

No.

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

Appendix To
Petition For A Writ Of Certiorari

Pro Se

Duane Ronald Belanus

AO #3003449

Montana State Prison

700 Conley Lake Road

Deer Lodge, MT 59722

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Writ of Certiorari Appendix A

ORIGINAL

IN THE SUPREME COURT OF THE STATE OF MONTANA

OP 20-0339

DUANE RONALD BELANUS,

Petitioner,

v.

LYNN GUYER,

Respondent.

ORDER
FILED

JUL 21 2020

Bowen Greenwood
Clerk of Supreme Court
State of Montana

Duane Ronald Belanus has filed a petition for a writ of habeas corpus, arguing his sentences for felony sexual intercourse without consent (Count I), an aggravating circumstance involving the infliction of bodily injury related to felony sexual intercourse without consent, pursuant to § 45-5-503(3)(a), MCA (Count II), and felony aggravated kidnapping (Count III), which led to a life sentence without parole, are void as to the “excess only[.]” He contends that the Lewis and Clark County District Court did not possess “the statutory authority to impose the in-excess sentences of imprisonment in the state prison” He further contends that the statutes—§ 45-5-503, § 45-5-503(3)(a), and § 46-18-211, MCA—in conjunction, “create[] a Due Process protected liberty interest guarantee against Mr. Belanus being sentenced to life in prison under” the first two statutes. Belanus also moves this Court to file an over-length brief, and has submitted a thirty-one-page memorandum in support of his petition.

This Court addressed similar challenges to Belanus’s sentence in his petition for habeas corpus filed in Cause No. OP 20-0338. We incorporate herein the explanation of the facts and history of Belanus’s charges set forth in our Order in that proceeding. This Court denied and dismissed that petition, and the same is necessary here. Although a challenge to his sentence comes more than a decade too late, Belanus’s sentences for life

imprisonment for these felonies are not facially invalid, and he is not entitled to habeas corpus relief.

We observe that this petition is Belanus's eighteenth such pleading challenging his 2009 convictions and sentences. This Court has issued seven Opinions related to the 2008 crimes: (1) *State v. Belanus*, 2010 MT 204, 357 Mont. 463, 240 P.3d 1021; (2) *Belanus v. Quintana*, No. DA 14-0202, 2015 MT 44N, 2015 Mont. LEXIS 48; (3) *Belanus v. Gallagher*, No. DA 15-0749, 2016 MT 186N, 2016 Mont. LEXIS 513; (4) *Belanus v. State*, No. DA 14-0782, 2016 MT 262N, 2016 Mont. LEXIS 923; (5) *Belanus v. Potter et al.*, 2017 MT 95, 387 Mont. 298, 394 P.3d 906; (6) *Belanus v. Sherlock et al.*, No. DA 16-0543, 2017 MT 232N, 2017 Mont. LEXIS 580; and (7) *Belanus v. Hoovestall*, No. DA 17-0590, 2018 MT 166N, 2018 Mont. LEXIS 224. We considered an interlocutory appeal and three petitions for a writ of supervisory control filed by Belanus. *See Belanus v. State*, No. DA 12-0232, Order (Mont. Sept. 11, 2012); *Belanus v. Sherlock*, No. OP 15-0369, Order, 379 Mont. 538, 353 P.3d 508 (June 30, 2015); *Belanus v. Sherlock*, No. OP 15-0383, Order, 381 Mont. 541, 357 P.3d 335 (July 7, 2015); and *Belanus v. Sherlock*, No. OP 15-0454, Order, 381 Mont. 543, 357 P.3d 336 (Aug. 12, 2015).

In 2020, Belanus filed two petitions for a writ of supervisory control which this Court denied because he had the remedy of appeal. *See Belanus v. Third Judicial Dist. Ct.*, No. OP 20-0059, Order, 399 Mont. 551, 460 P.3d 404 (Feb. 5, 2020) and *Belanus v. Third Judicial Dist. Ct.*, No. OP 20-0062, Order, 399 Mont. 551, 460 P.3d 404 (Feb. 11, 2020). Belanus then appealed the three decisions from the Third Judicial District Court where the court denied his challenge to a postconviction statute. We consolidated his appeals. The State of Montana moved to dismiss the appeals because they were all improper and untimely. We agreed. *See Belanus v. State*, No. DA 20-0126, Order (Mont. Apr. 29, 2020).

