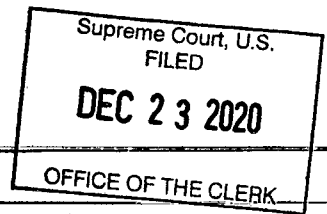


No. 20-926



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 Sentence Review Division

Petition For A Writ Of Certiorari

Pro Se

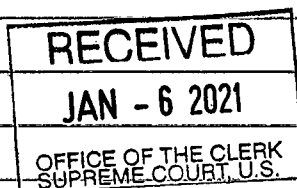
Duane Ronald Belanus

AO #3003449

Montana State Prison

700 Conley Lake Road

Deer Lodge, MT 59722



7) Question Presented

Does the failure to comply with Montana's state law provision or provisions governing proportionality review have the potential to be sufficiently egregious to amount to a denial of Equal Protection or of Due Process of Law guaranteed by the Fourteenth Amendment?

Sub-Divided Inquiries

1) Does the deprivation of Constitutionally invoked assistance of counsel during a plea hearing implicate the judgment as it relates to the sentence, thereby requiring a remedy of relief and consideration to be afforded, as the United States Supreme Court has consistently applied when prejudice has been shown?

2) Does Montana's Direct Appeal Critical Stage Sentence Review proceeding establish a Due Process guaranteed procedure of review mandated to be adhered to, as statutorily defined by Montana's legislature, required by the Division's Rules of Procedure, and ruled by the Ninth Circuit Court of Appeals and the Montana Supreme Court?

3) Did Sentence Review provide Mr. Belanus an adequate and effective opportunity to obtain an adjudication upon the merits on review of the judgment as it relates to the sentence, in accordance with Due Process and Equal Protection?

II) List of Parties

Petitioner -

Pro Se

Quane Ronald Belorus

AO # 3003449

Montana State Prison

700 Conley Lake Road

Deer Lodge, MT 59722

Respondent -

State of Montana

Attorney General's Office

P.O. Box 201401

Helena, MT 59620-1401

<u>III) Table of Contents</u>	<u>Pg.</u>
I) Question(s) Presented	i
II) List of Parties	ii
III) Table of Contents	iii
IV) Table of Authorities	iv-vii
V) Petition for Writ of Certiorari	viii
VI) Opinions Below	viii
VII) Jurisdiction	ix-x
VIII) Constitutional and Statutory Provisions Involved	xi-xii
IX) Statement of the Case	xiii-xvi
X) Consideration Governing Review	xvii-xix
XI) Index to Appendices	xx-xxi
XII) Reasons for Granting The Writ	1-39
XIII) Conclusion	40-41
XIV) Declaration of Service	42
XV) Certificate of Compliance	43

IV) Table of Authorities

Ag.

Cases:

Alney v. United States,
431 U.S. 651 (1977)

xvii

Argersinger v. Hamlin,
407 U.S. 25 (1970)

8

Arizona v. Fulminante,
499 U.S. 279 (1991)

6, 7

Carns v. Zelinsky,
689 F.2d 435 (3rd Cir. 1982)

5

Coleman v. Thompson,
501 U.S. 722 (1991)

ix

Colson v. Smith,
438 F.2d 1075 (5th Cir. 1971)

5

Douglas v. California,
372 U.S. 353 (1963)

xvii, 24

Driver v. Sentence Review Division,
2010 MT 43

14, 15, 18,

21, 23, 26, 35, 37, 55

Emitt v. Lucey,
469 U.S. 387 (1985)

xvii, 24

Ex parte Crow Dog,
109 U.S. 556 (1883)

9

IV) Table of Authorities, Cont Pg.

Ex parte Nielsen, 6-7
131 U.S. 176 (1889)

Herb v. Pitcairn, x
324 U.S. 117 (1945)

Hill v. Lockhart, 5
474 U.S. 52 (1985)

Ingraham v. Wright, 37
430 U.S. 651 (1977)

Iowa v. Tovar, 8
541 U.S. 77 (2004)

Johnson v. Zerbst, 5, 8, 10, 12
304 U.S. 458 (1938)

Kentucky Dept of Corrections
v. Thompson, 33
490 U.S. 454 (1989)

Klefer v. Cooper, 4
566 U.S. 156 (2012)

Louche v. Thomas, 32
517 U.S. 314 (1996)

Martinez v. Court of Appeal
of California, xvii
528 U.S. 154 (2000)

TV) Table of Authorities, Cont. Pg.

McMann v. Richardson,
397 U.S. 759 (1970) 4

Neader v. United States,
527 U.S. 9 (1999) 6

Padilla v. Kentucky,
559 U.S. 356 (2010) 5

Pulley v. Harris,
465 U.S. 37 (1984) 40

Rogers v. Ferriter,
796 F.3d 1009 (9th Cir. 2015) 20, 21,
27

Schrimer, 182 Mont. (Sent. Rev. Div.) 36

Securities & Exchange Comm'n
v. Chenery Corp., 318 U.S. 80 (1943) 36, 37

Services v. Dulles,
354 U.S. 363 (1957) 33

Stewart Mont. (Sent. Rev. Div.) 36
No. 3875

State v. Boucher,
2002 MT 114 5

State v. Rogers,
267 Mont. 190 (1994) 7, 10

IV) Table of Authorities, Cont. Pg.

