

No. 22-7858

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED
JUN 14 2023
OFFICE OF THE CLERK

Wayne Anthony Aviles — PETITIONER
(Your Name)

vs.

State of Montana, et al. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Supreme Court of the State of Montana
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Wayne Anthony Aviles
(Your Name)

Missoula County Detention Facility, 2340 Mullan Rd.
(Address)

Missoula, MT. 59808
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

1. IS the Montana, Tenth Judicial District court, Fergus County, at fault for Double Jeopardy by giving Mr. Aviles 4 separate Sentences?
2. Is the judge involved in sentencing at fault as a conflict of interest, bias, due to being Guardian Ad Litem for Mr. Aviles during youth court proceedings?
3. Is public defender, Fredrick Snodgrass, at fault for ineffective assistance of counsel

LIST OF PARTIES

[] All parties appear in the caption of the case on the cover page.

[X] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Lynn Guyer/Warden Montana State Prison (MSP),
Montana State Prison,
Captain Jason Kowalski (MASC facility)

RELATED CASES

- State of Montana vs. Aviles, No. DC-2016-70, Montana, Tenth Judicial District Court, Fergus County. Oral judgment entered Oct. 27, 2017.
- State of Montana vs. Aviles, No. DC-2016-70, Montana, Tenth Judicial District Court, Fergus County. Written judgment entered Oct. 27, 2017.
- State of Montana vs. Aviles, No. DC-2016-70, Montana, Tenth Judicial District Court, Fergus County. Amended Sentencing order and Judgment entered Jan. 4, 2018.
- State of Montana vs. Aviles, No. DC-2016-70, Montana, Tenth Judicial District Court, Fergus County. Resentencing entered June 7, 2022.
- Aviles vs. State of Montana, et al. DV-2019-72, Montana, Tenth Judicial District Court, Fergus County. Denial and dismissal of Habeas corpus entered Feb. 7, 2023.
- Aviles vs. Captain Jason Kowalski, No. OP 23-0116, Supreme Court of the state of Montana. Denial and dismissal of Habeas Corpus entered March 7, 2023.
- Aviles vs. Captain Jason Kowalski, No. OP 23-0116, Supreme Court of the state of Montana. Petition for rehearing denied entered April 11, 2023.

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4-6
REASONS FOR GRANTING THE WRIT	7
CONCLUSION.....	8

INDEX TO APPENDICES

APPENDIX A	<i>Habeas Corpus in Montana Supreme Court</i>
APPENDIX B	<i>Habeas Corpus in Montana, Tenth Judicial District Court, Fergus County</i>
APPENDIX C	
APPENDIX D	
APPENDIX E	
APPENDIX F	

- Wayne Anthony Aviles
- section VIII: Table of Authorities
- Cases/Citations: page 1 of 5

- The Suspension Clause: HAMDI v. RUMSFELD: 542 U.S. 507 @ 536 (2004) ; Docket #3, page 2, Paragraph 4.
- BOUMEDIENE v. BUSH: 128 S.Ct. 2229, 2244, 2246 Thru 2277 (2008) ; Docket #3, page 2, paragraph 5.
- FAY v. NOYA: 372 U.S. @ 400, 83 Ct. @828 ; Docket #3, page 2, paragraph 6.
- Donald E. Wilkes, Jr. - Federal and State Post-Conviction Remedies and Relief 41 Harrison (1992) ; Docket #3, page 2, paragraph 6.
- Facially Invalid sentence: Lott v. State: 2006 MT 279, 334 Mont. 150 P.3d 337 ; Docket #3, page 2, paragraph 8.
- MARSHALL vs. JERRICO, INC.: 466 U.S. 238 (1980) ¶ ; Docket #3, page 3, paragraph 9.
- Neutrality requirement: TICAREY vs. PIPHUS: 435 U.S. 247 (1978) ¶ ; Docket #3, page 3, paragraph 10.
- Due process right to an unbiased judge: TICAPERTON vs. A.T. MASSEY COAL CO., INC.: 556 U.S. 868 (2009) ¶ ; Docket #3, page 3, paragraph 11.
- TIREICHERT vs. STATE EX. REL. McALLOCH: 2012 MT. 11, 28 365 mont. 92, 278 p3d 455; quoting CAPERTON, SUPRA. ¶ ; Docket #3, page 3, paragraph 11.
- TIPARADIS vs. ARAVE: 20 F.3d 950-958 (9TH Cir. 1994) ¶ ; Docket #3, page 3, paragraph 12.
- TIWITROW vs. LARKIN: 421 U.S. 47 ; Docket #3, page 3, paragraph 13.
- RE MURCHINSON: 349 U.S. 137 (1955) ; Docket #3, page 3, paragraph 13.
- TAMEY vs. OHIO: 273 U.S. 510 (1972) ¶ ; Docket #3, page 3, paragraph 13.
- TIHARINAH vs. LARCHE: 363 U.S. 420, 505 (June 1960) ; Docket #3, page 3, paragraph 14.
- RE: MURCHISON, SUPRA; CHESTER vs. CALIFORNIA: 355 F2d 778, 786 (9TH Cir. 1966) ¶ ; Docket #3, page 3, paragraph 14