While this Court affords latitude to self-represented litigants, such latitude cannot be so wide as to permit duplicative, meritless pleadings, thereby straining judicial resources. *See Greenup v. Russell*, 2000 MT 154, ¶ 15, 300 Mont. 136, 3 P.3d 124.

Belanus has had more than his day in several Montana courts.¹ He was previously declared to be a vexatious litigant in the District Court. Therefore,

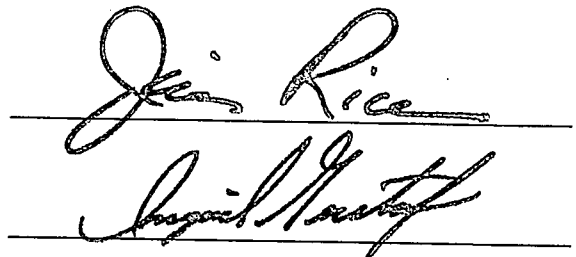
IT IS ORDERED that Belanus's Motion to Seek Leave to File Over-Length Briefs and/or Suspend the Rules for Word/Page Limit in this Proceeding is DENIED.

IT IS FURTHER ORDERED that Belanus's Petition for a Writ of Habeas Corpus is DENIED and DISMISSED.

IT IS FURTHER ORDERED that, henceforth, prior to filing any original petition or pleading with this Court, challenging his convictions and sentences, Belanus must first file a motion for leave to file the petition or pleading. The motion for leave must be sworn under oath, not exceed three pages in length, and make a preliminary showing that the proposed petition or pleading has merit and meets the criteria for stating a prima facie case under M. R. App. P. 14(5). The motion for leave shall be forwarded to the Court for review. Only upon issuance of an order by this Court granting the motion for leave to file may the Clerk of this Court file any petition or pleading from Belanus. Any other original petition Belanus seeks to file challenging his convictions or sentences shall be rejected by the Clerk, or otherwise summarily dismissed by the Court, and the Clerk shall inform Belanus accordingly.

The Clerk is directed to provide a copy of this Order to counsel of record and to Duane Ronald Belanus along with a copy of M. R. App. P 14(5).

DATED this 21st day of July, 2020.



¹ We point to this Court's earlier opinion where we noted Belanus's four cases in federal District Court originating in 2016 and 2017. *See Belanus v. State*, No. DA 16-0543, 2017 MT 232N, ¶ 9, 2017 Mont. LEXIS 580, n.1.

Ben Blum
Daniel R. Blum
Justices

Writ of Certiorari Appendix B

ORIGINAL

IN THE SUPREME COURT OF THE STATE OF MONTANA

OP 20-0338

FILED

JUL 21 2020

Bowen Greenwood
Clerk of Supreme Court
State of Montana

DUANE RONALD BELANUS,

Petitioner,

v.

ORDER

LYNN GUYER,

Respondent.

Duane Ronald Belanus has filed a petition for a writ of habeas corpus, contending his sentence of life imprisonment in the state prison exceeds the sentencing court's statutorily granted authority. While Belanus has also filed a motion for leave to file an over-length brief, he has already filed a memorandum in support of his petition, and we are not ordering any supplemental briefing herein. M. R. App. P. 14(7)(a) and 14(10).

