximum sentence a judge may impose solely on the basis of the facts reflected in the jury verdict or admitted by the defendant," quoting in relevant part Blakely at 303.

Mr. Belanus and Mr. Belanus' jury were

not provided Notice of Serious Bodily injury, and were not provided Notice for the protection of society element, in order to inform them of the possible punishments, allowing M. Beloner to defend against the elements of serious bodily injury and the protection of society, and for the jury to determine them by way of proof beyond a reasonable doubt, in violation of Winship and Mulloney. M. Beloner's jury did not find the required fact for the protection of society and did not find the required fact of serious bodily injury for the sentencing Court to impose a sentence greater than the 10-year maximum possible sentence of imprisonment under 45-5-30.3(2), by sentencing

Mr. Belanus under Montana's Death Penalty provisions (in violation of Jones, Apprendi, Booker, Blakely, Cunningham, Mangotega, King, and MCA 46-1-401).

"Capital defendants, no less than non-capital defendants, we conclude, are entitled to a jury determination of any fact on which the legislature conditions an increase in their maximum punishment," quoting in relevant part King at 589.

"The Court effectively declares five States' capital sentencing schemes unconstitutional. See ante, at 21, n.5 (identifying Colorado, Idaho, Montana, and Nebraska as having sentencing schemes like Arizona's). Nonetheless, the need to evaluate these claims will greatly burden the Courts in these five States," quoting in relevant part King at 621.

Mr. Belanus was charged with the statutorily defined violation offense of 45-5-303(2), requiring relief; as neither Mr. Belanus nor his jury were given Notice

of Montana's Death Penalty, and the required elements thereunder, being sought in this case (the only way a punishment of life in prison under 45-5-303(2) can be imposed), Montana's Judicial fact-finding, beyond the facts found by a jury, to expose and impose a sentence under Montana's Death Penalty sentencing authority, a sentence greater than that which the jury's verdict authorized, violates the 5th, 6th, 8th, and 14th Amendments; as the sentencing court conducting judicial fact-finding to impose a greater punishment found under Montana's Death Penalty is unconstitutional (as ruled by this Court in Ring) and requires correction by the granting of this Petition for a writ of Certiorari (reasoned by Appx. B).

(C) Mr. Blenues' sentences of imprisonment were imposed based upon a fact not found by Mr. Blenues' jury which exposed Mr. Blenues to a greater punishment, and this same judicial found fact made Mr. Blenues' paroleable sentences of imprisonment in the state prison become non-paroleable.

Mr. Blenues' Sentencing Court exercised judicial fact-finding to determine that Mr. Blenues' paroleable terms of imprisonment in the state prison be non-paroleable, and that the sentence of life in prison be imposed, for the protection of society, Mr. Blenues is a first-time offender and Mr. Blenues' jury made no such finding of fact that it is necessary for the protection of the public that Mr. Blenues be sentenced to life in prison and that his paroleable sentences become non-paroleable
(extending Mr. Blenues' term of imprisonment in the

State prison beyond that which was authorized by Mr. Blamie's jury's guilty verdict, in violation of Mangawaka, Apprendi, Blakely, Cunningham, Booker, Jones, Ring, MCA 46-1-401, and Lynch v. Arizona, 136 S. Ct. 1818 (2016).

The sentencing court imposing the sentence of life in prison and making Mr. Blamie's jury authorized paroleable sentences of imprisonment in the state prison non-paroleable is necessary for the protection of society in this non-death, no serious bodily injury, first-time offender, judicially decided to be sentenced under Montana's Death Penalty Case, is a violation of the 5th, 6th, 8th, and 14th Amendments, as Mr. Blamie was not

provided Notice to defend against the fact for the protection of society, was not provided Notice of the punishment attached for the protection of society, and Mr. Belanus's jury did not find the fact, and were not made aware of the punishment attached to the fact, for the protection of society in violation of Winslip and Mulloney.

The sentence of life in prison imposed in Mr. Belanus's case, and imposing a no parole stipulation upon Mr. Belanus's jury's verdict authorized paroleable sentences of imprisonment in the state prison, being necessary for the protection of society, is unconstitutional; as Montana's Judicial fact-finding to expose and

impose a sentence greater than that which the jury's guilty verdict authorized, is necessary for the protection of society, violates the 5th, 6th, 8th, and 14th Amendments in light of *Monguotega*, *Apprendi*, *Blakely*, *Booker*, *Cunningham*, *Jones*, *Ring*, *Lynch*, *Alleyne*, and *MCA 46-1-401*; and requires correction by the granting of this Petition for a Writ of Certiorari (Reasoned App. C).

XIII) Conclusion

Montana complains about its over-crowding and increasing prison populations. Is it any wonder why, with the way Montana sentences individuals to increased terms of imprisonment in the state prison by way of unconstitutional judicial fact-finding? Montana's judicial fact-finding to impose longer and harsher terms of imprisonment in the state prison beyond what a jury's guilty verdict authorized, and beyond what a defendant admits to, is unarguably violative of the United States Constitution, clearly violate established precedents of the United States Supreme Court, and violate Montana's own legislatively enacted state sentencing laws

for more than 20-years.

Montana imposing extended and greater punishments authorized under Montana's Death Penalty by way of judicial fact-finding in non-death, no serious bodily injury, first-time offender, no notice given of elements outside of the statutorily defined verbatim charged offense to be proven beyond a reasonable doubt (or admitted to by the defendant), no opportunity for the defendant to provide a defense against those elements, and no opportunity for a jury to determine and find guilt of those elements, violates the 5th, 6th, 8th, and 14th Amendments, rendering such a sentencing scheme fundamentally unfair and undeniably

prejudicial (liken to a dictatorship).

Montana's arbitrary and capricious avoidance of determining, applying, and adhering to the laws of the land commanded by this Court, as provided in this petition for a writ of Certiorari (one example of countless available), requires further briefing to review and provide compelling information of the clear manifest abuse of discretions and intentional disregards of the laws and Constitutional Rights pronounced by this Court; which constitutes a fundamental miscarriage of justice by the Courts of Montana that has gone uncorrected for more than two-decades ad infinitum, via unconstrained and unconstitutional judicial fact-finding.

Therefore, Mr. Bellows Prays that this

Petition for a Writ of Certiorari is granted to determine how correction of the Montana Court's judgments upon sentences is justified to rein-in the unconstitutional customs and practices of judicial fact-finding to expose and impose extended (longer than a jury's guilty verdict authorizes and a defendant's admission authorizes) terms of imprisonment in the state prison within the state of Montana.

Respectfully submitted this 7th
day of December, 2020.

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