- Wayne Anthony Aviles
- Section VIII: Table of Authorities
- Cases/Citations: page 2 of 5
- STATE v. MCKENZIE: 186 M. 481, 608 P.2d 428 (1980);
Docket #3, page 5, paragraph 22.
Affirmed in: IN RE PETITION OF BRODNIAK v. STATE: 239 M.
110, 779 P.2d 71 (1989) and in STATE v. FUHRMANN: 278
M. 396, 925 P.2d 1162 (1996) and STATE v. LEMERE: 2000
MT 45, 298 M. 358, 2 P.3d 204 (2000); Docket #3, page 5, paragraph 22.
- supporting brief for Habeas corpus, Docket #4:
- WINSHIP, IN RE: 379 U.S. 358, 90 S.Ct. 1068; 25 L.Ed 2d
368 (1970) and WILWORDING v. SWENSON: 404 U.S. 249
(1971); Docket #4, page 1.
- SENTSINGER v. MONTANA UNIVERSITY SYSTEM: (2004) MT 390 II;
15 325 Mont. 148; 104 P.3d 445 (Citing) COTTRILL v. COTRILL
SODDING SERVICE: 229 Mont. 40; 42 744 P.2d 895, 897
(1987); Docket #4, page 1.
- PLUMB CREEK LUMBER CO. v. HUTTON: 608 F.2d 1283 (9th Cir.
1979); Due process interest protected and Exemption from rule making procedure;
Docket #4, page 2.
- POLLARD v. GEO: 607 F.3d 583 (9th Cir. 2010); violating
Constitutional rights of prisoners; Docket #4, page 2.
- HAINES v. KERNER: 404 U.S. 519 (1972); can't be denied due
process; Docket #4, page 2.
- CALDER v. BULL: 3 U.S. 386; 3 Dall 386, 390; 1 Ed 648
and STATE v. STRIPLIN: 2009 MT 76 P.30, 349 Mont. 466;
204 P.3d 274; Docket #4, page 2.
- State v. Egdorf: 2003 MT 264; P19 317 Mont. 436; P.19
77 P.3d 517; DUNCAN v. LOUISIANA: 391 U.S. 145, 147-48 88
S.Ct 144 (1968) and DUNCAN v. POYTHRESS: 657 F.2d 691;
704 (5th Cir. 1981); Docket #4, page 2.

- Wayne Anthony Aviles
- Section VIII: Table of Authorities
- Cases/Citations: page 3 of 5
- State v. McLEAD: 2002 MT 348; P.3d 313 Mont. 358, P.18 61 P.3d 126 P.18; Opportunity to explain, argue and rebutt any information; Docket #4, page 2.
- STATE v. STEPHEN SAMPLES: 2008 MT 416; 347 Mont. 292; 198 P.3d 803; 2008; Lexis 655; Docket #4, page 2
- STIGMA Plus Standard: GWINN v. ANSMILLER: 354 F.3d 1211, 1216 (10th Cir. 2004); Docket #4, page 2.
- Strict scrutiny: PATEL v. U.S. Bureau of Prisons: 515 F.3d 807, 815 (8th Cir 2008); Docket #4, page 2.
- COMMUNITIES FOR EQUITY v. MICHIGAN HIGH SCHOOL ATHLETIC ASSN.: 459 F.3d 676, 696 (6th Cir, 2006); and LEWIS v. WOODS: 848 F.2d 649, 650-51 (5th Cir. 1988); Docket #4, page 2.
- State v. McCONNELL: (1993) 495 NW2d 658; Docket #4, page 2.
- HAINES v. KERNER: 404 U.S. 519; 30 L.Ed 632; 92 S.Ct. 594 (1972); Standard on Pro Se Litigation; Docket #4, page 3; 9th Cir. concurred in: ALLEN v. CALDRON: 408 F.3d 1150, 1153 (9th Cir. 2005); Docket #4, page 3.
- MARSHALL v. TERRICO, INC.: 446 U.S. 238, 64 L.Ed.2d 182, 100 S.Ct. 1610 (1980); Docket #4, page 4.
- CAREY v. PIPIHUS: 435 U.S. 247, 259-262, 98 S.Ct. 1042, 1043 (1978); Docket #4, page 4.
- UPJOHN COMPANY v. U.S.: 449 U.S. 383 (1981); Docket #4, page 4.
- FRANK v. MANGUM: 59 L.Ed 969; 237 U.S. 309; Docket 4, page 4.
- U.S. v. YOUNG: 424 F.3d 449, 509 (6th Cir. 2005); Docket 4, page 4.
- MILKE v. RYAN: 711 F.3d 998 (9th Cir. 2013); Docket 4, page 4.

