

No. 20-6235

IN THE
SUPREME COURT OF THE UNITED STATES

MARIO ALLAN MONTANO, APPLICANT,

v.

COURT OF APPEALS OF MICHIGAN, RESPONDENT.

ON APPLICATION TO THE
MICHIGAN SUPREME COURT

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

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December 6, 2020

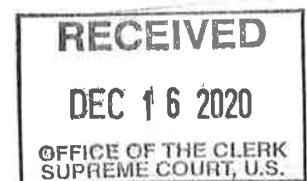


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Appendix B	Decision of the Michigan Supreme Court denying Applicant’s Motion for Reconsideration of the Order Dismissing No. 161299 on September 12, 2020.
Appendix C	Decision of the Michigan Supreme Court to Reject the Applicant’s Motion for a Stay of Execution in No. 161299 on November 21, 2020.
Appendix D	Decision of the Michigan Supreme Court to grant the Applicant a Fee Waiver in No. 161121 on March 18, 2020.
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IN THE
SUPREME COURT OF THE UNITED STATES

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

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

OVERVIEW

The Applicant filed a Complaint for a Writ of Superintending against the Respondent with the Michigan Supreme Court (“MSC”) initiating the case of *Montano v. Michigan Court of Appeals*¹ (“No. 161299”) on May 5, 2020. The Respondent has not filed a single document or contested the Complaint in No. 161299 since the day the case was initiated.

The MSC issued an order dismissing No. 161299 on August 13, 2020 (Appendix A). The order sanctioned the Applicant \$1,000 and ordered multiple filing restrictions against him. The MSC denied the Applicant’s motion for reconsideration of its order on September 12, 2020 (Appendix B).

The Applicant seeks an order from this Court staying the execution of the order dismissing No. 161299 (Appendix A) pending the disposition of the Petition for Writ of Certiorari.

JURISDICTION

The Applicant filed a Petition for Writ of Certiorari with the Supreme Court of the United States (“**the Court**”) on October 27, 2020. The Applicant filed a Motion for an ex Parte Stay of Execution of the order dismissing No. 161299 with the MSC on November 21, 2020. The Clerk of the MSC rejected the Applicant’s motion filing on November 21, 2020 (Appendix C). The rejection reason was that the case was closed, and no further filings would be accepted. It is a fact

¹ *Montano v. Michigan Court of Appeals*, 161299 (Mich. August 13, 2020).

that the court of last resort and only court having jurisdiction in the State of Michigan has denied the Applicant's petition for a stay of execution by rejecting his motion filing. The Petition for Writ of Certiorari and other documents were docketed with the Court initiating the case of *Montano v. Court of Appeals of Michigan*² ("this case") on November 5, 2020.

This Court may grant the requested stay of execution pursuant to Rule 23.1. This application is presented to this Court pursuant to Rule 23.2 and 28 U.S.C. §2101(f). The Applicant has shown his attempt and failure to obtain a stay from the only state court who could grant such a stay meeting the expectations in Rule 23.3.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

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

STATEMENT OF THE CASE

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

The Applicant filed a Motion to Waive Fees along with his Complaint initiating No. 161299 on May 5, 2020. The record of No. 161299 is presented in Appendix E. The following

² *Montano v. Court of Appeals of Michigan*, 20-6235 (U.S.).

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

comment by the MSC Clerk is included with the docketing of the Complaint, “Docketed so that the Court may determine if fileable.”⁴ The record reveals that the MSC never issued a ruling on the Applicant’s motion to waive fees. The record reveals that the Respondent did not file a single document into No. 161299. No. 161299 was uncontested by the Respondent. The Petition for Writ of Certiorari (“**Petition**”) addresses this evidence, determines other facts and applies law to those facts.

The Petition reveals that the first event on the record assigned a task to the MSC to determine if the filed Complaint was even valid. The record shows that the MSC did not complete that task. No. 161299 was initiated but never opened or technically issued since the Complaint had not been validated. The Petition’s conclusion is that the MSC has not had jurisdiction over No. 161299 and could not issue any order in the case outside of the validation of the Complaint since the case was initiated on May 5, 2020.

The Petition further reveals that the Applicant had paid no fees for his Complaint or any motion filings in No. 161299 nor had the MSC ruled on his motion to waive fees. Michigan legal authority requires that fees be waived or paid before the MSC has jurisdiction to issue an order or ruling in a case. The MSC did not have jurisdiction to issue any order in No. 161299 since fees had not been paid or waived.

