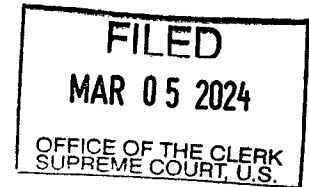


23-6959

Cause No.: _____

In The
Supreme Court
of the
United States



LIONEL SCOTT ELLISON,
Petitioner

-VS.-

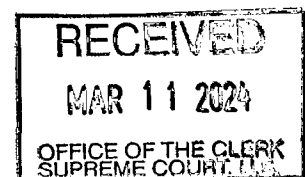
THE STATE OF MONTANA, ET. AL.,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI

To

THE MONTANA SUPREME COURT

Lionel Scott Ellison
AO# 3003002
% Crossroads Correctional Center
50 Crossroads Drive
Shelby, MT 59474



PETITION FOR WRIT OF CERTIORARI

CONSTITUTIONAL CHALLENGE

FIRST AMENDMENT:

Does the First Amendment of the U.S. Constitution Protect the Rights of each Justice of the United States Supreme Court, to receive any Petition to the Court, after it was properly mailed into a prison's internal mail system,[S.Ct.R. 29.2], as well as the Petitioner's?

OR

Does the State have the sovereign right to regulate what mail or pleadings it allows sent, and to destroy anything which could reasonably harm the State; Judicially and financially?

Does the Public have a First Amendment Right to Know of this??

CIRCUMSTANCES:

The present (R) Montana Attorney General, refuses to honor or remedy the prior (D) Montana Attorney General's legal waiver that the Petitioner is wrongfully convicted, and illegally punished, based on the waived Double Jeopardy violation, the Actual Innocence [DNA] Findings evidence, and (3) separate Malicious Prosecutorial Misconduct claims. [Lack of Probable Cause/ Fraud upon the Court, and Perjury (all conceded to by waiver, MT.R.Civ.P.12(b) and (h), MT.R.App.P. 12(2))].

RELEVANT JURISPRUDENCE:

"The Fourteenth Amendment precludes Indiana [like Montana herein] from keeping Cook [like Ellison here] imprisoned if it persists in depriving him of [this] type of appeal." Dowd v U.S. Ex Rel Cook, 340 US 206, 210, 71 S.Ct 262(1951).

"almost as much a part of free speech as the right to use our tongues.", is the right to receive mail sent by Petitioner, and received by the Supreme Court's Justices.

Lamont v Postmaster General, 381 US 301,305, 14 L.Ed.2d 398, 85 S.Ct 1493(1965).

"Access to the Courts through the mails has been constitutionally protected since 1941, when Ex parte Hull, 312 US 546 held that the state could not constitutionally refuse to mail a prisoner's inartful pleadings to the court." Procunier v Navarette, 434 US 555, 594, 98 S.Ct 855(1978) at n.9.

"no free person (Nullus Liber homo) shall be taken or imprisoned...except...by the lawful judgement of his peers or the law of the land." Common Law guarantee in the Magna Carta, See Dept.Homeland Sec. v Thuraissigion, 140 S.Ct 1959(2020).

QUESTIONS

- 1) Where Petitioner was acquitted of Arson at Trial; the State in Post-Conviction proceedings knowingly waived Petitioner's Double Jeopardy Claim on remaining counts, per MT.R.Civ.P. 12(b),(h); requiring relief under waiver and party presentation caselaw, with the State Court therefore lacking jurisdiction upon waiver; and on appeal, the then (D) State Attorney General waived under MT.R.App.P. 12(2), that the State was NOT "dissatisfied" with Petitioners New Actual Innocence Forensic (DNA) Science Findings and Jurisprudence; waiving (3) Prosecutorial Misconduct Claims, as 'Fraud upon the Court' related to Lack of Probable Cause, Perjury, and unlawful attack on Eye-Witness Credibility, that a detective was the perpetrator, in §I; and continued 'Fraud on the Court' in §II, with a 'Bounty' on Petitioner.
- 2) Where the present (R) State Attorney General refuses to honor the prior (D) waiver, nor apply remedy or relief, required under MT.R.Prof.Conduct 3.4 and 3.8; nor abide by the MT.R.Evid. 402 and 901, nor the above Rules of Procedure; but instead gave an official written directive to State Prison Warden to destroy all evidence of State wrongdoing, including this Certiorari from prison internal mail, and the related §1983/ civil R.I.C.O. suit casefiles, documenting 'Fraud upon the Court', violating the Petitioners 1st Amendment Rights, and also the 1st Amendment Rights of this Court's Justices, as joint victims of Federal Crimes; done to suppress the waived collusion between a County Detective, hiring Mexican Cartel Members, who, admit to Torturing and Raping Petitioner to extort a signature on a release of liability form, for an Oregon Company caught in 'Bond Fraud' by Petitioner, and who paid 'Bounty' monies to halt, that 'Bond Fraud' suit; with the attached overwhelming conclusive evidence and Cartel admissions of State corruption and Conspiracy violating the Sherman Anti-Trust Act, Federal Trade Commission Act, the Hobbs Act, and R.I.C.O. Act by Government officials who weaponized the State and Federal Judiciary, defiling the Court's integrity, based on political ideology.
- 3) Where the U.S. District Court in the related §1983 suit, excused the (R) State Attorney General from a 'Third Party Complaint', to escape 'Third Party Interference' by bias interpretation of Law, and 'Abuse of discretion' after Default was filed, is the (R) Attorney General immune from accountability?

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case in which the (R) Montana Attorney General ordered the Warden at Montana State
Prison to destroy, along with the earlier, March 2023, version of this Petition
was also destroyed by the prison, after it was legally mailed into the Montana
State prison internal mail system. Soon after it was destroyed the State unlawfully
moved the Petitioner to the State's "GANG" prison in Shelby, Montana. These actions
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United States v Johnson, 988 F.2d 941,943 (9th Cir 1993)	69d

	Pg.
United States v Lineham, 56 4th 693,707 (9th Cir 2022)	48d
United States v Lee, 106 US 196,220, 27 L.Ed 171, 1 S.Ct 240(1882)	24c
United States v Marcus, 560 US 258,263, 130 S.Ct 2159(2010)	64d
United States v Morgan, 51 F.3d 1105,1112 (2nd Cir 1995)	60d
United States v Olano,507 US 725,733, 113 S.Ct 1770(1993)	29,4b,5b
United States v Payner, 447 US 727,749-50, 100 S.Ct 2439(1980)	23d
United States v Pineta, 980 F.2d 22,23 n2 (5th Cir 1993)	69d
United States v Phillips, 929 F.3d 1120, 1123(9th Cir 2019)	48d
United States v Rios-Ortiz, 830 F.2d 1067,1069(9th Cir 1987)	20b
United States v Rose, 806 F.2d 931,933 (9th Cir 1987).	7b
United States v Russell, 411 US 423, 93 S.Ct 1637(1973)	26a
United States v Sierra Pac Indust, 862 F.3d 1157,1167(9th Cir 2017)	5b,32b,23d
United States v Sineneng-Smith, 140 S.Ct 1575(2020)	27,28,2a,7a,37a,47a
United States v Stonehill, 660 F.3d 444 (9th Cir 2011)	23d
United States v Suarez, 820 F.2d 1158,1161 (11th Cir 1987)	5d
United States v Taylor, 139 F.3d 924 (DC Cir 1998)	19b
United States v Turner, 898 F.2d 705,713 (9th Cir 1990)	20b
United States v Urguildi, 71 F.4th 357,365 (5th Cir 2023)	39
United States v Waide, 60 F.4th 327,337 (6th Cir 2022)	38
United States v Young, 470 US 1,15, 84 L.Ed.2d 1, 105 S.Ct 1038(1985)	5b
Ex Parte Wall, 107 US 265,315, 2 S.Ct 569, 127 L.Ed 552(1882)	25d
Wall v Kholi, 562 US 545,549, 131 S.Ct 1278 (2011)	69d
Weaver v Massachusetts, 137 S.Ct 1899,1911, 198 L.Ed.2d 420(2017)	45d,64d
Wheeldin v Wheeler, 373 US 647,655, 83 S.Ct 1411 (1963)	35
Wiggins v Smith, 539 US 510, 123 S.Ct 2527(2003).	35
Williams v Pennsylvania, 579 US 1, 136 S.Ct 1899 (2016)	33,10a,11a,31a,35a 8b,32b,33b,22d,64d
Williams v Taylor, 529 US 397, 120 S.Ct 1495(2000)	35,36a
In re Winship, 397 US 358, 25 L.Ed.2d 368, 90 S.Ct 1068(1970)	31,15b,46a
Withrow v Larkin, 421 US 35,47, 95 S.Ct 1456 (1975)	11a,31a,45d
Wollin v Gondert, 192 F.3d 616,623 (7th Cir 1999)	30d
Wood v Milyard, 556 US 463,466,132 S.Ct 1826(2012)	26,29,2a,6a,7a,39b
Woodruff v Parham, 75 US 123,131(1869).	70d
Wyman v James, 400 US 309,335, 91 S.Ct.381 (1971)	32d
Yeager v United States, 557 US 110, 129 S.Ct 2360(2009)	32,37a,46a,47a

TREATISES:

1 Jardine Criminal Trials 435 [Sir Walter Raleigh's Trial]

2 Moore's Federal Practice: Vol. 2: Analysis: Civil Rules 7-12, Chapter 12.

Defenses and Objections: When and How Presented; Motions for Judgement on Pleadings; Consolidating Motions; Waiving Defenses: Pretrial Hearings.