Thomas, Head, and Gelsden
Employees Trust v. Buster,
95 F.3d 1449 (9th Cir. 1996) 9

Turner v. Calderon,
281 F.3d 851 (9th Cir. 2002) 5

United States v. Ahims,
276 F.3d 1141 (9th Cir. 2002) 5, 6, 8

United States v. Cronin,
466 U.S. 648 (1984) 6

United States v. Fuller,
941 F.2d 993 (9th Cir. 1991) 6

Vitarelli v. Seaton,
359 U.S. 535 (1959) 33

Vondael v. State,
2015 MT 345 N 16, 17

White v. Maryland,
373 U.S. 59 (1963) 6

II) Petition for Writ of Certiorari

Petitioner respectfully Prays that a Writ of Certiorari issue to review the judgment below from the Montana Supreme Court Sentence Review Division, (Appendix B).

III) Opinions Below

The Order denying Rehearing and/or Reconsideration was decided on August 24th, 2020 (Appendix B), one day before the decision was issued affirming M. Bellemis's sentence on August 25th, 2020 (Appendix A). The transcripts of the proceeding are found at (Appendix P).

III) Jurisdiction

The date on which the Montana Supreme Court Direct Appeal Sentence Review Division entered its Order was on August 24th, 2020 and August 25th, 2020. The decision was issued on August 25th, 2020, which appears at (Appendix A); and the Order denying Rehearing and/or Reconsideration was issued on August 24th, 2020, which appears at (Appendix B).

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

"When this Court reviews a state court decision on direct review pursuant to 28 U.S.C. 1257, it is reviewing the judgment; if resolution of a federal question cannot affect the judgment, there is nothing for the Court to do," quoting *Coleman v. Thompson*, 501 U.S. 722, 730-731 (1991).

The resolution of Mr. Blomquist's Federal questions affects the State Court's judgment; and this Honorable Court's "power is to correct wrong judgments, not to revise opinions," quoting *Herb v. Pittsman*, 324 U.S. 117, 125-126 (1945). The Judgment sought to be reviewed is found at (Appendix B).

VIII) Constitutional and Statutory Provisions Involved

(1) Constitutional: Pg.

5th Amendment	2
6th Amendment	2
14th Amendment	2, 13, 35 39, 40

(2) Statutory:

MCA 1-1-108 (Appx. R) (Pg. 2)	33-34
MCA 46-1-202 (1) (Appx. R) (Pg. 2)	10, 17, 24
MCA 46-1-202 (25) (Appx. R) (Pg. 2)	16
MCA 46-18-115 (1) (Appx. R) (Pg. 2-3)	29
MCA 46-18-115 (3) (Appx. R) (Pg. 3-4)	29-30
MCA 46-18-901 (4) (Appx. R) (Pg. 6)	15, 17, 26
MCA 46-18-903 (Appx. R) (Pg. 6-7)	16
MCA 46-18-904 (1)(a)(i) (Appx. R) (Pg. 7)	11, 16, 17, 24 25
MCA 46-18-904 (1)(a)(ii) (Appx. R) (Pg. 7)	15
MCA 46-18-904 (2) (Appx. R) (Pg. 8)	16, 17, 25

VIII) Constitutional and Statutory Provisions Involved, Cont.

	<u>Pg.</u>
MCA 46-18-904(3) (Appx. R) (Pg. 8)	15, 26
MCA 46-18-905(2) (Appx. R) (Pg. 9)	xviii
MCA 46-21-101(1) (Appx. R) (Pg. 9)	21

(3) Rules of Procedure:

Rule 3 (Appx. K) (Pg. 1)	xiii, 18, 20, 23, 27, 31
Rule 11 (Appx. N) (Pg. 8)	19, 20, 26, 31
Rule 15 (Appx. N) (Pg. 10-12)	18-21, 26, 28, 29, 31
Rule 17 (Appx. N) (Pg. 13)	35
Rule 22 (Appx. N) (Pg. 16)	30

IX) Statement of the Case

On September 21st, 2010, Mr. Belomus' invoked Direct Appeal was decided; and on August 24th and 25th, 2020, Mr. Belomus invoked Direct Appeal Sentence Review proceedings were decided. The stage in the proceedings brought before the United States Supreme Court where the federal questions have been raised and called into question, is during Montana's Direct Appeal Sentence Review proceedings.

Pursuant to Rule 3 of the Sentence Review Division, it states,

"The Division shall not consider issues which could have been or should have been addressed in District Court by appeal or post conviction relief." (Appendix K, pg. 1).