- Wayne Anthony Aviles
- Section VIII: Table of Authorities
- Cases/Citations: page 4 of 5
- State v. Ah jimi: 9 Mont. 167, 23 P. 827 (1890);
In Re Durban: 10 Mont. 147, 25 P. 872 (1890); and
State v. Brett: 16 Mont. 360, 40 P. 873 (1895); and
Ex Parte Wilson: 114 U.S. 417 (1885); Docket 4, page 7.
- Turney v. Ohio: 273 U.S. 510, 523 (1927);
Quoting: Withrow v. Larkin: 421 U.S. @ 47; Docket 4, page 7.
- U.S. v. Cronin: 466 U.S. 648 (1984);
Cuyler v. Sullivan: 466 U.S. 335 (1984);
Harris v. Wood: 64 F.3d 1432 (9th Cir. 1995); Docket 4, page 8.
- FAY v. Noia: 372 U.S. 391, 400 (1962); Docket 4, page 12.
 - Motion to Dismiss and Exonerate...; Docket #5:
- U.S. v. Santeramo: 45 F.3d 622, 624 (2nd Cir. 1995) (Pre curiam);
Docket 5, page 2.
- U.S. v. Italiano: 837 F.2d 1480 (11th Cir. 1988);
U.S. v. Gavle: 967 F.2d 483 (11th Cir. 1992); and
U.S. v. Deisch: 20 F.3d 139 (5th Cir. 1994); Docket 5, page 2.
- Memorandum, Docket #6:
- Scott v. McNeal: 154 U.S. 34; and
Standard Oil Co. v. Missouri: 224 U.S. 270, 280-282;
Docket 5, page 2.
- Harinah v. Larche: 363 U.S. 420, 508 4L.Ed 1307, 80
S.Ct. 1502 (June 1960); Docket 5, page 2.
- Carter v. Galaza: 491 F.3d 1119, 1131 (9th Cir. 2007);
Docket 5, page 3.
- Herbert v. Louisiana: 272 U.S. 312, 316, 71 L.ED 270,
272; 47 S.Ct. 103, 48 A.L.R. 1102; Docket 5, page 3.
 - Motion for Default Judgment...; Docket #9:
- State v. LAMERE: 2000 MT. 45; Docket 9, page 2.

- Wayne Anthony Aviles
- Section VIII: Table of Authorities
- Cases/Citations: page 5 of 5
- State ex rel. Craig v. District Court of Thirteenth Judicial Dist. In and For Yellowstone, Dept. No. 1, 458 P.2d 608, 153 Mont. 427 (Mont. 1969); Docket 23, page 4.
- Hurn v. Retirement Fund Trust of the Plumbing, Heating and Piping Industry, 648 F.2d 1252, 1254 (9th Cir. 1981); Jackson, 902 F.2d at 1387; Jackson, at 1387-88; Ascon Properties, Inc. v. Mobil Oil Co., 866 F.2d 1149, 1160-61 (9th Cir. 1989); Docket 26, page 3.
- Burgett v. Cigna Corp., 15 F.3d 1083 (9th Cir. 1994); Docket 26, page 3.
- Heard v. Bravo (D. N.M., 2016); Docket 26, page 3.
- Hamilton v. State, 510 P.3d 137 (Table) (Mont. 2022), under paragraph 6; Docket 28, page 3.
- MT Supreme Court, Petition for Reversal/Rehearing:
- Strickland v. Washington, 466 U.S. 668 (1984)
- Ex parte Duffy, 607 S.W.2d 507 (Tex. Crim. App. 1980)
- Herrera v. Collins, 506 U.S. 390 (1993)
- Ex parte Tuley, 109 S.W.3d 388 (Tex. Crim. App. 2002)
- Ex parte Elizondo, 947 S.W.2d 202 (Tex. Crim. App. 1996)
- Ex parte Harmon, 116 S.W.3d 778 (Tex. Crim. App. (2002))
- Ex parte Calderon, 309 S.W.3d 64 (Tex. Crim. App. 2010)
- Ex parte Brown, 205 S.W.3d 538, 545 (Tex. Crim. App. 2006)
- Ex parte Miles, 359 S.W.3d 647 (Tex. Crim. App. 2012)
- Blockburger v. United States, 284 U.S. 299, 304, 76 L. Ed 306, 52 S.Ct. 180 (1932)
- Lewis v. U.S., 523 U.S. 155 (1998)