(c) Consolidating and Waiving Defenses.

§12.20: Most Defenses and Objections Must be Raised on Initial Response or Motion.

..."waiver provisions make clear that to avoid waiving most available defenses or objections, a party must raise them in one initial motion or, if none is filed, in the first responsive pleading. Rule 12(b) requires a party to assert, in the response to any pleading requiring a response, every legal or factual defense to claims made.

[As is shown the Yellowstone County Attorney failed to brief the Petitioners Claim #7, Collateral Estoppel, Double Jeopardy, 5th Amendment violation Claim, in the 13th Jud.Dist.Ct., DV-18-1629. And the Montana Attorney General refused to dispute the new DNA Forensic Science Findings "Secondary DNA Transfer", and 3 separate Prosecutorial Misconduct (Malicious) Claims, in Appeal 2020 MT 324N.]

3 Black Comm. 382; Sir William Blackstone

4 Commentaries of the Laws of England 21(1769); Sir William Blackstone.

4 Commentaries of the Laws of England 329(1769); Sir William Blackstone.

Cooley's Blackstone, 4th Ed. Vol.II, Chapter XXII, p 1448-1449.

W. Blackstone Commentaries of the Laws of England, Book IV, Chapter 27.

Institute of the Laws of England 55(6th ed.1681), Sir Edward Coke.

[" if a man be taken, or committed to prison contra terrae, against the Laws of the Land", then" he may have an habeas corpus."]

Journal of Forensic Science, Sept. 15, 2015;

"Could Secondary DNA Transfer Falsely Place Someone at the Scene of a Crime?"

By Dr. Cale, Earl and Latham.

The Magna Carta; "no free person (Nullus Liber homo) shall be taken or imprisoned,... except by lawful judgement of his peers or by the law of the land."

Invalid Forensic Science Testimony and Wrongful Convictions; 95 Va.L.rev.14(2009)

Garret and Nuefeld.

Strengthening Forensic Science section, of the National Academy of Science Publications.

READERS DIGEST PUBLICATION ON "Secondary DNA Transfer", in Appendix B.

The Holy Bible: Proverbs 18:17(~~13~~ version on page 70d herein).

12 J.W. Moore, Moore's Fed.Prac. §60.21 [4][c].

INDEX FOR APPENDICES

- §I, The attack on the Ellison residence, by Detective Frank Fritz.
- §II, The car's trunk exploding, while Petitioner was driving; Petitioner injured.
- §I **APPENDIX A** -- Ninth Circuit Court of Appeals, Cause 22-35774,
Page Suffix a. Order denying COA, Rule 60 Motion.
- APPENDIX B** -- United States District Court, District of Montana,
CV 21-026-BLG-DLC-TJC, Ellison v Salmonsens, et al.
- APPENDIX C** -- Montana Supreme Court, 2020 MT 324N; Ellison v State,
Appeal from District Court, Post Conviction DV-18-1629.
[State waived Actual Innocence, 3X Prosecutorial Misconduct].
- APPENDIX D** -- Montana District Court for the 13th Judicial District,
DV-18-1629, Ellison v State, Petition for Post Conviction
Relief. [State waived Double Jeopardy Claim #7 therein].
-
- §II, **APPENDIX E** -- Ninth Circuit Court of Appeals, 20-35189 & 21-35669
Page Suffix b. Order denying COA, Rule 60 Motion.
- APPENDIX F** -- United States District Court, District of Montana,
Cv 17-168-BLG-DLC-TJC, Ellison v Fletcher, et al.
- APPENDIX G** -- Montana Supreme Court, 2020 MT 228N;
Appeal from District Court, Post Conviction DV-19-1330.
[Bounty evidence presented, linking nexus to §I].
- APPENDIX H** -- Montana District Court for the 13th Judicial District,
DV-19-1330, Petition for Post Conviction Relief,
Ellison v State [II].
-
- APPENDIX I** -- Documentation of Retaliation by the State of Montana officials.
Page Suffix c. Admissions of Cruel and Unusual Punishment, [8th Amend. violations].
-
- APPENDIX J** -- 'Outrageous Gov't. Conduct'; Structural Defects, documented
Page Suffix d. Perjury by U.S. Dist.Ct. Judge to 9th Cir; 'Fraud upon the Court'.
- APPENDIX K** -- Previous U.S. Supreme Court Habeas, w/ clerks letters to allow
resubmission of stolen Certiorari. [Intervening Circumstance,
in violation of U.S.S.Ct.R. 29.2 and 36.1.
- APPENDIX L** -- Documentation of the Criminal Directive from the (R) Montana
Attorney General's Office, to the Warden at the Montana State
Prison to destroy all "evidence" illegally taken from Petitioner.
- APPENDIX M** -- In relation to above, and Bounty from Oregon Company, violating
Federal Trade Commission Act, Sherman Anti Trust Act, Hobbs Act
and R.I.C.O. Acts, as nexus to §I & §II, Fraud and Conspiracy [MT].
-
- APPENDIX N** -- Recent denial of Habeas Corpus in the Montana Supreme Court,
Page Suffix e. cause OP-23-0683, Ellison v Bludworth, Knudsen, Moody, for their
'Fraud', Conspiracy, Solicitation, Crimes.
- APPENDIX O** -- Decision on Dec. 19, 2023. [This Petition is NOT Time barred].

NOTE: Based upon the Bounty monies offered and paid by private corporation,
APPENDIX P to State officials, where Montana is also a corporation, the fine
per 15 USC §1, is proper also due to the criminal acts by both;
constituting a Conspiracy by the (R) Montana Attorney General's
Office, to suppress the documented and admitted involvement with
the Mexican Cartel, as nexus to the §1983 civil suit.

Each Appendix has its own Table of Contents.

In the
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

OPINIONS BELOW

The opinions below constitute two related incidents, and the resultant State and Federal Proceedings, linked by the nexus of 'Bounty' monies offered by a Oregon Company on the Petitioner, who cites Rule 42- Consolidation requested. Each incident is hereafter referred to as §I, an attack on the Petitioner's family home, is waived by the State; and §II, concerns the car's trunk exploding and fire, while Petitioner was driving, and recorded on video. The Petitioner directly appeals the following:

- ** (1) The most recent proceeding was an opinion concerning both §I and §II, in the Montana Supreme Court, Ellison v Bludworth, Knudsen, Moody; Cause OP-23-0683; in a Petition for Writ of Habeas Corpus Relief, denied on December 19, 2023, for appeal.
- §I: (a) The opinion in the Montana Supreme Court for review as reported: DA-20-0375, published as 2020 MT 324N, Ellison v State; on appeal from the 13th MT.Jud.Ct. for Post Conviction Relief, Dv-18-1629, denied on November 12, 2020. Originating from trial, DC-14-0614, State v Ellison. Ellison acquitted of Count I.
- (b) The opinion of the U.S. District Court for Montana, for Habeas review, as reported in Cv-21-026-BLG-DLC-TJC, Ellison v Salmonsens, et al; denied on September 27, 2022: Appealed to the Ninth Circuit Court of Appeals, 22-35774, COA denied, en banc denied.
- §II: (a) The opinion of the Montana Supreme Court for review as reported: DA-20-0100, published as 2020 MT 228N, Ellison v State; on appeal from the 13th MT.Jud.Ct. for Post Conviction Relief, DV-19-1330; denied on September 8, 2020. Originating from DC-07-0907, State v Ellison, [Exclusion of Bounty evidence shown in both §I and §II Petitions, and evidence of Actual Innocence, lack of probable cause shown].
- (b) The opinion of the U.S. District Court for Montana, for review as reported; Cv 17-168-BLG-DLC-TJC, Ellison v Fletcher, et al, Habeas Relief denied on February 25, 2020; Appealed to the United States Court of Appeals for the Ninth Circuit, 21-35669, with Appellate Commissioner's request for COA denied.
- (c) Judicial Misconduct Complaints 21-90024, 21-90025; 28 USC § 351(a), Chief Justice Sidney Thomas, of Billings, Yellowstone County, Montana presiding; and later presided over appeal in CV-21-026-BLG-DLC-TJC, Ellison v Salmonsens, not as the Chief Justice, but with prior knowledge.