The order in Appendix A issued by the MSC on August 13, 2020 in No. 161299 without jurisdiction issues the following against the indigent Applicant:

1. Dismisses No. 161299.
2. Orders the Applicant to pay \$1,000 for a frivolous and vexatious complaint to the Clerk based on a Complaint that was never reviewed by the MSC according to the record.

⁴ Appendix E at 1, Event 1.

3. Orders the Clerk to reject all filings by the Applicant until the \$1000 sanctions are paid.
4. Orders the Clerk to no longer allow the Applicant to file a motion to waive fees and instead require the payment of fees up front.

The Applicant cannot afford and has not paid the \$1000 sanction. The Applicant cannot afford the filing fees even if he paid the \$1000 sanction. Chief Justice McCormack affirmed both of these points as factual by her order granting a fee waiver on March 18, 2002. The Applicant has been barred from defending himself or appealing to the MSC since August 13, 2020 based on the order issued in Appendix A. The Applicant has been absolutely deprived of \$1000 in property without merit by an MSC violation of U.S. Const. Amend. V via the issuance of its order. The Applicant has been deprived of equal protection under the law and due process to defend himself in the MSC violating U.S. Const. Amend. XIV § 1 by the order issued by the MSC.

The Respondent has waived filing a response on the Petition as seen in Appendix F. This case has been totally uncontested without a single Respondent filing since the day it was initiated with the MSC.

An opinion and order going against the Applicant was issued in the uncontested case of *Wimmer v. Montano*⁵ (“No. 350711”) by the Respondent on October 29, 2020. The MSC rejected an interlocutory application for leave to appeal regarding a fee waiver in No. 350711 because the Applicant did not pay fees for his filing based on the order in Appendix A on November 23, 2020. An order from the Respondent is currently pending on the Applicant’s Motion for Reconsideration in No. 350711.

The Applicant has already been deprived of his right to file an interlocutory application based on the order in Appendix A. Should the Respondent deny the Applicant’s motion for

⁵ *Wimmer v. Montano*, 350711 (Mich. Ct. App. October 29, 2020).

reconsideration, the Applicant will not be able to appeal to the MSC based on the order in Appendix A.

REASONS FOR GRANTING THE APPLICATION

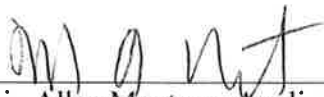
The Petition for Writ of Certiorari associated with this case is straightforward and uncontested. The Petition shows an egregious violation of the Applicant's rights via deprivation of property and due process that has fined the Applicant \$1000 and deprived him of his ability to even defend himself in the Michigan Supreme Court. This deprivation was a result of the Michigan Supreme Court issuing an order in an uncontested case that wasn't even open in which the Michigan Supreme Court had no jurisdiction to issue an order. Though this case isn't a case that normally fits the criteria for acceptance by the Court, it is a clear case of abuse by the court of last resort against a poor litigant. The Applicant believes the Court will grant the relief in the Petition or minimally grant the Petition given the abuse of the least amongst citizens without cause by the court of last resort in Michigan.

The Applicant is barred from appealing anything and seeking justice in the Michigan Supreme Court because of an order issued against him without jurisdiction or cause. The Applicant has a case currently pending where he will be deprived of his right to appeal without a stay of execution of the decision in Appendix A. This is a true travesty of justice by a state court of last resort without cause against a single citizen who is poor.

CONCLUSION

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

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'M. A. Montano', written over a horizontal line.

Mario Allan Montano, Applicant
Date: December 6, 2020

No. 20-6235

IN THE SUPREME COURT OF THE UNITED STATES

MARIO ALLAN MONTANO, Applicant,

v.

COURT OF APPEALS OF MICHIGAN, Respondent.

APPENDIX

Appendix A

Order

Michigan Supreme Court
Lansing, Michigan

August 13, 2020

Bridget M. McCormack,
Chief Justice

161299 & (7)

David F. Viviano,
Chief Justice Pro Tem

MARIO MONTANO,
Plaintiff,

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

v

SC: 161299

COURT OF APPEALS,
Defendant.

On order of the Court, the motion to dismiss the complaint for superintending control is GRANTED. The case is dismissed.