- Wayne Anthony Aviles
- Section VIII: Table of Authorities
- Statutes/Montana Code Annotated(MCA): page 1 of 3
- MCA: § 46-22-101 thru §46-22-307.; Docket #3, page 1
- MCA: § 45-5-503(3); Docket #4, page 6
- MCA: § 1-2-108; Docket #4, page 7
- MCA: § 46-11-102(2009); Docket 4, page 7
- MCA: § 46-11-201(2009); Docket 4, page 7
- MCA: § 46-11-301; Docket 5, page 1
- MCA: § 3-15-601 and 602; Docket 5, page 1
- MCA: § 46-11-302 §(3); Docket 5, page 2
- MCA: § 46-11-203; Docket 6, page 1
- M.R. CIV. P. 55(a), (b), (2), (c) and (d) and 50(a) (1) and (b)(2);
Docket 9, page 1
- MCA: §27-2-409, (1); Docket 13, page 1
- MCA: §25-4-301; Docket 13, page 1
- MCA: §25-20-Rule 60, (b)(2), (and (b)(4); Docket 13, page 1
- MCA: §26-1-102, (3); Docket 17, page 2
- MCA: §27-2-102, (2); Docket 17, page 3
- MCA: §46-22-202, (1); Docket 18, page 1
- MCA: §46-22-203; Docket 18, page 2
- MCA: Art. VII, §4; Docket 18, page 2
- MCA: § 1-3-223; Docket 18, page 2
- MCA: § 1-3-214; Docket 18, page 2
- MCA: § 25-20-Former Rule 55(c); Docket 21, page 2
- MCA Annotations(2014)(page 571): Per se Nuisance, under Contributory Negligence;
Docket 21, page 2 and Exhibit 2
- M.R. Civ. P., under Rule 60(b); Docket 21, exhibit 2
- MCA Annotations(2014), title 8, page 1255: under chapter Attorney
General's opinions; Docket 23, page 2
- MCA Annotations(2014), title 4, page 498: Disposal on Grounds other than merits;
Docket 23, page 3

- Wayne Anthony Aviles
- Section VIII: Table of Authorities
- Statutes/MCA: page 2 of 3

- MCA Annotations (2024), title 4, page 572: Classification of Nuisances; Docket 23, page 4
- MCA: § 15-1-302, (3); Docket 23, page 6
- MCA: § 45-7-201, (2); Docket 23, page 6
- MCA: § 46-22-303; Docket 23, page 7
- MCA: § 3-1-501, (1)(i); Docket 23, page 7
- MCA: § 85-5-109; Docket 23, page 7
- MCA: § 25-5-301; Docket 23, exhibit 4
- MCA: § 1-3-213; Docket 26, page 2
- MCA: § 1-3-220; Docket 26, page 2
- MCA: Article VII, Section 11, subsection (2); Docket 26, page 3
- MCA: § 28-1-203; Docket 26, page 4
- MCA: § 28-1-1203; Docket 26, page 4
- MCA: § 46-4-302, (1) and (2)(C); Docket 26, page 5
- MCA: § 2-4-703; Docket 28, page 1
- MCA: § 46-4-302, section (2), (C); Docket 28, page 3
- MCA: § 25-11-102, subsections (1) and (4) and (6); Docket 28, page 3, and in exhibit 1
- MCA: § 46-21-102, (2); Docket 28, page 3
- MCA: § 46-18-902; Docket 28, page 4
- MCA: § 26-1-302, (3), (4), (7), and (9); Docket 28, exhibit 5
- MCA: § 26-1-102, (2)(a); Docket 28, exhibit 11
- MCA: § 26-1-812, (3)(b); Docket (28), exhibit 15
- MCA: § 3-1-803; MT supreme court, Memorandum, page 2. and and exhibits page 4
- MCA: § 27-1-201, 202, and 220; MT. Supreme court, Memorandum, exhibits (on Restitution); page 80.
- MCA: § 3-1-501, 1(c) and (d); MT. Supreme court, Petition for rehearing