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: This Petition is timely, bases on the State Court December 19, 2023 decision, See Appendix N.

The date on which the highest state court decided my case was December 19, 2023
A copy of that decision appears at Appendix N.

☐ A timely petition for rehearing was thereafter denied 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 _____.

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

"Jurisdiction extends to rights protected by the Constitution, treaties, or laws of the United States, from whatever source those rights may spring."

New Orleans v DeArmas, 34 US 224, 9 L.Ed. 109,(1835)

Petitioner cites McQuiggen v Perkins, where Actual Innocence Claims are NOT time barred, when proven, as here, and also the evidence is waived by the State, and other claims waived.

CONSTITUTIONAL RIGHTS VIOLATED

AND

CONTROLLING STATUTES AND RULE OF PROCEDURE APPLICABLE

UNITED STATES CONSTITUTION:

ARTICLE III: CONTROVERSY REQUIREMENT

1st Amendment: RIGHT TO REDRESS, FREEDOM OF SPEECH, PROHIBITION OF RETALIATION.

4th Amendment: RIGHTS PROHIBITING UNREASONABLE SEIZURE.

5th Amendment: RIGHT TO DUE PROCESS, AND PROHIBITION OF DOUBLE JEOPARDY.

6th Amendment: RIGHT TO [COMPETENT] ASSISTANCE OF COUNSEL, [Trial and Appeal].

8th Amendment: RIGHT PROHIBITING CRUEL AND UNUSUAL PUNISHMENT.

14th Amendment: RIGHT AGAINST A STATE'S DEPRIVATION OF LIBERTY WITHOUT THE
DUE PROCESS OF LAW, LACK OF JURISDICTION, DENIAL OF
EQUAL PROTECTION.

MONTANA CONSTITUTION: ARTICLE II, DECLARATION OF RIGHTS.

§17, DUE PROCESS OF LAW; §24, RIGHTS OF THE ACCUSED; §25, DOUBLE JEOPARDY.

FEDERAL STATUTES:

15 USC §1. THE SHERMAN ANTI-TRUST ACT. [Conspiracy in restraint of Commerce].

15 USC §45. THE FEDERAL TRADE COMMISSION ACT. [Unfair Methods affecting Commerce
by Deceptive Practices].

18 USC §1501-1521. OBSTRUCTION OF JUSTICE.[§1519. Destruction...of records in
Federal matter].

18 USC §401. POWERS OF COURT. [Contempt of Court, by Montana, by MT.Atty.Gen.].

18 USC §1951. THE ANTI-RACKETEERING ACT [HOBBS ACT],

§1958. USE OF INTERSTATE COMMERCE FACILITIES IN THE COMMISSION OF
MURDER-FOR-HIRE.

§1951. INTERFERENCE WITH COMMERCE BY THREATS OR VIOLENCE.

18 USC §1961-1968, et seq. THE RACKETEERING INFLUENCED AND CORRUPT ORGANIZATIONS
ACT, [R.I.C.O.]

STATE STATUTES: [MCA] Montana Codes Annotated.

§45-7-207. TAMPERING WITH OR FABRICATING PHYSICAL EVIDENCE.[MT Waived evidence of]

§45-6-103, ARSON, [ACQUITTED OF AT TRIAL, §I], [Actual innocence in §I & §II].

§45-7-209, IMPERSONATION OF PUBLIC OFFICIAL. [MT Waived per MT.R.Evid. 901].

§45-7-103, CRIMINAL USE OF PUBLIC OFFICE OR POSITION [MT.Atty.Gen. & Cnty Pros.]

§45 7-210, FALSE CLAIM TO PUBLIC AGENCY, [County Prosecutors false probable cause].

§45-4-101, SOLICITATION,/ §45-4-102, CONSPIRACY. [MT.Atty.Gen. order to destroy].

§45-5-201, ASSAULT,/ §45-5-204, MISTREATING PRISONERS,/ §45-5-221, MALICIOUS INTIM.

§45-5-302, KIDNAPPING,/ §45-5-502, RAPE=SEXUAL ASSAULT

§45-5-201, PERJURY,/ §45-7-206, TAMPERING WITH WITNESSES/ §45-

§45-7-208, TAMPERING WITH PUBLIC RECORDS OR INFORMATION.

§45-7-303, OBSTRUCTING JUSTICE./§45-5-102(1)(b) ATTEMPTED DELIBERATE HOMICIDE.

MONTANA RULES OF CIVIL PROCEDURE, 12(b),(h) & MT.RULES OF APPELLATE Pr. 12(2).

STATEMENT OF CASE

The Petitioner, Lionel Scott Ellison, presented a Petition for Writ of Habeas Corpus to the Montana Supreme Court, which was wrongfully denied, and is thus cause and grounds shown for this 'Appeal' directly to the United States Supreme Court, based on the concession and legal waiver by the former Democrat Attorney General, in Post Conviction proceedings that the Petitioner is wrongfully convicted under the Double Jeopardy Clauses of the Montana and United States Constitutions, after the Petitioner was acquitted at trial of Count I: Arson.

The State of Montana's Highest Court is the Montana Supreme Court; where the Petitioner filed for relief directly to that Court, and directly to the present Chief Justice Mike McGrath, due to the documented direct written order from the present Republican Attorney General, Austin Knudsen, and his 'Elective Franchise'; which ordered the destruction of the Petitioner's evidence of criminal acts by the State of Montana, and its public officials; and the evidence that the Petitioner is wrongfully convicted under his Double Jeopardy rights after acquittal.

The Montana Attorney Generals Office directive was written on official State of Montana, Office of the Montana Attorney General Austin Knudsen letterhead, and attached to an email.[See in Appendix L, Official Letter of Fraud/Conspiracy/Contempt].

The email from the Office of the Montana (R) Attorney General, was sent to the Warden of the Montana State prison, Jim Salmonsens, and to other officials for the Montana State Prison and the Montana Department of Corrections.

Under the direct order of the Montana (R) Attorney Generals Office, prison officials confiscated the Petitioner's previously mailed Petition for Writ of Certiorari, after it was legally mailed into the MSP prison internal mail system.

This is a violation to the Due Process of Law under the 5th and 14th Amendments, Due Process Clauses, by 'Fraud upon the Court', by the State of Montana's commission of criminal acts, including Obstruction of Justice, Obstruction of Process, Tampering with Evidence, Tampering with Witnesses/ Victims, Solititation and Conspiracy.

All violations which the State Court refuses to recognize or hold as Contempt, including denying rights to each of the Nine Supreme Court Justices of the United States Supreme Court to receive that Certiorari by mail, under the 1st Amendment.

The decision by the Montana Supreme Court, to deny Habeas Corpus relief, is a violation to the Due Process Clause, where the State has conceded that the Petitioner was wrongfully convicted of subsequent charges, after the Petitioner was acquitted at trial of Count I: Arson, as the principle alleged offense; and knowingly conceded by intentional waiver that the Petitioner's Double Jeopardy rights had been violated, under the Fifth Amendment's Double Jeopardy Clause, after the Petitioner was acquitted.

This must be considered an 'abuse of discretion' by the State Court, not to apply the cited Waiver and Party Presentation jurisprudence cited, as controlling the fact that the State of Montana, through counsel, had conceded and waived the Petitioner's Double Jeopardy Claim in State District Court proceedings, but also had legally conceded and waived the Petitioner's New Forensic [DNA] Science Findings, confirming the Petitioner's Actual Innocence; and waived (3) three separate issues of Malicious Prosecutorial Misconduct, by the Yellowstone County prosecutor.

The (3) three issues of Malicious Prosecutorial Misconduct includes the State's lack of probable cause to charge or seize the Petitioner in violation of the Fourth Amendment and that the County Prosecutor representing the State committed known Perjury to the State Court, which in this case constitutes 'Fraud upon the Court', for that County Prosecutor's prior involvement as the elected Park County Attorney, and his attempt at covering up and suppressing video and investigations, that confirm that a Yellowstone County Sheriff's detective hired (2) Mexican Cartel gang members to Abduct, Torture, and Rape the Petitioner, in an attempt to extort the Petitioner's signature on a release of liability form for an Oregon Company. The Park County Attorney, Brent Linneweber, was dismissed or quit, once the Park County Commissioner's were informed of the criminal acts by Linneweber, to cover-up for Yellowstone County detective Frank Fritz, who was having an extra-marital affair with the Petitioner's wife, and paid the Cartel the \$50,000 'Bounty' placed on the Petitioner, with monies from the Oregon Company, LCG Pence of Portland Oregon. See Appendix B for that suit.

The State Court's 'abuse of discretion' here must be considered to be documented "drastic departure from the adversarial system of adjudication."

The Petitioner claims and cites Rule 10(a) of the Supreme Court Rules, for the Court's Consideration for Certiorari, where the State's highest Court decision has, "so far departed from the accepted and usual course of judicial proceedings", that the Supreme Courts Appellate and Supervisory Powers are required to correct this admitted and waived, 'Miscarriage of Justice', to aid and abet the criminal acts of government officials in Montana. The Constitution and Congress grants this power.