We conclude that the complaint is frivolous and vexatious. MCR 7.316(C). The plaintiff is ordered to pay the Clerk of this Court \$1,000 within 28 days of the date of this order. We direct the Clerk of this Court not to accept any further filings from the plaintiff in any non-criminal matter until he has made the payment required by this order. We further direct the Clerk of this Court not to accept any documents from the plaintiff that require a fee unless the plaintiff pays the fee at the time of submission.



b0811

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

August 13, 2020

Clerk

Appendix B

Order

**Michigan Supreme Court
Lansing, Michigan**

September 22, 2020

Bridget M. McCormack,
Chief Justice

161299(10)

David F. Viviano,
Chief Justice Pro Tem

MARIO MONTANO,
Plaintiff,

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

v

SC: 161299

COURT OF APPEALS,
Defendant.

On order of the Court, the motion for reconsideration of this Court's August 13, 2020 order is considered, and it is DENIED, because we are not persuaded that reconsideration of our previous order is warranted. MCR 7.311(G).



a0921

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

September 22, 2020

Clerk

Appendix C

almontano29582@gmail.com

From: info@truefiling.com
Sent: Saturday, November 21, 2020 4:13 PM
To: almontano29582@gmail.com
Subject: MiFILE: Filing Rejected Notification – MI Supreme Court Case No. 161299

The Michigan Supreme Court has rejected your document filed into Case No. 161299, MARIO MONTANO V COURT OF APPEALS.

Filing Details

Rejection Reason: The filing was rejected because case is closed. No further filings accepted.

Document Type: Motion - Regular

Filing Name: Motion for an Ex Parte Stay of Execution

Filed By: Montano, Mario (Pro Se)

From: Mario Montano

You should contact the Court if you need further explanation.

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

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

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

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Appendix D

Order

Michigan Supreme Court
Lansing, Michigan

March 18, 2020

Bridget M. McCormack,
Chief Justice

David F. Viviano,
Chief Justice Pro Tem

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

161121(37)

IVY ALICE WIMMER, f/k/a IVY ALICE
MONTANO,

Plaintiff-Appellee,

v

MARIO ALLAN MONTANO,
Defendant-Appellant.

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

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



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

March 18, 2020

Clerk

Appendix E

Case Search

Case Docket Number Search Results - 161299

Appellate Docket Sheet

MSC Case Number: 161299

MARIO MONTANO V COURT OF APPEALS

1	MONTANO MARIO
2	COURT OF APPEALS

COA Status: **MSC Status:** Closed

05/05/2020	1 SCT: Superintending Control Answer Due: 06/02/2020 For Party: 1 Filed By Pro Per Comments: Docketed so that the Court may determine if fileable
05/05/2020	2 Order Appealed From
05/05/2020	3 SCT Motion: Waive Fees Party: 1 Filed by Pro Per
05/05/2020	4 SCT Case Caption Proof Of Service Date: 05/05/2020
05/06/2020	5 SCT Notice Letter Sent Proof Of Service Date: 05/06/2020
05/06/2020	6 SCT Correspondence Received Proof Of Service Date: 05/06/2020 Filed By Pro Per Comments: Copy of correspondence sent to CoA re dismissal
06/03/2020	7 SCT Motion: Dismiss Party: 1 Filed by Pro Per
08/13/2020	8 SCT Order: Close View document in PDF format Comments: Grant motion to dismiss the complaint for superintending control. PL Montano is sanctioned \$1,000, which is to be paid by 9-10-2020, for filing a frivolous and vexatious action. Clerk of Court is not to accept an filings in non-crim case that has a fee until it is paid at time of submission.
08/14/2020	9 SCT Correspondence Received Proof Of Service Date: 08/14/2020 Filed By Pro Per Comments: Correspondence re: fee waiver
08/17/2020	10 SCT Motion: Reconsideration Submission Date: 09/01/2020 Party: 1 Filed by Pro Per
08/20/2020	11 SCT: Miscellaneous Filing Filing Date: 08/20/2020

For Party: 1 MONTANO MARIO
 Filed By Pro Per
 Comments: Objection to SC 08-13-2020 Order

08/21/2020 12 SCt: Miscellaneous Filing

Filing Date: 08/21/2020
 For Party: 1 MONTANO MARIO
 Filed By Pro Per
 Comments: Proof of service of objection; see event 11