- Wayne Anthony Aviles
- Section VIII: Table of Authorities
- Statutes/MCA: page 3 of 3
- MCA: § 25-23-Rule 15, (B); MT. Supreme Court, Petition for rehearing
- MCA: § 46-21-101, (1); Mentioned in Hamilton v. State, 510 P.3d 137 (Table) (Mont. 2022), under Paragraph 6, Docket 28, page 3.

- Wayne Anthony Aviles
- Section VIII: Table of Authorities
- Treatises: page 1 of 1
- Judicial Structural Defect/Error.; Docket #3, page 1
- Original Subject Matter Jurisdiction.; Docket #3, page 1

- Wayne Anthony Aviles
- Section VIII: Table of Authorities
- Articles: page 1 of 1

- Montana Constitution Article VII § 4; Docket #3, page 1.
- Mont. Const. Art. II § 3, 17 and 24; Docket #3, page 1.
- Mont. Const. Art. II § 19; Docket #3, page 2, Paragraph 8.
- Mont. Const. Art. II § 17 and 24; Docket #3, page 4, Paragraph 17.
- Mont. Const. Art. II § 3, 4, 17, 19, 20, 24, and 28; Docket #4, page 1.
- Mont. Const. Art. VII § 4; Docket #4, page 3
- Mont. Const. Art. II § 20; Docket #5, page 2
- Mont. Const. Art. II § 3, 4, 17, 20, 22, 24, 25; Docket #5, page 3.

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

- Seperate pages ((5 pages))

STATUTES AND RULES

- Seperate pages (3 pages)

OTHER

- Seperate pages
 - Treatises (1 page)
 - Articles (1 page)

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the Montana Tenth Judicial District court appears at Appendix B to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☒ For cases from **state courts**:

The date on which the highest state court decided my case was March 7, 2023.
A copy of that decision appears at Appendix A.

☒ A timely petition for rehearing was thereafter denied on the following date:
April 11, 2023, and a copy of the order denying rehearing appears at Appendix A.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- Amendments (U.S. const.): 5, 6, 8, 14
- - Appears in Appendix B:
 - Docket #s: 3 (pages 1 and 6), 4 (pages 8, 10, 11), 5 (page 2)
- Article I, § 10
 - Appears in Appendix B:
 - Docket # 4 (page 2)
- Article 10, § 1
 - Appears in Appendix B:
 - Docket # 4 (page 10)
- STIGMA Plus standard: GWINN v. AWMILLER: 354 F.3d 1211; 1216 (10th Cir. 2004)
 - Appears in Appendix B:
 - Docket # 4 (page 2)
- Standard set forth in: Strickland v. Washington, 466 U.S. 668 (1984)
 - Appears in Appendix A:
 - Montana Supreme Court, (Reversal/Rehearing).
- Abuse of Discretion
 - Appears in Appendix A:
 - Montana Supreme Court, (Memorandum).
- U.S. Supreme Court precedence; under the SUPREMACY CLAUSE; of FAY v. NoIA: 372 U.S. 391, 400 (1962); see GERSTEIN v. PUGH: 420 U.S. 103; 95 S.Ct. 854 (1975)
- U.S. Supreme Court precedence in: HAINES v. KERNER: 404 U.S. 519; 30 L.Ed 632; 92 S.Ct. 594 (1972); 9th Circuit concurred in: ALLEN v. CALDRON: 408 F.3d 1150, 1153 (9th Cir. 2005)
- Double Jeopardy; U.S. Supreme Court Decision: Blockburger v. United States, 284 U.S. 299, 304, 76 L. Ed 306, 52 S.Ct. 180 (1932)
 - Blockburger Test and Double Jeopardy Definition

• Wayne Anthony Aviles

• Section XII:

• Statement of the case: page 1

1.) • Double jeopardy, with 4 separate sentences:

— 10 yrs MSP, none suspended; Oct. 10, 2017 (Transcription, page 15)

— 10 yrs DOC, none suspended; Oct. 10, 2017, filed 10/27/2017

(Judgment and Sentence, Docket #32, page 1)

— 10 yrs DOC, w/all but 5 yrs suspended; Jan. 4, 2018, filed 1/16/2018

(Amended Sentencing order and Judgment, Docket #41, page 2)

— 5 yrs DOC, none suspended; May 24, 2022, filed 6/7/2022

(Order on Resentencing, Docket #82, page 2)

• The state overlooked case law on the blockburger test:

Blockburger v. United States, 284 U.S. 299, 304, 76 L. Ed 306,

52 S.Ct 180 (1932); Also defines Double Jeopardy

• The state claims I can't argue against revocation overlooking MCA;

§46-21-101, (1) which says I can argue against it.