The Montana Supreme Court's decision is a "drastic departure" from the Supreme Courts established 'Stare Decisis' as demanded by this Court concerning a party's waiver of issues presented to the Court, and the knowing and intentional abandonment by waiver of those issues; and must be held as abuse of discretion, as held before.

The Court was given the Power to protect the rights of the individual from such abuse of discretion by a State Court, lacking jurisdiction after acquittal, and the waiver that a individuals Double Jeopardy rights have been violated.

In this Petitions "Reasons", the Petitioner will cite the same principles of law and Supreme Court controlling authority, which governs a lawful waiver, as is defined by this Court, as well as the Court's Party Presentation procedural rules of adjudication; where courts are held to have abused their discretion.

A court of law, whether state or federal, is not at liberty to bypass, override, or excuse a state's deliberate waiver, is a controlling principle, where the State here voluntarily and deliberately waived these issues with awareness that the State was acknowledging that the Petitioner Ellison was wrongfully convicted, in violation of his Double Jeopardy rights, prohibiting this waived wrongful conviction.

Waiver directly implicates the power of the parties to control the course of the litigation, if a party affirmatively and intentionally, relinquishes an issue, then the Courts must respect that decision, and not undertake the role of being a party to the action. In this case the State of Montana waived (5) distinct violations that are demanded of a fair trial, and in which an unbiased court would recognize, and apply the proper remedy and relief, where there is no actual controversy as is required under Article III, of the Constitution.

The Honorable Justice Ginsburg opined two unanimous Supreme Court cases as being controlling 'Stare Decisis' jurisprudence, in relation to a party knowingly and intentionally waiving issues; and the 'Party Presentation' doctrine violated by the Tenth Circuit and Ninth Circuit respectfully.

Justice Ginsburg's opinions support the five issues in this present matter, where the State waives all evidence of a crime, and concedes to the criminal acts by the detective, the Cartel men, and the vindictive malicious prosecution by the Yellowstone County Prosecutor Linneweber.

A Court of law should not excuse a procedural default by a government entity, and not excuse that of a citizen as a party. This is then a "Equal Protection" violation of the Fourteenth Amendment, which the Petitioner claims here.

A Court of Law is not allowed to disregard the Rules of Civil Procedure nor the Rules of Appellate Procedure, in relation to a party's intentional waiver of issues presented by the opposing party, this violates the Due Process Clauses.

In Montana the controlling Civil Procedure Rules are Rule 12(b) and 12(h), which control a party's waiver in the Montana District Courts. In the present matter the State Court disregarded these rules and actually refused to write an opinion at all on the Petitioner's Double Jeopardy Rights violations as waived by the State, in the Petitioner's Post Conviction Relief proceedings. The Judge there completely skipped the Petitioner's Claim #7 therein, because the State refused to dispute, disagree or brief that issue, after the same Judge ordered the State to respond to all (7) Seven of the Petitioner's claims, with multiple issues in each. Completely disregarding the Rule, and aiding and abetting a wrongful conviction.

In Montana the controlling Appellate Procedural Rules are Rule 12(2), which controls a party's waiver, and in which a party only has to respond to a claim, if the party is "dissatisfied" with the opposing party's claim. The State was then satisfied with the Petitioner's claims of Actual Innocence evidence, and that the State had lacked probable cause, committed 'Fraud upon the Court' Perjury, and unlawfully attacked eye-witness credibility; and the Bounty on the Petitioner, where the Detective hired the Cartel.

This Petition contains (2) separate matters that are linked by the nexus of the 'Bounty' placed on the Petitioner, by the Oregon Company the Petitioner was suing for 'Bond Fraud', and theft of \$1,786,000.00 Bond, for a construction project in Bozeman, Montana. That civil suit is in evidence here, in Appendix B, and shows when the continuous 'Fraud upon the Court' began.

The first being §I, which is the attack on the Ellison home, where the Petitioner and his parents were tied inside their home, by ropes tied to each outside doorknob and tied to immovable objects to prevent escape after the same Yellowstone County Detective, Frank Fritz, threw a 'Bomb' thing against our home, to destroy witnesses and evidence against him and the Prosecutor Linneweber.

The second being §II, which concerns an earlier linked matter, where the trunk of the car the Petitioner was driving exploded into flame, destroying the car, and damaging the Petitioner's lungs and caused the progressive severe hearing loss, in which the Petitioner had to wear hearing aids from that day forward. Until the present (R) Republican Montana Attorney General, Austin Knudsen ordered the Warden at the Montana State Prison to destroy this Courts Certiorari, which was in the prison internal mail system; all of the Petitioner's §1983 civil suit evidence and pleadings, and the prison officials confiscated the Petitioner's hearing aids.

All of the evidence proving the above §I and §II, and the linking 'Bounty' evidence was destroyed by the Warden, including the hearing aids, as the directive ordered. The following is also the linking nexus to both §I and §II, from Mr. Knudsen: Pg. 2: "Prior to the destruction or return of evidence seized in relation to this investigation, please ensure it is not necessary for another criminal, civil, or administration case."

~~This is undeniably an order to the Warden and his staff to "ensure" that NO~~
other "criminal, civil, or administrative case" could be filed, and to destroy all of the evidence. This included the Certiorari, the §1983 case files, and the hearing aids, [So that the Petitioner could not attend the upcoming §1983 trial].

The above follows what on Page 1, must only be held to be a death threat:

"Notably, Inmate Ellison has no realistic chance of leaving prison."

Ellison discharges in only a few years, at the age of 71, so this is a threat...

In connection to the continued 'Fraud upon the Court', by former Park County Attorney, Brent Linneweber, tried to charge the Petitioner with 'Tampering with Evidence' and had the Petitioner placed in the State Hospital, where the Respondents representative Dr. Virginia Hill conducted a investigation, and reported on page 6:

"We found that the collateral information actually tends to support Mr. Ellison's beliefs. The video (above) is a sworn statement from an individual saying he was approached about assisting in a plan to "terrorize" the owner of WallPro, Inc. (Mr. Ellison), allegedly at the bequest of a company Mr. Ellison was suing after a business deal had gone bad. While in jail at one point, Mr. Ellison believes another inmate had been asked/ordered to murder him, there is a written note in existence that could be construed as such. With regard to the idea his wife had conspired against him, Mr. Ellison produced evidence of this in the form of text messages from her, described in the Supreme Court decision (above) as, "arguably favorable to his case"(¶ 17). Finally, at the risk of stating the obvious, Mr. Ellison was in fact discovered bound and gagged in a field in Park County, and has offered evidence to support his version of events."

This investigation confirms the Petitioner's case that a 'Bounty' was placed on him, and the conspiracy between his former wife, who was having an affair with the detective and the 'gang' notes from Cartel members to murder the Petitioner in jail. Also the individual named by Dr. Hill is Justin Stevens, who was a known Seattle Organized Crime member who was first approached to "terrorize" the Ellison Family into signing the release of liability for the Portland, Oregon Company, LCG Pence, as named in the civil suit also in Appendix herein. Mr. Steven's transcripts from his deposition, are also attached to this Petition in the Appendices, as uncontradicted and waived as true evidence by the then (D) Montana Attorney Generals office.

Mr. Stevens, admitted his having been a Seattle Organized Crime (gang) Member in his deposition, and that the Oregon Company had offered him and his brother, Aaron, \$10,000.00 to "terrorize" the Ellison family into dropping the suit against LCG Pence. Mr. Stevens refused LCG Pence's offer, and identified the person responsible for the money as "Lonnie", for Lonnie Higgins, a defendent in the suit, and how Lonnie had paid a man named Keith Harris to beat up the Petitioner, and admitted to killing my puppy, Bodo; and that he was doing something the following morning to discourage Ellison from continuing with the suit. The following morning the car that the Petitioner was driving to be repaired exploded in the trunk area, and burnt up the car, and hospitalized the Petitioner, with smoke damage, and Petitioner's loss of hearing.

It was at this point that Claude Ellison, the Petitioner's father called the Park County Commissioners, and reported that the then Park County Attorney was involved in the cover-up for the Yellowstone County detective; to protect him and the Petitioner's then wife, Rhonda Mae Quarters, and the two Cartel men hired after the Seattle gangster Stevens had refused, and came forward afterwards to stop any claims of his involvement. The Park County Attorney, Linneweber was either fired or quit, once the Commissioners learned he had Dr. Hill's Report sealed, and had lied about and suppressed the Park County Deputy's dashcam video, documenting the rescue of the Petitioner from the bottom of the I-90 bridge/ cliff. Linneweber immediately went to work in Yellowstone County, as an assistant prosecutor working with detective Fritz. The detective identified by Ellison who orchestrated the Abduction, Torture, Rape and dumping the Petitioner in Park County, using the Oregon Company money.