08/28/2020 13 SCt: Miscellaneous Filing

Filing Date: 08/28/2020
 For Party: 1 MONTANO MARIO
 Filed By Pro Per
 Comments: Objection regarding due process

09/14/2020 14 SCt: Miscellaneous Filing

Filing Date: 09/14/2020
 For Party: 1 MONTANO MARIO
 Filed By Pro Per
 Comments: Settlement offer to CoA

09/15/2020 15 SCt: Miscellaneous Filing

Filing Date: 09/15/2020
 For Party: 1 MONTANO MARIO
 Filed By Pro Per
 Comments: Request to correct the record

09/15/2020 16 SCt: Miscellaneous Filing

Filing Date: 09/15/2020
 For Party: 1 MONTANO MARIO
 Filed By Pro Per
 Comments: Notice re request sent to Clerk (see event 15)

09/21/2020 17 SCt: Miscellaneous Filing

Filing Date: 09/21/2020
 For Party: 1 MONTANO MARIO
 Filed By Pro Per
 Comments: "Notice of intent to file a claim against this Court"

09/22/2020 18 SCt Order: Reconsideration - Deny

View document in PDF format

09/29/2020 19 Correspondence Sent

Proof Of Service Date: 09/29/2020
 Comments: Clk email to Mr. Montano re invoice and payment of sanctions by 10-20-2020.

10/22/2020 20 Correspondence Sent

Proof Of Service Date: 10/22/2020
 Comments: Notice of filing stay of execution with SCOTUS

11/10/2020 21 SCt Correspondence Received

Proof Of Service Date: 11/10/2020
 Comments: SCOTUS letter - petition for writ of certiorari docketed 11-05-2020, No. 20-6235

Case Listing Complete

Appendix F

WAIVER

SUPREME COURT OF THE UNITED STATES

Supreme Court Case No. 20-6235

Mario Allan Montano

(Petitioner)

v.

Court of Appeals of Michigan

(Respondent)

I DO NOT INTEND TO FILE A RESPONSE to the petition for a writ of certiorari unless one is requested by the Court.

Please check one of the following boxes:

- ☒ Please enter my appearance as Counsel of Record for all respondents.
- ☐ There are multiple respondents, and I do not represent all respondents. Please enter my appearance as Counsel of Record for the following respondent(s):

Michigan Court of Appeals/Michigan Supreme Court

I certify that I am a member of the Bar of the Supreme Court of the United States (Please explain if your name has changed since your admission):

Signature B. Eric Restuccia for Fadwa A. Hammoud with permission

Date: 12/3/2020

(Type or print) Name Fadwa A. Hammoud, Solicitor General

☐ Mr. ☐ Ms. ☒ Mrs. ☐ Miss

Firm Michigan Department of Attorney General

Address Post Office Box 30212

City & State Lansing, Michigan

Zip 48909

Phone (517) 335-7628

A COPY OF THIS FORM MUST BE SENT TO PETITIONER'S COUNSEL OR TO PETITIONER IF *PRO SE*. PLEASE INDICATE BELOW THE NAME(S) OF THE RECIPIENT(S) OF A COPY OF THIS FORM. NO ADDITIONAL CERTIFICATE OF SERVICE IS REQUIRED.

SEE REVERSE FOR INFORMATION CONCERNING THE STATUS OF A CASE ON THE DOCKET.

CC: Mario A. Montano

647 Springdale Drive, Little River, SC 29566

No. 20-6235

**IN THE
SUPREME COURT OF THE UNITED STATES**

MARIO ALLAN MONTANO, Petitioner,

v.

COURT OF APPEALS OF MICHIGAN, Respondent.

PROOF OF SERVICE

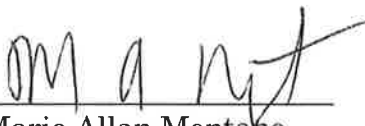
I, Mario Allan Montano, do swear or declare that on this date, December 6, 2020, as required by Supreme Court Rule 29 I have served the enclosed EMERGENCY APPLICATION FOR A STAY PENDING THE DISPOSITION OF THE PETITION FOR WRIT OF CERTIORARI, APPENDIX, THIS PROOF OF SERVICE on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

Fadwa A. Hammoud, Solicitor General, Michigan Department of Attorney General, Post Office Box 30212, Lansing, Michigan 48909.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 6, 2020.



Mario Allan Montano
Petitioner