This Court is familiar with the history of the case. In August 2008, the State of Montana charged Belanus with felony sexual intercourse without consent; with a second related count of aggravating circumstances involving the infliction of bodily injury, pursuant to § 45-5-503(3)(a), MCA; felony aggravated kidnapping; felony burglary; felony tampering with or fabricating physical evidence; and misdemeanor theft, after he brutally attacked and raped his then-girlfriend. A jury convicted Belanus on all counts, and this Court affirmed. *State v. Belanus*, 2010 MT 204, 357 Mont. 463, 240 P.3d 1021. Belanus petitioned the Lewis and Clark County District Court for postconviction relief, and the District Court denied his petition. He appealed, and we affirmed. *Belanus v. State*, No. DA 14-0782, 2016 MT 262N, 2016 Mont. LEXIS 923. The District Court ultimately declared Belanus a vexatious litigant in July 2016, after Belanus had extensively litigated or attempted to litigate other issues arising from his 2008 convictions. We again affirmed

the District Court. *Belanus v. Potter et al.*, 2017 MT 95, 387 Mont. 298, 394 P.3d 906. Belanus has also sought several writs with this Court.¹

Here, Belanus maintains the District Court did not possess the statutory authority to impose life imprisonment for Count III—aggravated kidnapping—pursuant to § 45-5-303(2), MCA. Citing to the cross references in this statute, he argues the court did not “impose a life imprisonment sentence as provided in 46-18-301 through 46-18-310,” and contends no basis existed to authorize the sentencing court to impose a sentence of life imprisonment. Thus, he argues his sentence of life imprisonment violates his fundamental rights under both the United States and Montana Constitutions. Finally, he argues that he qualified for the sentencing exception under § 45-5-303(2), MCA, for cases in which the victim is released in a safe place and without serious bodily injury.

Belanus’s arguments about the District Court’s authority to impose his sentence have been thoroughly reviewed previously and are without merit. The District Court properly followed Montana’s statutory scheme. We have recognized “[t]he maximum penalty for aggravated kidnapping is 100 years, § 45-5-303(2), MCA[.]” *State v. Brady*, 249 Mont. 290, 295, 816 P.2d 413, 415-16 (1991). The sentencing court may consider aggravating and mitigating factors, if applicable, as set forth in § 46-18-303 and § 46-18-304, MCA. Section 46-18-305, MCA, addresses the effect of aggravating and mitigating circumstances, and provides:

In determining whether to impose a sentence of death or imprisonment, the court shall take into account the aggravating and mitigating circumstances enumerated in 46-18-303 and 46-18-304 and shall impose a sentence of death if the trier of fact found beyond a reasonable doubt, . . . one or more aggravating circumstances and the court finds that there are no mitigating circumstances sufficiently substantial to call for leniency. If the court does not impose a sentence of death and one of the aggravating circumstances

¹ There have been five writs, resulting in denials and dismissals: *Belanus v. Sherlock*, No. OP 15-0369, Order, 379 Mont. 538, 353 P.3d 508 (June 30, 2015); *Belanus v. Sherlock*, No. OP 15-0383, Order, 381 Mont. 541, 357 P.3d 335 (July 7, 2015); *Belanus v. Sherlock*, No. OP 15-0454, Order, 381 Mont. 543, 357 P.3d 336 (Aug. 12, 2015); *Belanus v. Third Judicial Dist. Ct.*, No. OP 20-0059, Order, 399 Mont. 551, 460 P.3d 404 (Feb. 4, 2020); and *Belanus v. Third Judicial Dist. Ct.*, No. OP 20-0062, Order, 399 Mont. 551, 460 P.3d 404 (Feb. 11, 2020).

listed in 46-18-303 exists, the court may impose a sentence of imprisonment for life or for any term authorized by the statute defining the offense.

The State of Montana included in its charging document for sexual intercourse without consent the aggravating circumstance of infliction of bodily injury and charged Belanus with aggravated kidnapping. These documents provided Belanus notice, and he had full opportunity to challenge the charges within his criminal proceeding, in contradiction to his due process claim. The jury found him guilty of all counts, including the aggravating circumstance and aggravated kidnapping. The District Court had statutory authority to impose life imprisonment for both felonies—aggravated kidnapping and sexual intercourse without consent—pursuant to § 45-5-303(2), MCA, and § 45-5-503(2), MCA. When considering all of the circumstances pursuant to § 46-18-305, MCA, the District Court found no basis for leniency:

In passing judgment, the Court notes that the defendant's attorney did an excellent job of advocating for the defendant's eventual release from prison[;] however, after carefully considering the evidence at trial, the pre-sentence investigation report, the psycho-sexual evaluation, the requirements of Section 46-18-202, MCA, and all of the other materials submitted to the Court, the Court finds and determines that the defendant should not be eligible for parole. In making this finding, the Court notes, what in the Court's experience was the unprecedented brutal nature of the offenses against a victim. The Court further determines that should the defendant ever be released from prison, he would pose a risk, not only to the victim of the offense, but against other women as well to the degree that the level of danger posed by the defendant to society outweighs any possibility that he might be rehabilitated.

Neither is Belanus entitled to the ten-year sentence for aggravated kidnapping for safe release of the victim without serious injury. "When a district court imposes a sentence for aggravated kidnapping, Mont. Code Ann. § 45-5-303(2) provides flexibility in sentencing a defendant who (1) voluntarily releases the victim, (2) in a safe place, and (3) not suffering from serious bodily injury; if these three factors are satisfied, the sentence may not exceed 10 years." *State v. Smith*, 228 Mont. 258, 265, 742 P.2d 451, 455 (1987);

see also § 45-5-303(2), MCA (2007). As the jury found, these facts did not occur here, and Belanus does not contend otherwise.


Moreover, any challenge to his sentence comes more than a decade too late. Belanus cannot challenge or collaterally attack his sentence through a writ of habeas corpus because he has exhausted the remedy of appeal. Section 46-22-101(2), MCA. Belanus did not challenge his sentences in his appeal and is precluded from doing so now. His sentence for aggravated kidnapping is not facially invalid. The District Court imposed a lawful sentence and Belanus is not entitled to habeas corpus relief. Therefore,

IT IS ORDERED that Belanus's Motion to Seek Leave to File Over-Length Briefs and/or Suspend the Rules for Word/Page Limit in this Proceeding is DENIED.

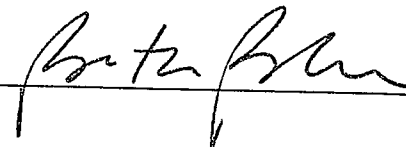
IT IS FURTHER ORDERED that Belanus's Petition for a Writ of Habeas Corpus is DENIED and DISMISSED.

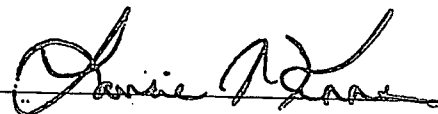
The Clerk is directed to provide a copy of this Order to counsel of record and to Duane Ronald Belanus personally.

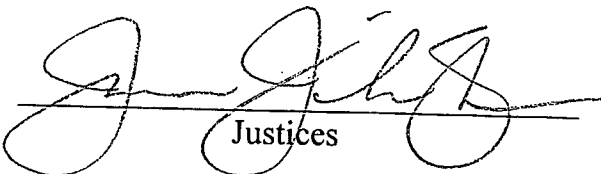
DATED this 21st day of July, 2020.










_____ Justices

Writ of Certiorari Appendix C



Bowen Greenwood
CLERK

State of Montana
Office of Clerk of the Supreme Court
P.O. Box 203003
Helena, MT 59620-3003
406-444-3858 phone
406-444-5705 fax

NOVEMBER 19, 2020

DUANE BELANUS
3003449
MONTANA STATE PRISON
700 CONLEY LAKE ROAD
DEER LODGE, MT 59722

Dear Mr. Belanus:

This office received your documents entitled "Motion for Leave to File Rule 60(b)(6) Motion,"(x2) "Rule 60(b)(6) Motion," and "Motion for Leave to File Original Habeas Corpus Petition." All are being returned to you unfiled. The court elected not to grant leave.

This court cannot consider Rule 60 motions because those rules apply to district courts.

Notarization by individuals who are not notaries public does not meet the requirements of the Court's order in OP 20-0339.