These acts and the evidence confirming them are also waived by the then (D) Montana Attorney General. The later acts by the (R) Montana Attorney General's Office choosing to order the destruction of all evidence of the above, instead of obeying the Montana Rules of Professional Conduct, Rule 3.8, that is for prosecutors only, and requires that Knudsen "Remedy" the known unlawful conviction, based on Rule 3.4, Fairness. The two different ways of dealing with this case, definately shows the difference in political ideology between the (R) Republican Party, and it's elitism values against personal rights, defying obedience to the 'Rule of Law'. As completely different from the prior (D) Democrat Party's elected Attorney General, who knowingly waived the constitutional violation issues, under the Rule of Procedure. The difference being the ethics of each elected official; and that ability to accept accountability, and not ignore the issues or save the State from Federal exposure by more Fraud.

This case involves two linked situations, both in relation to the 'Bounty' monies offered by the Oregon Company, and which demonstrates the 'Fraud upon the Court' and the documented nexus, which demonstrates the conspiracy by officials, with the Cartel, and the Oregon Company. This nexus proves the violations to the Sherman-Anti Trust Act, the Federal Trade Commission Act, the Hobbs Act, and the R.I.C.O Acts as intended by the U.S. Congress, and the 'Outrageous Government Conduct' herein.

This Petition is presented with both the criminal matters, stemming from the 'Bounty' money offered by the Oregon Company to violate fair trade between States, and by that company criminally obtaining the Petitioner's \$1,786,000 bond to pay illegal mexican labor [known as MS 13], to do the construction job for much less, supplied by the Guzman family Cartel. This is admitted to by Marco Guzman, an inmate at Montana State Prison, and nephew to the famous 'El Chapo' Guzman, now in Federal prison. Marco Guzman had been a 'associate' to Carlos Molina before being transferred to Montana State Prison from Texas, where he was twice convicted of murder. How is it that he is now in Montana State Prison, is a question for the Court to ask the Montana Attorney General who ordered the destruction of all evidence linking Montana to the Cartel, to hinder the Petitioner, including destroying my hearing aids.

§I--The First, and present matter, the Petitioner will refer to as §I, concerning the attack upon the Ellison Home by Detective Fritz, as identified by the Petitioner and his Parents. Fritz was seen in the Ellison home front yard, and identified by Claude and Marlene Ellison, and the Petitioner, after we had been awoken at about 4:30am on March 14th, 2013 by a loud explosion at the front of our home. The Petitioner and his parents found that they could not open the doors to see what had happened, and saw through the window of the front kitchen door that fire was burning on the house, with Fritz in the yard, who then ran to the west, where taillights of a vehicle were seen leaving down the block. See the eyewitness testimony and affidavits in Appendices.

The Petitioner used a fire extinguisher to break the window in the kitchen door, to reach through the broken glass to cut the ropes that the detective had used to tie them shut from the outside. Each door was tied from the outside door knob to an immovable object, with our front kitchen door, to the old 'whiskey barrel' planter, full of dirt, see photos, showing, Ellison used the fire extinguisher to put out the fire. The detective did not know that Claude Ellison had built the home, and that the original kitchen area was cementious block with masonite siding, that does not burn. Photographic evidence also confirms this herein, and is also waived evidence, as undisputed facts by the prior (D) Attorney General, as undisputed.

Brent Linneweber, the former Park County Attorney, now a deputy Yellowstone County Attorney was notified by a media email, that the Petitioner was seeking an attorney with the assistance of a Denver [Oil & Gas] attorney, Steve Hamilton of Hall and Evans,[See Steves letter herein, documenting his efforts and supplying a copy of the Park County Deputy dashcam] seeking to sue Linneweber and Fritz.

Linneweber then filed an information to charge the Petitioner with Count I: Arson, and Count II and III, Tampering with Evidence, with Count II being because the Petitioner's DNA was found at the Petitioner's Home, on the doorknobs and the rope tied to the doorknobs, [See the accepted 'Secondary DNA Transfer' Findings in Appendices] , and Count III [Later dismissed] that a knife with the name 'Fritz' on it was found in the roadway, with extra rope and a cigarette lighter, found in the area that Fritz ran, just before the taillights were seen leaving by the witnesses, who identified Detective Fritz, which Petitioner claims as being vindictive prosecution.

The State also charged Count IV: Impersonating a Public official, where a person who identified himself as Detective Frank Fritz, demanded each of the Petitioner's subsequent employer's to fire the Petitioner Ellison from employment. None of the employer's identified the Petitioner as the caller, at any time nor at trial.

The Petitioner plead 'NOT GUILTY' to these charges and was going to trial with his family attorney Elizabeth Honaker, the same attorney who caught Brent Linneweber with suppressing the Park County Deputy Dashcam video, and the Montana investigation by Dr. Hill, while Linneweber was still the Park County, Montana's County Attorney.

Ms. Honaker was threatened by a Yellowstone County Attorney, Jeff Michaels while she was in the Yellowstone County Clerk of Court's office, and again on voicemail Michaels left on her phone, that he was going to "WIPE YOU OUT" for her representing the Petitioner. Ms. Honaker's Affidavit is attached in Appendices, and is undisputed, and waived also.

The Petitioner was appointed an attorney from Helena, Montana;[200 miles west], who saw the Petitioner rarely, and refused to hire an investigator to prove any of Ellison's claims, in this DC-14-0614, Ellison v State case.

The State appointed Public Defender, Michael Kakuk, refused to investigate any of the Petitioner's evidence, and in fact asked the Petitioner and his witnesses Claude and Marlene Ellison to change their testimony for 'their sake'. He also asked the Petitioner to do the same. The Petitioner tried to fire him but the presiding Judge Jones, refused that request.

During trial attorney Kakuk for the Petitioner, refused to cross-examine Detective Frank Fritz, and refused to present any defense at all. Kakuk simply stood up and told the court that "Defense Rests", even though he had all of the evidence to prove that Fritz committed the crimes the Petitioner was charged with, and the motive behind Fritz attacking the Ellison residence, and the motive as why the prosecutor Linneweber would file the charges as being more for self and career preservation, instead their being a actual crime being committed with probable cause to charge the Petitioner.

Now evident with the (D) Montana Attorney General having waived, that he is satisfied with the Petitioner's claim of Malicious Procecutorial Misconduct, for filing an affidavit and information, lacking in probable cause, which legally then constitutes 'Perjury', and under Ninth Circuit jurisprudence, constitutes actual 'Fraud upon the Court', Which is consistant with Linneweber also lying to the Yellowstone County District Court in the DC-14-0614 Trial, about the evidence in the Park County case, and knowingly stating a false narrative to the court that the Petitioner could somehow do this to himself. A false narrative in which Linneweber could not prove with evidence, but did prejudice the judge and the State District Court, and in which defense counsel Kakuk did not object.

The Petitioner was unable to object to Kakuk's refusal to present any defense, as shown by the evidence, that during trial the Yellowstone County Jail admits to not feeding the Petitioner, knowing that the Petitioner is a severe Hypoglycemic, and must eat many small meals per day, as shown in Dr. Hill's investigation and Report, known to Linneweber as the Park County Attorney, which further documents the conspiracy and nexus between Fritz, Linneweber, Molina and LCG Pence's 'Bounty'.

At no stage of the trial proceedings, was the Petitioner given a fair trial, as defined by law, and the jurisprudence of this court.

III. Neither the Defense Counsel, nor the Prosecutor presented evidence to the jury except in a manner that was prejudicial to the Petitioner and demonstrates that the outcome was faulty, even with the Petitioner being acquitted of Count I: Arson, and found guilty of the present Tampering, using the same evidence as was previously used to acquit the Petitioner, which by definition and the 'Rule of Law' constitutes Double Jeopardy, as claimed by the Petitioner, as collateral estoppel, under the Fifth Amendment; as present and prohibited here as waived in the State proceedings, by the (D) Montana Attorney General Administration.

At no time can it be said, based upon the evidence and the States waiver, did Linneweber act in a manner that was independent and impartial in his official duties, as a Deputy Yellowstone County, Montana, County Attorney; representing the State of Montana. Which is cause for the Petitioner to file the enclosed Professional Misconduct charges in a Complaint to the Montana Office of Disciplinary Counsel, and the Montana Commission on Practice, and for this 'Fraud upon the Court', and in which the Petitioner also recently filed a complaint against the (R) Montana Attorney General, Austin Knudsen and his assistant Patrick J. Moody, for ordering the Warden Jim Salmonsens, and his Staff to destroy all of the Petitioner's evidence as had been confiscated. Including the prior Petition for Writ of Certiorari to this Court, in March 2023, and also the Petitioners evidence in the two 'Tote' boxes [23 5/8" L X 16 3/8" W X 13 1/4 H], which the attached documentation confirms was taken and not returned. As evidence in the pending related §1983 case in the U.S. District Court, Ellison v Yellowstone County, et al. v Austin Knudsen et al. Cv 18-056-BLG-BMM-JTJ. Where the District Court Judge Brian Morris issued a Writ of Habeas Corpus ad Testificandum, to protect that evidence and the Petitioner from harm, which the directive from Knudsen violated, and shows Contempt of Court Order, and Contempt of the United States Supreme Court; see Appendix L.