— also see case law: Hamilton v. State, 510 P.3d 137 (Table)

(Mont. 2022), under paragraph 6

• Violates my right of 14th Amendment, Due Process, and my right to freedom from Double Jeopardy, 5th Amendment.

• Allowing this sets a precedence for any court to violate anyones constitutional rights and that should not be allowed.

2.) • Conflict of Interest, Bias:

— Judge Jon A. Oldenburg (Retired) was Guardian Ad Litem for me in Youth court proceedings. MCA, §25-5-301

— Judge was supposed to recuse himself but didn't

— case law: Williams v. Pennsylvania, U.S. Sup. Ct. (2016)

— Interested Judge not to act, MCA, §46-18-902

- Wayne Anthony Aviles
- Section XII
- Statement of the Case: page 2

3) • Ineffective Assistance of Counsel:

- Fred Snodgrass was public defender in question
- "Information" filed 10/19/2016 instead of indictment
 - no waiver of indictment signed by me
- Failed to provide a list of proposed witnesses
 - valid claim under Strickland v. Washington standards
- No motion to strike the witness at conclusion of their testimony
- Failure to object to the "erroneous enhancement evidence"
 - invalid enhancements/aggravators
 - fail to mount an objection at time of (trial and) punishment
 - Since I was "in treatment before and did not learn from it" according to Judge Jon Oldenburg (retired)

- Wayne Anthony Aviles
- Section XIII:
- Reasons For Granting The Petition: page 1

According to the "Rules of the Supreme Court of the U.S.", Rule 10, both (b) and (c) apply to my case. Montana, Tenth Judicial District Court (state court) and Montana Supreme Court (state court) has both decided an important question in a way that conflicts with the decision of a U.S. Court of Appeals. Also of importance is the decision by both courts (state) that has not been, but should be, settled by this court.

For rule 10, (c): The Montana code clearly shows that I can argue a revocation offense and thus I still am violated my 5th Amendment, Double Jeopardy rights. This doesn't just affect me however. It affects other American citizens as well due to setting a precedence allowing the state of Montana to violate constitutional rights at any point after. My judge was conflict of interest and should have recused himself. This also affects citizens nationally. If a judge who is biased is allowed to stay on the bench including during review of a sentence imposed by the same judge (MCA, §46-28-902), This violates anyones 14th Amendment, Due Process rights.

Williams v. Pennsylvania as cited earlier (2016) is a clear case on blatant disregard to recusal which brings me to rule 10, (b). That while there is no case involving all 3 questions simultaneously in petition, they are seperately answered. I have never come across a case that has elements of double jeopardy violations, conflict of interest, and ineffective assistance of counsel. This is very troubling for national importance reasons.

- Wayne Anthony Aviles
- Section XIII:
- Reasons For Granting the Petition: page 2

The fact that an attorney was "allowed" to file an information without a waiver signed by me instead of an indictment and then getting sentenced to a felony crime instead of a misdemeanor (which is what information filing is for), shows that this is blatant disregard to the laws and constitutional rights that exist for a reason. If a judge is allowed to commit perjury, not recuse themselves, allow backdated documents to be filed by county attorney, have multiple contempts of court in a case (filed by me) and even agreeing with one, and violate federal law by not allowing me my United States constitutional rights, then what else would a court allow if permitted to continue such activities? This is greatly of National Importance and rightly so. See my attached appendices for all of these things mentioned. The courts don't even seem to read any of these laws I cite such as the "Blockburger" test which was never performed to decide double jeopardy or the Hamilton v. State case which proves I can argue a revocation. What court refuses to see the law and repeatedly rape the Justice System? Montana Supreme court and Montana, Tenth Judicial District Court, Fergus county, those two courts do. These courts are setting precedence for other courts in the U.S. to follow suit and with blatant disregard to Justice. Surely the United States Supreme Court should agree this not be allowed? That is what my petition aims to determine. Thank you for your time in this matter.