Sincerely,

A handwritten signature in black ink, appearing to read "B. Greenwood", written over a horizontal line.

BOWEN GREENWOOD
Clerk of the Supreme Court

Enc.

Pro Se

Duane Ronald Belanus
AO #3003449
Montana State Prison
700 Galey Lake Road
Deer Lodge, MT 59712

IN THE SUPREME COURT
OF THE STATE OF MONTANA
vs.

Duane Ronald Belanus,
Petitioner,

vs.

Lynn Oyler,
Respondent.

MOTION FOR LEAVE
TO FILE ORIGINAL
HABEAS CORPUS PETITION

Comes now Duane Ronald Belanus, who respectfully
files this Motion for leave to File Original Habeas
Corpus Petition.

Request for leave

I request leave to File an Original Habeas
Corpus Petition before this Court.

The Sentencing Court's judgment of conviction
states that it sentenced me to life in prison, and
without the possibility of parole "for the protection
of society". I was not provided Notice of being
sentenced to life in prison, "for the protection of
society", and I was not provided Notice of
a no parole stipulation "for the protection of society".
The fact, "for the protection of society", was not

[illegible]

presented to my jury and was not provided to me by way of Notice so I could defend against it. The sentencing court exercised judicial discretion to determine the fact of, "for the protection of society," in order to impose a no parole condition and to impose a sentence of life in prison. "For the protection of society," is a fact not found by my jury exposing me to greater punishment than that authorized by my jury in violation of Apprendi v. New Jersey, 530 U.S. 466 (2000) and the 5th, 6th, 8th and 14th Amendments; Apprendi at 490 and 492-494; Cunningham v. California, 127 S. Ct. 856, 868 (2007); MCA 46-1-401, Judicial fact-finding under 46-18-101(3)(d), 46-18-115(1) and (6), without Notice and a jury finding, violates Apprendi and Cunningham.

My jury found me guilty of the verbatim statutorily defined offenses. The sentencing court finding the fact of, "for the protection of society," in order to impose a sentence of life in prison and making my sentence non-parolable violates Boumediene v. Hawaii, 127 S. Ct. 1210 (2007); see also Kana v. Frank, 436 F.3d 1057, 1061-1062 (9th Cir. 2006); Tilcock v. Budge, 538 F.3d 1138, 1144 (9th Cir. 2008); D'Agirland v. Bennett, 2007 U.S. Dist. LEXIS 35966, *17. The failure to provide me Notice of, "for the protection of society," the punishment of this fact, and for this fact to be proved beyond a reasonable doubt by my jury violates In re Winship, 397 U.S. 358 (1970); Mulloney v. Willer, 471 U.S. 684 (1975); Specht v. Patterson, 386 U.S. 605 (1967); United States v. Gaudin, 515 U.S. 506, 510 (1995).

"For the protection of society," is a judicially found fact not presented in any charging document/information, jury instruction, or jury verdict form. The sentence of life in prison based upon "for the protection of society," is a judge found fact beyond the facts found by my jury; and the imposition of no parole, "for the protection of society," is a judge found fact beyond the facts found by my jury, constituting a facially invalid sentence caused by factually erroneous findings made by the sentencing court providing me Habeas Corpus relief when no such punishment exists in this non-death, non-serious bodily

injury, first-time offender case.

Declaration

Pursuant to 28 U.S.C. 1746 and MCA 1-6-105, I, Duane Ronald Belanus, swear and declare under the penalty of perjury that the foregoing is true.

Signed this 22nd day of
October, 2020.

Duane Ronald Belanus

Duane Ronald Belanus

I swear under the maximum penalty of perjury that this Motion to Seek leave and its corresponding attachment is not for harassment purposes, is not frivolous, and has sound merit in Constitutional law.

* Sworn upon and Oathed upon the Bible
this 22nd day of October, 2020.

Duane Ronald Belanus

Witnessed by: Jeremy C Woods / J Woods 10/22/20

* Due to Covid, a Notary has not been available for weeks.