The State not only violated Supreme Court Rule 29.2, but also Supreme Court Rule 36, by transferring the Petitioner to another facility, after filing the Misconduct.

Before the Petitioner was convicted, the Yellowstone County Detention Facility, affirmed that Yellowstone County guards did not provide the Petitioner with food during the final two day of trial, which made the Petitioner incoherent and unable to mentally comprehend the trial or assist or object to the actions of the court.

The guards responsible for the above, once they returned to work, did then place a known combatant former employee into the Petitioner's cell at the County facility. The same guards who withheld the food, placed the man into the Petitioner's segregated cell, even with both the Petitioner and this man objecting. Later this man, Steve Aalgard, was taken out of the cell for about an hour, and returned. That night the man stabbed the Petitioner with a sharp instrument (3) times before the Petitioner got him stopped. The Jail Medical staff confirmed this also, as did the Jail Sr. Staff, that this occurred and that the jail had previously known of threats from the gang members throughout the prison.[See Appendix I. Retaliation Section.]

The Petitioner filed a Motion for a New Trial with the State District Court, based upon the above, to no avail or response.

It was during this time that a Billings, Montana newspaper and reporter had been publishing the public hearings against the Yellowstone County Attorney, Jeff Michael, who had threatened and assaulted the Petitioner's Attorney Elizabeth Honaker, and was found guilty of Obstruction and unprofessional conduct in relation to his prior involvement with the Petitioner's cases, and the State of Montana sanctioned him, in the hearings through the Commission on Practice, which the Petitioner hopes the Commission will be consistant and sanction the present (R) Montana Attorney General and his assistant, as well as Linneweber, for their continued 'Fraud upon the Court' as is waived as true by the prior (D) Montana Attorney General.

The Petitioner appealed the DC-14-0614 Judgement based upon the fact that the State had waived the Petitioner's Double Jeopardy Claim, and presented his seperate Malicious Prosecution Claims, and the New Scientific Forensic Science Findings about 'Secondary DNA Transfer' and how common it is, at a person's home, often referred to by the general public as 'Dust', which transfers repeatedly 85% of the time, demonstrating Actual Innocence, to Count II.

The Montana Supreme Court in this §I, DC-14-0614, State v Ellison matter, as presented in the Post Conviction proceeding cause DV-18-1629, Ellison v State; codified this matter in the Montana Supreme Court as DA-20-0375, with its opinion denying appeal as 2020 MT 324N, Ellison v State.

The Montana Supreme Court refused to recognize that the State had conceded to and waived the presented issues, as is demanded by the Montana Rules of Appellate Procedure, and refused to recognize the States waiver of Double Jeopardy, in the State District Court.

The State in its response to the Petitioner's Opening Brief, did not dispute or brief that the County Detective had hired the two Cartel men to Abduct, Torture, Rape the Petitioner with the glass 'dope' pipe that Molina broke off in the Petitioner's rectum, nor deny that they used a car cigarette lighter to burn Petitioner 25+ times before dumping the Petitioner from the I-90 Federal Interstate bridge/ cliff, as the evidence conclusively shows.

Throughout all proceedings in the State and Federal Courts, the Petitioner has presented the same claims in this matter being:

1) Actual Innocence; 2) Judicial Error; 3) Forced Mental Impairment at Trial; 4) Malicious Prosecutorial Misconduct (4. separate claimed issues); 5) Ineffective Assistance of Counsel; 6) Perjury by Law Enforcement (Det. Fritz); and finally 7) Collateral Estoppel, Fifth Amendment prohibiting Double Jeopardy, as a Fourteenth Amendment violation of Due Process and the Equal Protection of the Law. This Claim #7, being the issue the State refused to argue, brief or dispute in the State District Court cause DV-18-1629, and in which the State District Court refused to adjudicate, and substituted with another earlier claim. Which is an abuse of discretion or furtherance to the disobedience to the 'Rule of Law', and State 'Fraud upon the Court', for refusing to recognize Montana Law, MCA: §46-11-503, prosecution barred after acquittal; and MCA: §46-11-410 Mutiple Charges, both are State Double Jeopardy Statutes, included in Claim #7, and waived by the State, per the Rules of Procedure.

By United States Supreme Court holds that States must recognize their laws.

The Petitioner presented 4 claims of Malicious Prosecutorial Misconduct, to the Montana Supreme Court as follows, 3 of which the (D) Montana Attorney General refused to argue, dispute or brief, which procedurally defaulted these claims per the MT.R.App.P. 12(2) and being satisfied with the claims, as correct and true.

- 1) That the Yellowstone County Prosecutors, for the State Lacked Probable Cause.
- 2) That the Prosecutors had knowingly made fraudulent statements to the Court, with Linneweber falsely claiming that there was no evidence that the Petitioner had been Abducted from Yellowstone County, Tortured and then Raped, before being 'dumped' in Park County. Where he had been dismissed as the Park County Attorney, for suppressing the Deputy dashcam video, and hid the State Report by Dr. Hill, which confirmed the 'Bounty' and the collusion between Rhonda Mae Ellison [the Petitioner's then wife], Det. Fritz, and the two Cartel men.
- 3) That the arresting detective had suppressed the audio recordings from the two witnesses, recorded the morning of this assault by Fritz on the Ellison home. The Montana Attorney General did respond to this claim, only with an illogical claim that Trial Counsel would have known if a recording was made. [Trial Counsel, Kakuk, also admitted that he had not investigated Count IV, and had the phone that the State claimed made the calls to get the Petitioner fired. Counsel refused to investigate phone call history by an expert].
- 4) That the State did knowingly and unlawfully attack the credibility of the two eye-witnesses who saw the detective that morning, without justification except that they were suing Fritz for prior harrassment and threats.

Issues 1, 2, and 4, were completely ignored and not briefed by the State, which by State Law constitutes a waiver, and can not be bypassed, over road, or excused, per Supreme Court Jurisprudence, and the Party Presentation Doctrine, both of which the U.S. District Court for Montana, and the Ninth Circuit Court refused to recognize or apply, where this matter was adjudicated by jurists who reside in Yellowstone County only, which demonstrates regional bias, and elitism standards of law there.

The Montana Supreme Court, in this 2020 MT 324N decision, refused to recognize or apply, State and Federal Law concerning clearly established Supreme Court law, as will be cited in this Petitions 'Reasons' section.

The U.S. District Court, as presided by Montana Judge Dana Christensen, and with the 'Findings and Recommendations' from Magistrate Timothy Cavan, of Billings, Yellowstone County, Montana, refused to recognize the waiver laws in the Petitioner's Petition for Habeas Corpus, under 42 USC §2254, in CV 21-026-BLG-DLC-TJC herein.

Both of these Courts refused to recognize the Petitioner's Motion for Relief from Judgement, under the Montana and Federal Rules of Civil Procedure, Rule 60, at §(b), concerning (1) Mistake; (2) Newly Discovered Evidence; (3) Fraud; (4) the Judgement is void; and (6) any other reason that justifies relief [Exceptional Circumstances]. And most importantly refused to recognize or apply Rule 60(d)(3), Fraud upon the Court, which should be applied based upon the (D) Montana Attorney Generals waiver of the above Malicious Prosecutor Misconduct Claims, that can not be bypassed or excused, with the inclusion that the present (R) Montana Attorney General is bound by law, that he "shall seek to remedy the conviction" per the Montana and Federal Rules of Professional Conduct, Rule 3.8(g),(h); and 3.4 Fairness.

The Petitioner wishes for the Court to note that the Magistrate in this §I, matter was Timothy Cavan, who influenced the presiding U.S. District Court by presenting his 'Findings and Recommendations', which Judge Christensen accepted. Timothy Cavan is legally barred from presenting any 'Findings' in §I or §II, by Cavan, having previously been the U.S. Attorney for Yellowstone County, and that he had been repeatedly presented this case by the Petitioners father, Claude Ellison, with all of the evidence herein of the Abduction, Torture, Rape and Attempted Murder of the Petitioner for the 'Bounty' monies offered by the Oregon Company, LCG Pense. The U.S. District Court still denied Habeas relief, and refused to recognize the 'Clearly Established' Supreme Court law, in violation of Federal Law under 42 USC §2254(d)(1) and (2), with an unreasonable decision, which is cause for reversal based on Structural Error, per Supreme Court Binding Law.

The U.S. District Court decision, also denied the Petitioner a Certificate of Appealability, as should have rightfully been granted, except for the prejudice and bias shown in that Court by the Yellowstone County Jurist influence.