(A) - Question (1):

Presented in this Petition for a Writ of Certiorari was addressed in the Sentencing Court by postconviction relief; and by Rule 3 (Appx. K), the Division was required to consider Federal Question (1) by the word "shall", when the matter was raised before the Sentencing Court by postconviction relief and argued before the Sentence Review Division, see Postconviction Petition Pages 5 and 18, Ground 12 (Pages 1-4) (Appx. C); Sentencing Court Postconviction Ruling, Pages 16, lines 8-10, Page 26, lines 4-6 (Appx. D; also Att. #114); Postconviction Appeal Brief of Appellant, Pg. 34 (Appx. E); Postconviction Appeal Brief of Appellant,

Pages 12-16 (Appx. F); Synopsis of Sentence Review Brief, Pages 1-4 (Appx. G); Sentence Review Brief of Petitioner, Pages 1-48 (Appx. H); Sentence Review Memorandum Addendum Brief of Petitioner, Pages 1-28 (Appx. I); Sentence Review Division Decision, Pages 14, lines 22-23, Page 15, lines 2-3, lines 20-25 (Appx. B); Motion for Clarification (Appx. J).

(B) - Question (2):

Presented in this Petition was addressed in the Direct Appeal Sentence Review proceedings, see Sentence Review Brief of Petitioner, Pages XV-XXIV, XLi-Lii (Appx. H); Sentence Review Memorandum Addendum Brief of Petitioner, Pages

xvii-xxi; xxvii-xxxiv (Appx. I);

Sentence Review Division Decision, Pages
3-5 (Appx. B).

(C) - Question (3):

Presented in this Petition was
addressed in the Direct Appeal Sentence
Review proceedings, see Sentence Review
Division Decision Pages 3, last line; Page 4,
lines 1-10; Page 5, lines 1-12; Page 10, lines
10-13; Page 14, lines 10-11 (Appx. B);
Motion for Clarification (Appx. J).

X) Consideration Governing Review

1) If the state provides an appeal as a matter of statutory right, its appellate procedure in deciding cases must comport with the Due Process and Equal Protection Clauses of the 14th Amendment, see *Evitts v. Lucy*, 469 U.S. 387, 389, 393-394 (1985) (Due Process); *Douglas v. California*, 372 U.S. 353, 354-355 (1963) (Equal Protection); see also *Martinez v. Court of Appeal of California*, 528 U.S. 152, 161 (2000).

"The right of appeal, as we presently know it in criminal cases, is purely a creature of statute," quoting *Abney v. United States*, 431 U.S. 651, 656 (1977).

Montana provides Direct Appeal as

a matter of statutory right, and provides Direct Appeal Sentence Review as a matter of statutory right.

Montana's Direct Appeal Sentence Review's customs and practices in deciding cases does not comport with, and is violative of, the Due Process and Equal Protection Clauses of the 14th Amendment, please see following Reasons for Granting this Petition for a Writ of Certiorari.

2) The Reported Sentence Review Division's cases are statutorily commanded by MCA 46-18-905(2) to be reported in the Montana Reporter. These cases are not available through the Montana State

Prison's legal research materials for Mr. Belanus to view, research, or quote. However, Mr. Belanus has found a few cases supporting the arguments presented in this petition through an external source.

If the Sentence Review Division can adjudicate Sixth Amendment Constitutional violation claims asserting ineffective assistance of counsel during its Sentence Review proceeding in Mr. Belanus's case (which, if were found in Mr. Belanus's favor, therefore, invalidating the proceeding), then it reasons that if a Sixth Amendment violation occurred in Mr. Belanus's sentencing, then the Sentence Review Division can rule upon the claims as done in previous cases.

XI) Index to Appendices

Appendix A - August 25th, 2020 Order
Affirming M. Belonus's Sentence

Appendix B - August 24th, 2020 Order
Denying M. Belonus's Rehearing

Appendix C - Postconviction Claim Filings, Pages

Appendix D - Postconviction Court Rulings, Pages

Appendix E - Postconviction Appeal Brief, Pages

Appendix F - Postconviction Appeal Reply Brief, Pages

Appendix G - Synopsis of Sentence Review
Brief

Appendix H - Sentence Review Brief of Petitioner

Appendix I - Sentence Review Memorandum
Addendum Brief of Petitioner

Appendix J - Motion for Clarification

Appendix K - Sentence Review Division Rules
Provided to Applicants

Appendix L - Overcoming the Presumption of
Correctness for MCA 45-5-303(2)

Appendix M - Overcoming the Presumption of
XX

XI) Index to Appendices, Cont.

Correctness for MCA 45-5-503

Appendix N - Sentence Review Division Rules
Not Provided to Applicants

Appendix O - Page 7 of State v. Lacey,
No. DC-05-259, Sentence Review
Hearing Transcript

Appendix P - Transcripts of Sentence
Review Hearing, State v. Belanus

Appendix Q - Filed Habeas Corpus Petition
in Relation to Sentences Imposed

Appendix R - Montana Statutes Quoted
in this Petition

XII) Reasons For Granting The Writ

1) Fundamental Constitutional Right violations constituting a prejudicial structural defect of the criminal process, which affects the judgment as it relates to the sentence, provides a remedy of relief to be afforded.

On the morning of August 4th, 2005, Mr. Belanus was brought before Honorable Judge Wallace Jewell in the Justice Court of Lewis and Clark County to enter a plea to a charge of misdemeanor partner and/or family member assault (Appendix H, Att. #114). Mr. Belanus clearly asserted and invoked his guaranteed Fundamental Right to the assistance of counsel before he entered a plea, (as Mr. Belanus wanted to speak to an attorney before entering his guilty plea).