The Petitioner appealed this matter to the Ninth Circuit, requesting a [COA], Certificate of Appealability, for review of the constitutional violations in the Federal Habeas Corpus, Ellison v Salmonsens, State of Montana, CV 21-026-BLG-DLC-TJC. Ninth Circuit Justice Sidney Thomas denied the Petitioner's Request for COA, and appeal to the Ninth Circuit Court of Appeals, cause no: 22-35774.

Ninth Circuit Justice Sidney Thomas also resides in Yellowstone County, Montana.

Justice Thomas is the former Chief Justice of the Ninth Circuit, and had earlier presided over two Judicial Misconduct proceedings which the Petitioner had filed with the Ninth Circuit. Justice Thomas denied that Petitioner's claims, even though it is documented that Judge Christensen blatantly lied to the Ninth Circuits Appellate Commission, about who the Magistrate was who wrote the 'Findings and Recommendations' which influenced his denial of Habeas Relief.[See in Appendix J], the mailing receipt from the Petitioner to Judge Thomas's address in Billings, Yellowstone County, Montana, which contained a large package of all of the documents herein, and the crimes and 'Outrageous Government Conduct', in Yellowstone County.

The Bias and prejudicial dismissal of this case, is a matter of record, and in defiance of Federal Law in the Ninth Circuit, and the U.S. Supreme Court, and shows the 'Tampering with the Democratic Structure between Friends', as outlawed as being defined as Tyranny, a subject that Thomas Jefferson held that the Court must have "Eternal Hostility" against.

This same bias and prejudice by the Montana Courts, was also shown in the following §II, which concerns the earlier explosion of the car that the Petitioner was driving. The nexus connecting the two incidents has also been waived by the prior (D) Montana Attorney General, and the 'Bounty' monies being offered by the Oregon Company. The major difference being that the Petitioner was forced into pleading guilty or the State would charge the Petitioner's mother with 'Tampering'.

§II--- This is the earlier matter as mentioned, but concerns the trunk of the car exploding, while the Petitioner was driving, which was documented by a camera on the Avis Car Rental Store; in Billings, Yellowstone County, Montana.

The car exploding occurred a few weeks after the Petitioner and his father had caught the Oregon company, LCG Pence in their 'Bond Fraud' scheme, and after the Petitioner had retained an attorney to notify LCG Pence that they were in default of their contractual obligations. The Ellison's did not know that LCG had already placed the 'Bounty' on both Claude and Lionel Ellison, owners of WallPro, Inc..

The car was an older 1986 Thunderbird, which the Petitioner was paying to be repaired and drivable as a graduation present to the daughter of the company secretary who had worked for WallPro, Inc, the summer before. At the time of the explosion the car had just been worked on the days before by a mechanic who repaired the electrical system and fuel pump, which was in the gas tank in that model. The Petitioner

The Petitioner was driving the car to a muffler shop for repair when it exploded, and the car became completely engulfed in flame. The Petitioner was able to pull the car to the curb, and exit the vehicle, but did suffer from smoke inhalation, which severely damaged the Petitioner's lungs, and caused loss of hearing, for which the Petitioner still suffers. NOTE:[Petitioner's hearing aids were taken from Petitioner, at the time the (R) Montana Attorney General gave his directive to the Montana State Prison to destroy what would ensure that no more legal pleadings could be filed. Montana Department of Corrections continues to refuse to replace them, or supply a TTY phone to contact an attorney or anyone else].

The Petitioner sold the car to a Fromberg, Montana 'demolition car' racer for \$50.00 later. The car was moved 70+ miles west by this man.

Three months later the Yellowstone County Sheriff detectives went to Fromberg to view the car for the first time, after the new owner had been using the car, and they took photos of the car.

Yellowstone County, then decided to charge the Petitioner with Arson, and claimed that the video from Avis Car Rental proved probable cause. At that time the State Montana's minimum value for felony Arson was \$1,000, as stated in the charging.

This §II matter was filed also in the Thirteenth Judicial District for the State of Montana, Yellowstone County, as DC-07-0907, State v Ellison, with one count of Arson, based on the States claim that the video was probable cause, and that the car's value met the \$1,000 minimum for felony arson in 2007.

The attorney that the Petitioner first met with was Quinton Rhoades, who told the Petitioner to first of all go get the car appraised by the only licenced car appraiser in Montana. The Petitioner saw Mr. Steffes, who then did the appraisal, based on the car's previous history, when it was sold and it's condition before the Petitioner bought it and put the title in his secretary's name as a joint gift to her daughter.

Jeff Michael contacted the Petitioner, and stated he could get the charges dropped for less, after Mr. Rhoades was unable to do so based on case load. Michael stated that because of the appraised value, that the car value disqualified it for a felony charge, without his viewing the Avis Car Rental. The Petitioner gave Michael the \$5,000.00 that he asked for, because Michael claimed to be best friends with the then Yellowstone County Attorney Scott Twito: and because the car's value was only \$500.00.

Soon after, Jeff called the Petitioner and his mother, Marlene Ellison to his office, and said he needed another \$10,000.00 to continue or his friend Twito was going to charge the Petitioner's Mother with Tampering, because she did as Michael requested, by bringing the girl who was to receive the car to Michael's office.

Michael also said that he had made a plea deal with Twito, and Twito would drop the charge to a misdemeanor if the Petitioner plead guilty, and that the charge would be deferred, and then removed. The Petitioner agreed, and went to Court, unable to properly hear what the judge said, but said yes to everything at Michael's urging. Ellison had not received his hearing aids yet at that time.

It was at the end of this hearing that the Petitioner learned he had been lied to by Michael, and fired him, and filed a Motion for Change of plea with the Court, who held a hearing, where the State Fire investigator stated he did not know what caused the car fire, or the value of the car, but was relying on the Avis video as evidence of arson, per Mr. Twito. The full hearing transcripts are herein. The new judge still denied a change of plea back to 'Not Guilty', based on Michael.

The Petitioner filed for Post Conviction Relief in the Thirteenth Judicial District Court, cause Dv-11-0306, with his parents attorney Elizabeth Honaker, and she submitted the State of Montana's own video experts analysis and findings on the alleged probable cause from the Avis Car Rental video. The expert, Douglas McShane, presented his findings and affidavit of the video, from the car fire on May 19, 2007. Mr. McShane's analysis and findings stated as follows: that the video did not show arson, contrary to the Yellowstone County Claims, and actually supported the Petitioner's claim of innocence and verified his testimony as stated that day, Mr. McShane concluded on Page 1, that:

"The images jump around and change shape a bit, but this is consistent with fire and smoke. At approximately 15:35:18 there appears a particularly good image of what can only be a fire at this same spot."

Page 2:

"At no time prior to the imaginary noted above did I detect any indication or suggestion of people or a single person moving at or in the vicinity of the item I described as the fire. Also, during the duration of the 'fire' as described above, I did not detect any indication or suggestion of people or a single person moving at or in the vicinity of the image described. Frankly, during this time, it is virtually impossible to see anyone or anything past this dancing imagery (fire and smoke)."

"In the following minute and a half or so, it is now apparent that there is movement and probably people (more than one) in the vicinity of the 'fire' and this continues until an individual actually leaves the scene described and moves into the Avis building (Lobby) and then departs again, etc. However, the number and identity of the individuals is in my opinion impossible to identify given the quality of the video. Furthermore, it is truly impossible to determine anything even remotely associated with actions or intent."

The full analysis is in Appendix F/ Exhibit 2, herein which the Petitioner further claims his Actual Innocence, and the 'Fraud upon the Court' by Yellowstone County, who again falsified evidence; claiming it to be probable cause; where it is "impossible to determine...actions or intent", and is a violation of the Petitioners Right to Due Process, under the Fifth and Fourth Amendments 'Probable Cause' Clause, and the Due Process Clause of the Fourteenth Amendment. This charge was used to enhance the sentence of the previous §I, attack upon the Ellison home, which the State legally waived also did not have probable cause to charge as continuous Fraud.

Also, in the Seattle Organized Crime man, Justin Stevens testimony, the person who caused the car fire is Keith Harris, who admitted to his intent in a "deal", the following day, when the car exploded, [See statement in Memorandum of Law of Appendix herein, in the Steven's transcripts.]

On page 25 of that deposition, Keith Harris, had just been released from jail, for stealing tools from WallPro, Inc. and had admitted to another "deal" with

"Lonnie" stating: "I got another deal going here and I'm going to go down to his shop in the morning and I'll wait for him. Because he shows up the same time every morning right here at the same gate...And he's like, I tie him up and throw him in the car and take him for a ride and I'm going to see if I can't, you know, get a point across to him or something. Or if I can't, convince him of what's going on here or if I can't---something."

The next morning the Petitioner took the old car to get the muffler repaired, and this is when the car's trunk exploded. Someone must have tampered with the car. Harris is the same man, along with 2 others who beat up Ellison, and killed his puppy.