Mr. Belanus was deprived of his invoked 5th, 6th, and 14th Amendments Right to the assistance of counsel during the plea hearing and was required to enter a plea without speaking to an attorney (a plea hearing where Mr. Belanus was forced to plead not guilty to the misdemeanor parent and/or family member assault charge, as he wanted to speak to an attorney first before entering his guilty plea to it).

Thereafter, charges increased without leave of the court to an included felony, then to 3-felonies (where Mr. Belanus was again required to enter a plea without Constitutionally invoked assistance of counsel); and then charges were increased to 7-felonies. A

week later, Mr. Belanus's Family retained Counsel to assist in Mr. Belanus's case, as Mr. Belanus had yet to be spoken to by an attorney. Had Mr. Belanus been provided the assistance of Counsel to enter a plea at the misdemeanor partner and/or family member assault plea hearing as Constitutionally invoked (as Mr. Belanus wanted to speak to an attorney first before entering his guilty plea), Mr. Belanus would have pled guilty and all subsequent criminal charges and proceedings out of the same transaction would have been barred by Montana's Statutorily enhanced Double Jeopardy liberty Interest guarantee protected by the 14th Amendment (Please see Appx. G, Pg. 1-4;

Appx. H, Pg. 1-48; Appx. I, Pg. 1-28).

The fact-finding trial court determined that Mr. Belanus's opportunity to plead guilty to the misdemeanor partner and/or family member assault charge was part of the plea bargain process (Appx. H, Att. #114). The Sixth Amendment Right to Counsel extends to the plea bargain process; and thus, "during plea negotiations defendants are 'entitled to the effective assistance of competent counsel'" (Casper v. Cooper, 566 U.S. 156, 132 S. Ct. 1376, 1384 (2012) (quoting McMann v. Richardson, 397 U.S. 759, 771 (1970))). (See also Appx. P, Pg. 11-12, 17:25-28).

"If a plea bargain has been afforded, a defendant has the right to effective

assistance of Counsel in considering whether to accept it," quoting Lafler at 1387. See also *Colson v. Smith*, 438 F.2d 1075, 1078 (5th Cir. 1971); *Caruso v. Zelinsky*, 689 F.2d 435, 438-439 (3rd Cir. 1982); *Turner v. Colorado*, 281 F.3d 851, 879 (9th Cir. 2002); *United States v. Atkins*, 276 F.3d 1141, 1146 (9th Cir. 2002); *Pardilla v. Kentucky*, 559 U.S. 356, 372 (2010); *Hill v. Lockhart*, 474 U.S. 52, 57 (1985).

"It is common knowledge that many defendants who plead ... to offense in Montana's Courts of limited jurisdiction do so without the benefit of Counsel" quoting in relevant part *State v. Baucher*, 2002 MT 114, ¶ 33; but,

"If the accused, however, is not represented by Counsel and has not competently and intelligently waived his Constitutional Right, the Sixth Amendment stands as a jurisdictional bar to a valid conviction and sentence depriving him of his life or his liberty," quoting in part *Johnson v. Zerbst*, 304 U.S. 458, 467-468 (1938).

Mr. Belanus was forced to, "enter" a plea before the magistrate and that

plea was taken at a time when he
had no counsel," quoting *White v.*

Maryland, 373 U.S. 59, 60 (1963), "[W]here
is counsel more important than at a

plea proceeding," quoting *Akins* at 1147-1148;

see also *United States v. Fuller*, 941 F.2d

993, 995-996 (9th Cir. 1991). The United

States Supreme Court,

"has uniformly found constitutional
error without any showing of prejudice
when counsel was either totally absent
or prevented from assisting the accused
during a critical stage of the proceeding,"
quoting *United States v. Cronk*, 466 U.S. 648,
651, 25 (1984); see also *Arizona v. Fulminante*,
499 U.S. 279, 310 (1991); *Wheeler v. United States*,
527 U.S. 1, 8 (1999).

Mr. Belanus, "was protected by a
Constitutional provision securing to him a
Fundamental Right. It was not a case
of mere error in law, but a case of
denying to a person a Constitutional Right.
And where such a case appears on the record,

the party is entitled to be discharged from imprisonment," quoting in relevant part *Ex parte Nielsen*, 139 U.S. 176, 1814 (1889); see also *Fulminante* at 310 (requiring reversal).

Montana's legislature defined

'Judgment' as,

"[A]n adjudication by a court that the defendant is guilty or not guilty and if the adjudication is that the defendant is guilty, it includes the sentence pronounced by the court" (MCA 146-1-202 (1)); see also *State v. Roger*, 267 Mont. 190, 192-193 (1994).

The review of Mr. Belanus's judgment, affirmed by the sentencing court's review of the record and its finding of fact, provides that Mr. Belanus was definitively charged

with, and pled to, a charge of misdemeanor partner and/or family member assault; and that M. Belonus's opportunity to plead guilty to it, was part of the plea bargain process (Appx. H, ATT. #114). This plea hearing/proceeding, was a critical stage (Iowa v. Tovar, 541 U.S. 77, 80-81, 87 (2004); Argersinger v. Hamlin, 407 U.S. 25, 34, 37 (1970); Atkins at 1146-1147). By M. Belonus's forced entry of a plea without Constitutionally involved Counsel's assistance, the Fifth, Sixth, and Fourteenth Amendment violations stands as a jurisdictional bar to M. Belonus's conviction and sentence depriving him of life and liberty (Zerbst at 467-468); and,

"It results that the First District Court of [Montana] was without jurisdiction to find and try [the Criminal Proceedings] against [M. Belamis], that the conviction and sentence are void, and that his imprisonment is illegal" quoting in relevant part *Ex parte Crow Dog*, 109 U.S. 556, 572 (1883).

"A void judgment is not void simply because it is or may have been erroneous; it is void only if the Court that rendered judgment lacked jurisdiction of the subject matter or the parties" quoting in relevant part *Thomas, Head, and Green Employees Trust v. Buster*, 95 F.3d 1449, 1460 n.17 (9th Cir. 1996).

Therefore, Mr. Belamis's judgment is void by the deprivation of his invoked Fundamental Right to the assistance of Counsel during the plea bargain arraignment hearing for the misdemeanor charge; and the judgment's voidness directly relates to the sentence imposed in Mr. Belamis's

Case CMCA 46-1-202(11); Rogers at 192-193), which requires a remedy of relief to be provided.

"The Sixth Amendment stands as a constant admonition that if the Constitutional safeguards it provides be lost, justice will not still be done," quoting in relevant part Zerbst at 462-463.

As shown and argued in the state courts, prejudice is established by showing how Mr. Bellamy pleading guilty to the misdemeanor charge exposed him to a maximum sentence of up to 1-year in jail, which statutorily barred any other charges out of the same transaction pursuant to Montana's enhanced statutorily guaranteed Double Jeopardy protections; compared to the

felony charges, which has placed Mr. Belorus in prison for over 12-years. Calbeit also argued as an expired sentence since August 3rd, 2018; please see Overcoming the Presumption of Correctness for MCA 45-5-303(2)(Appx. L) and MCA 45-5-503(Appx. M); filed under a Federal Habeas Corpus proceeding, Cause No. CV-00060-CCL, transferred to Cause No. CV-16-104-H-DLC-JTS, see Appx. Q).

The Division is statutorily commanded to review the judgment as it relates to the sentence (MCA 46-18-904(1)(a)(i)); and when the judgment has been affected by a jurisdictional defect caused by a

Fundamental Constitutional Right
deprivation (constituting a structural
defect in the criminal processes), the
Division's review must consider and
address the jurisdictional requirement
for a court to obtain a judgment
against Mr. Belanus, see Zerbst at
466-467,

"... it may become necessary to
look behind and beyond the record of
his conviction to a sufficient extent
to test the jurisdiction of the State
Court to proceed to a judgment against
[Mr. Belanus]".

The Division's attempt to alter
the factual record, (Appx. B, Pg. 15, 8 lines
up from the bottom) (alleging that
Mr. Belanus, "entered an uncounseled guilty
plea to a charge of partner/family
Pg. 12 of 43

member assault in some other matter";
when the record of fact for over 12-years
(Appx. H, Att.#114; Appx. I; Appx. J, Pg. 3; Appx. P,
Pg. 11-12, 17:25-28) stands uncontested and
indisputable), fails to comport with and
violates Fundamental Fairness guaranteed by
Due Process under the 14th Amendment for
testing jurisdiction. In relation to M.
Belanus's trial testimony, to being faced to
pleading without Constitutionally involved
assistance of Counsel to the misdemeanor
charge during the plea bargain assignment
proceeding, the prosecutor, Les Gallagher
asserted,

"If the State made a mistake
here, you acquit him of everything" (Tr. 764: 7-8; see also Appx. F, Pg. 16, lines 8-10;
Appx. J, Pg. 3).

2) Montana's Direct Appeal

Critical Stage Sentence Review proceeding establishes a guaranteed Statutory procedure of review, of both the Sentence and the Judgment.

On behalf of the Citizens of
Montana, Montana's,

"legislature" voluntarily created" the Division... to serve essentially as a safety net for our indiscriminate sentencing system; providing additional protection for both the public and for the individual defendant. The division was created to review sentences challenged as being unjust or inequitable," quoting in relevant part *Driver v. Sentence Review Division*, 2010 MT 43, p. 18.

The Sentence Review Division's
Rules,

"[P]rovide for an appropriately broad review of the totality of the facts and circumstances of each case which we have previously described as a review" for equity, disparity, or considerations of justice" by the Sentence

1
Review Board," quoting in relevant part Driver, p. 20.

"[B]oth the State and the Montana Supreme Court further qualify the uniformity standard by requiring sentencing courts to take into account "considerations of justice". That which is just is legally right, lawful, and equitable," Driver, p. 29.

Pursuant to MCA 46-18-904(3),

"The sentence imposed by the district court is presumed correct," (see also Driver, p. 21);

"Thus, after hearing evidence and argument, the Division must decide whether this presumption has been overcome and a new sentence should be imposed, "including a decrease or increase in the penalty". Section 46-18-904(1)(a)(i), MCA," quoting Driver, p. 21.

Pursuant to MCA 46-18-901(4),

"The review division may adopt any rules that will expedite its review of sentences. The division is also authorized to appoint a secretary."

Pursuant to MCA 46-1-202(25),

""Sentence" means the judicial disposition of a criminal proceeding upon a plea of guilty or ~~nolo contendere~~ or upon a verdict or finding of guilty" (see also *Vondal v. State*, 2015 MT 345², P. 9); and,

"Disposition is defined as "a final settlement or determination," quoting *Vondal*, P. 9.

Regarding the review of the judgment, Montana's legislature enacted MCA 46-18-904(1)(a)(1), which Statutorily commands the Sentence Review Division,

"In each case in which an application for review is filed in accordance with 46-18-903, the review division shall review the judgment as it relates to the sentence imposed."

Pursuant to MCA 46-18-904(2),

"In reviewing a judgment, the division may require the production of presentence reports and any other

records, documents, or exhibits relevant to the review proceedings..."

Pursuant to MCA 46-1-202(1),

"Judgment" means an adjudication by a court that the defendant is guilty or not guilty, and if the adjudication is that the defendant is guilty, it includes the sentence pronounced by the court", (see also Wondol, p. 9).

The Montana Sentence Review

Division adopted rules to expedite its review of sentences as statutorily authorized

by MCA 46-18-901(4), but not rules to

expedite its review of the judgments

(MCA 46-18-904(2) and MCA 46-18-904(1)(a)(i)).

A set of Rules provided to applicants (Appx. K), and a separate set of Rules quoted

as governing operating Rules of the Division

in Driver not provided to applicants,

which M. Belanus is not allowed to have (Appx. N).

In accordance with the Division's broad review of the totality of the facts and circumstances of each case (Driver, P. 20), the Division created Rule 3 (Appx. K) which states,

"The Division shall not consider issues which could have been or should have been addressed in District Court by appeal or post conviction relief."

In other words, Rule 3 states,

"The Division shall... consider issues which... have been addressed in District Court by appeal or post conviction relief."

All issues which were presented in District Court by appeal or post conviction relief shall be considered by the Division; and furthering the Division's broad review, Rule 15 (Appx. N),

which is not provided to applicants) States in relevant part,

"The record from which the Sentence Review Division shall conduct its review shall consist of the following:

... If the sentencing judge did not set forth his reasons for the sentence, or did not consider a pre-sentence report, or if there are critical matters which should have been presented at the sentencing hearing, the Sentence Review Division may vacate the sentence and remand it for resentencing based upon proper documentation..."; and,

Rule 11 of the Sentence Review Division (Appx. IV, not provided to its applicants) States in relevant part,

"... the Secretary of the Sentence Review Division shall accept for filing briefs concerning the review of sentence...".

Therefrom, the Division considers all issues raised at the District Court

on appeal and post conviction relief (Rule 3, Appx. K); and the Division considers all critical matters that should have been presented at the Sentencing hearing (Rule 15, Appx. N), to include briefs concerning the review of the sentences imposed (Rule 11, Appx. N). Montana's Sentence Review Division's authority for review is broad and clear, equally as its authority to issuing an order in conjunction therewith; the Sentence Review Division,

"[H]as the authority ... to affirm, decrease, increase, or otherwise alter any sentence, subject to those limitations applicable to the original sentencing judge," quoting in relevant part *Rogers v. Ferriter*, 796 F.3d 1009, 1011 (9th Cir. 2015).

In Montana, the legislature provided

a statutory limitation of authority to the original sentencing judge under MCA 46-21-101 (1),

"The State District Court that imposed a criminal sentence has the power "to vacate, set aside, or correct the sentence" quoting in relevant part Rogers at 1010-1011; see also Rule 15 (Appx. IV; "may vacate and remand", "may correct").

"Simple "equity" cannot serve as the standard of review, as the legislature did not intend for the Division to engage in de novo sentencing," quoting in relevant part Driver, P. 21.

Therefore, Montana's Direct Appeal Critical Stage Sentence Review proceedings create a statutory and common law procedure of review for both the sentence and the judgment, guaranteed by the Due Process and

Equal Protection Clauses of the United
States Constitution for all applicants.

3) Mr. Belenus was deprived of his right to full Sentence Review in violation of the Fourteenth Amendment.

Montana provides Sentence Review as an additional safety net protection in order to review sentences as being unjust or inequitable (Driver, p. 18), and provides for a broad review of the totality of the facts and circumstances of each case for equity, disparity, or considerations of justice (Driver, p. 20) by considering all issues raised in District Court by appeal or post conviction relief (Rule 3, Appex. K), while statutorily ensuring that the Sentence Review Division shall review the judgment (the adjudication of guilt, MCA

46-1-202(11)) as it relates to the
Sentence imposed (MCA 46-18-904(c)(a)(i)).

Montana's Sentence Review is a
matter of statutory right and its
procedure in deciding cases must
comport with the Due Process and
Equal Protection Clauses of the 14th
Amendment, Reasoned by Evans at
389, 393-394 and Douglas at 354-355.
Mr. Blomus was deprived of his 14th
Amendment Right to Sentence Review
when Montana's Direct Appeal Critical
Stage Sentence Review Division failed
to abide by its statutory, common law,
and operating Rules of procedure owed
to Mr. Blomus and all other applicants.

i) Appx. B, Pg. 3, last 4-lines;
Pg. 4, lines 1-3, the Division claimed
that it was not error, "to limit its
review to consideration of matters
pertaining to the Defendant's sentence
and not to consider issues pertaining
to the Defendant's underlying convictions",
as it, "is authorized only to consider
matters pertaining to a sentence and
not the underlying conviction § 46-18-904(1)(a)(i)
("... the review division... shall review the
judgment as it relates to the sentence
imposed...")".

MCA 46-18-904(1)(a)(i) and MCA
46-18-904(2) clearly state that the
Division shall review the judgment (a,

"broad review of the totality of the facts and circumstances of each case"; Driver, P. 20); and MCA 46-18-901(4) and corresponding MCA 46-18-904(3) pertain to reviewing the sentence, and hearing evidence and argument about the presumption of correctness being overcome, (Driver, P. 21), by accepting briefs concerning the review of the sentence, by Rule 11 (ATT. N). This includes hearing critical matters that should have been presented at the sentencing hearing, by Rule 15 (ATT. N).

ii) Appx. B, Pg. 4, lines 10-24; Pg. 5, lines 1-7, the Division claimed that M. Belorus's reliance upon the Ninth

Circuit's holding of *Rogers v. Ferriter* is misplaced and that Rule 3 underscores this point.

(a) Rule 3 (Appx. K) clearly states that,

"The Division shall not consider issues which could have been or should have been addressed in District Court by appeal or postconviction relief".

Therefore, the issues which were addressed in District Court by appeal or postconviction relief in Mr. Belanus's case, shall be considered by the Division.

(b) The Division claims that it is not merely an alternative forum for defendants to bring petitions to vacate, set aside, or correct their sentences and that Mr. Belanus is incorrect contending

that the Division has the authority to vacate, set aside, or correct a sentence,

The Division's obnoxious assertion of authority is clarified by Rule 15 (Appx. IV), which clearly asserts that the Division may vacate the sentence, remand for re-sentencing; and may correct clerical errors in the interest of judicial economy. Furthermore, the Division is not merely an alternative forum for defendants to bring petitions to vacate, set aside, or correct their sentences, as the Division can affirm, decrease, increase, or otherwise alter any sentence subject to those limitations applicable to the original sentencing judge,

(Rogers at 1011) (Driver, P. 21).

In addition, Rule 15 (Appx. V) authorizes critical matters which should have been presented at the sentencing hearing to be considered by the Division, Applicable to the original sentencing judge (pertinent to critical matters which should have been presented at the sentencing hearing), are issues of statutory authority under MCA 46-18-115(1) which states,

"The court shall afford the parties an opportunity to be heard on any matter relevant to the disposition, including the imposition of a sentence enhancement penalty and the applicability of mandatory minimum sentences, persistent felony offender status, or an exception to these matters"; and

under MCA 46-18-115(3), which states

in relevant part,

"... the Court shall address the defendant personally to ascertain whether the defendant wishes to make a statement and to present any information in mitigation of punishment or reason why the defendant should not be sentenced".

iii) Though a harmless error in M. Belamusi's case, in Appx. B, Page 2, lines 16-18, the Montana Sentence Review Division asserted,

"for the proposition that a sentence review applicant may move for rehearing. Neither the statutes nor the rules which govern the Division provide any basis for a party to seek rehearing."

Contrary to, Rule 22 (Appx. U) states in relevant part,

"Rehearing may be ordered by the Sentence Review Division upon application in writing directed to the Sentence Review Division within thirty (30) days of notice

of the Sentence Review Division's decision on the original application...".

iv) Appx. B, Page 16, lines 12-17, the Review Division states in relevant part,

"Rule 11 provides: "The Division shall consider only information which was available to the Sentencing Judge at the time of Sentencing"...".

Contrary to, Rule 15 (Appx. V) states in relevant part,

"The record from which the Sentence Review Division shall conduct its review shall consist of the following: ... critical matters which should have been presented at the Sentencing hearing...".

The witness statements were provided in postconviction before the original Sentencing judge and Rule 3 states in relevant part (Appx. K),

"The Division shall... consider issues which... have been addressed in District

Court by appeal or post conviction relief".

Montana's Sentence Review Division disregards, and is in conflict with, its mandated provisions governing and controlling its processes and procedures for its review of the judgment and for its review of the sentence guaranteed to its applicants. Courts of equity, "must be governed by rules and precedents not less than the Courts of law," quoting in relevant part *Lonchar v. Thomas*, 517 U.S. 314, 323 (1996). Here, Montana's Sentence Review Statutes, its Rules (both provided and not provided), and its common law rulings tell the

Division how it must conduct its review

Reasoned by Kentucky Dept of Corrections
v. Thompson, 490 U.S. 454, 463 (1989)); and
the Division's failure to follow its
procedural Commandments required
by statute, by common law in support
thereof, and by its own enacted Rules
of procedure constitutes an independent
violation of Due Process, Reasoned by
Vitarelli v. Seaton, 359 U.S. 535, 547 (1959);
Services v. Dulles, 354 U.S. 363, 388 (1957).
Any case ruled by Montana's Courts, and
the Rules made thereby, that are inconsistent
with and contrary to the Division's
Statutory and legislative Commandments,
are null, void, and inapplicable (there is no
common law in any case where the law is

declared by statute, MCA 1-1-108).

For principles of Equal Protection, in case State v. Lacey, No. DC-05-259 (Appx. O, Pg. 7, lines 4-9) (and others), the applicants were authorized to present, and the Division asserted that it would hear and consider, arguments to ignore the presumption of correctness of the sentence imposed in their cases (see also Driver, P. 21); yet, Mr. Bellemus was denied and deprived of this equal right and availability to have a consideration made upon his overcoming the presumption of correctness arguments, (Appx. I, Pg. 1-2) to ignore their alleged correctness (Appx. L and M) (Appx. B, Pg. 7, lines 1-6; Pg. 13,

lines 14-17; Pg. 5, last paragraph), in violation of the Equal Protection Clauses of the 14th Amendment. The arguments filed (Driver, P. 21), were central to the Division's Rule 17 providing that Mr. Bellemus's sentences imposed are clearly unconstitutionally excessive requiring correction as presented. Rule 17 (Appx. W) states in relevant part,

"The sentence imposed by the District Court is presumed correct, and the sentence will not be reduced or increased unless it is deemed clearly inadequate or excessive."

Further denying Mr. Bellemus's Equal Protections of Sentence Review, the Division ruled on Pg. 10, lines 10-12 (Appx. B, and Appx. B generally),

"The Division does not have the authority to correct an unlawful sentence. Unlawful sentences must be corrected on appeal or in postconviction proceeding".

Yet, in *Stewart Mont. (Sent. Rev. Div. I)*, No. 3875, *Slip op. and Schrimmer*, 182 *Mont. (Sent. Rev. Div. I)* at 3, the Review Division modified and remanded the sentences in those cases for correction because the trial court's sentencing decision was clearly illegal (Mr. Belamie does not have access to Montana's Sentence Review Division's decisions for further supporting cases).

The "Determination of what is 'fair and equitable' calls for the application of ethical standards to particular sets of facts" quoting in relevant part *Securities & Exchange Comm'n v. Chenery Corp.*, 318 U.S. 80, 87-88 (1943).

In Montana, the Sentence Review Division's procedure provides for a broad review of the totality of facts and circumstances of each case (Driver, p. 20),

"But it is also familiar appellate procedure that where the correctness of the lower court's decision depends upon a determination of fact which only a jury could make but has not been made, the appellate court cannot take place of the jury," quoting in relevant part *Chenery Corp.*, at 88-89.

The jury in Mr. Belanus's case did not make the Constitutionally mandated requisites of fact authorizing his sentencing court to impose the sentences against Mr. Belanus (please see Appx. L and M); and,

"It is fundamental that the state cannot hold and physically punish an individual except in accordance with due process of law," quoting in relevant part *Ingraham v. Wright*, 430 U.S. 651, 674 (1977).

Whether it's a jurisdictional argument
(a deprivation of Constitutionally invoked
assistance of counsel during a critical
stage argument constituting a
structural defect in the criminal process),
an unlawful sentence not authorized by
statute not authorized by the jury's verdict,
or a factually erroneous sentence, Montana's
Sentence Review Division must be held to
a standard consistent with Due Process and
Equal Protection for the totality of facts
and circumstances of each individual
case which provides and affords all
applicants the same avenues of relief
and benefits.

Therefore, so far as Montana's

Sentence Review Division refuses to undertake a broad review of the facts and circumstances of the judgment and of the sentence in Mr. Belamius's case, and all other similarly situated cases, it is arbitrary and invalid under Due Process and Equal Protection of the Fourteenth Amendment. Mr. Belamius's sentence under MCA 45-5-303(2) is not within Constitutional limits (please see Appx. L); and his sentence under MCA 45-5-503 and 45-5-503(3)(a) is not permitted by statute, not a type of punishment authorized for a first-time offender, and not authorized by the sentencing court's discretion, rendering it void for the excess, as Montana's Citizens specifically limited and defined the punishment of life imprisonment as life registration (please see Appx. M).

XIII) Conclusion

This Honorable Court has left open the possibility that the failure to comply with state law provisions governing proportionality review could potentially, "be sufficiently egregious to amount to a denial of Equal Protection or of Due Process of law guaranteed by the 14th Amendment," quoting in relevant part *Pulley v. Harris*, 465 U.S. 37, 41 (1984).

For the reasons and authorities set forth herein, petitioner respectfully requests that the petition for a writ of *Habeas Corpus* be granted.

Respectfully submitted this 23rd
Pg. 40 of 43