The Petitioner filed a Habeas Corpus with the U.S. District Court for Montana, Ellison v Fletcher, CV 17-168-BLG-DLC-TJC, with Mr. Cavan again unlawfully influencing Judge Christensen to deny the Habeas in his 'Findings and Recommendations', claiming lack of diligence. The Petitioner Claimed his Actual Innocence, and explained the PTSD caused by being Abducted, Tortured, Raped and 'Dumped' by the Cartel, which still causes Petitioner problems and at times depression and pain from the scars that bleed inside the Petitioner's rectum, from the broken glass of the 'dope' pipe thing, that Molina admits to have used to Rape Ellison, and it broke inside me.

The Petitioner appealed the car fire habeas to the Ninth Circuit Court of Appeals, cause no: 21-35669, where the Ninth Circuit Appellate Commissioner, Ms. Lisa B. Fitzgerald ordered the U.S. District Court Judge Christensen to respond to the Petitioner's Motion for Relief from Judgement pursuant to Rule 60(b), in the above car fire habeas. The Commissioner requesting a Certificate of Appealability for the matter based upon the facts concerning the 'Bounty' money, and the Stevens depositions, and the involvement of Magistrate Cavan, which was illegal.

U.S. District Court Judge Christensen responded with a known fraudulent statement: "United States Magistrate Judge John T. Johnston handled pretrial proceedings. On January 7, 2020, Judge Johnston issued a Finding and Recommendation urging this court to dismiss Mr. Ellison's Petition with prejudice on the basis that it was time-barred without cause."

Judge Christensen, knowingly committed Perjury to the Ninth Circuit, by trying to fraudulently substitute Johnston as Mr. Cavan. This was the grounds Petitioner filed for Judicial Misconduct in 21-90024 & 21-90025, referred to then Chief Justice Thomas.

The Petitioner's claims for Certiorari and relief from wrongful conviction, as waived, and the continuing nexus with the State's Highest Court refusing to abide by that State's laws and Ruled, constitutes 'Abuse of Discretion' by that court, in reference to the cited United States Waiver and Party Presentation Doctrine jurisprudence as follows, and for that State Court to knowingly ignore the criminal acts by the State, and especially the present (R) Attorney General as the highest ranked 'Police' officer, and is "above the law" in Montana, as is a County detective.

The evidence heré; must be deemed as extraordinary, concerning documented crimes by government officials, and the lack of integrity by the Courts to hold these State and County officials and 'officers of the court' accountable for their acts, like no other by a State's elected 'Police' officer, directing law and justice in the State. But instead violates Federal Trade Acts by Racketeering methods; violations:

- 1) The Sherman Anti-Trust Act, 15 USC §1. Trusts, etc., in restraint of trade;
- 2) The Federal Trade Commission Act, 15 USC §45, unfair methods of competition, unlawful; prevention by Commission. [LCG paying a 'Bounty' to silence Petitioner]
- 3) The Hobbs Act, 18 USC §1958. Use of Interstate Commerce facilities in the commission of murder-for-hire.[by Fritz and the Cartel using I-90].
- 4) The R.I.C.O. Act, 18 USC §§ 1960-68, et seq., as Prohibited Activities in §1962.
- 5) Conspiracy against Rights. 18 USC §241; Deprivation of Rights under Color of Law, 18 USC §242; Conspiracy to commit offense or to defraud United States, 18 USC §371. [The written MT Atty.Gen. directive, with Warden]....
- 6) Fraud and Fraudulent Statements: Statement or entries generally, 18 USC §1001; Obstruction of Proceedings, 18 USC §1505; Tampering with witness, victim or informant, 18 USC §1512; Destruction of Mail, 18 USC §1705.[destroying Certiorari].

This includes many State crimes that apply, as committed under MCA: §45-4-102, Conspiracy; §45-4-101, Solicitation; §45-5-203, Intimidation; §45-5-202 Aggravated Assault; §45-5-502, Sexual Assault; §45-7-309, Criminal use of Office; §45-7-208, Tampering with public records; §45-7-206, Tampering with witnesses; and most especially §45-7-303, Tampering with or fabricating physical evidence:

NOTE: This crime that the Montana (R) Attorney General is documented as committing is the very same crime that the State alleges that the Petitioner committed, but in which the previous (D) Attorney General concedes and waives that the Petitioner didn't commit, as charged without probable cause, and by the use of perjury by Yellowstone County, to cover up criminal acts by County law enforcement. Facts that the State is NOT "dissatisfied" that Petitioner's claims, per MT.R.App.P. 12(2).

Is this not a two tiered system of justice? Will the Court allow, or grant relief?

REASONS FOR GRANTING THIS PETITION

The First Amendment Rights of the Petitioner, and each Supreme Court Justice have been violated, by the State (R) Attorney General's directive to destroy the previously mailed Certiorari, to silence the overwhelming evidence of criminal activity in Yellowstone County, Montana; and the 'Abuse of Discretion' by the State District and Supreme Court involved in both §I, the attack on our home by Fritz, and §II, the car's trunk exploding while the Petitioner was driving.

The Montana Courts have knowingly disregarded the Montana Rules of Procedure, and governing Waiver and Party Presentation jurisprudence, excusing the State in maintaining an admitted wrongful conviction to benefit a private corporation, that the Ellison family caught committing 'Bond Fraud', and then choosing extortion, violence and bribery of law enforcement officers to hire Cartel members. Who admit to being paid "50K" [\$50,000] to force the Petitioner to sign a release of liability, by the Aduction, Torture [Tazer and Beating], and Rape before disposing of Ellison's body off a Federal Interstate, I-90. With that company choosing this OVER the Court.

("Moreover, it is monstrous that the courts should aid and abet the lawbreaking police officer. It is abiding truth that "Nothing can destroy a government more quickly than it's failure to observe it's own laws, or worse, its disregard of the character of its own existence.")

Gelbard v United States, 408 US 41,69, 92 S.Ct 2357,33 L.Ed.2d 179 (1972); citing Harris v New York, 401 US 222,232, 91 S.Ct 643(1971); Mapp v Ohio, 367 US 643,659, 81 S.Ct 1684 (1961); Olmstead v United States, 277 US 438, 485, 72 L.Ed.2d 944, 48 S.Ct 564 (1928).

The "lawbreaking police officer" in this matter, is the state's highest ranking officer, and is the (R) Montana Attorney General, Austin Knudsen; and the Yellowstone County detective Frank Fritz. With Knudsen using the prestige of his office to order subordinates to commit crimes, to suppress earlier crimes committed by Fritz and the 'officers' of the court, in Yellowstone County.

This continued 'Fraud upon the Court' shows the "drastic departure" by the Montana Courts, from the 'Rule of Law', [See U.S. Supreme Court Rule 10(a)], Showing Contempt of Supreme Court, and its Rules; Rule 29.2 [internal mail/ filing] and Rule 36.1 [illegal transfer during pending S.Ct. Habeas review].

The Montana Supreme Court continues to disobey Supreme Court authority, and the prevailing Waiver and Party Presentation Law, to knowingly maintain the present wrongful conviction.

The Montana Supreme Court has repeatedly refused to recognize it's own decisions and State Laws, to the point of excusing criminal acts, and disregarding Montana Law, to support the crimes by the (R) Attorney General refusing to honor the former (D) Attorney General concession and waiver, To literally keep Ellison a "Political Prisoner". and ignoring the State's waiver of Double Jeopardy, Actual Innocence, and Malicious Prosecution (3) issues, where Petitioner attached a copy of Certiorari to that court.

"It is a fundamental principle of our constitutional scheme that the government, like the individual, is bound by the law. We do not subscribe to the totalitarian principle that Government is the law, or that it may disregard the law even in pursuit of the lawbreaker."

Alderman v United States, 394 US 165,202, 89 S.Ct. 961, 22 L.Ed.2d 176 (1969)

The present disobedience to the federal guarantee of freedom from arbitrary imprisonment, as protects the Petitioner by the Fourteenth Amendment, encompassing the Petitioners 1st, 4th, 5th, 6th, and 8th Amendment rights, are being brazenly disregarded to protect these criminal "police officers", and inflict cruel despot retaliation on anyone who challenges that despot's authority, as a totalitarian.

The Montana Supreme Court's denial of Constitutional Rights, and the jurisprudence of the United States Supreme Court's principles and controlling standards as 'Stare Decisis', is nothing short of a disrespectful "drastic departure" of the 'Rule of Law', both State and Federal.

§I. THE ATTACK UPON THE ELLISON HOME, CONTROLLING WAIVER/ PARTY PRESENTATION LAW:

In Appendix D, the Petitioner presents DC-14-0614, State v Ellison; and it's Post Conviction proceedings documents in DV-18-169, Ellison v State; and the Appeal of that Post Conviction to the Montana Supreme Court, as DA-20-0375, and published decision as 2020 MT 324N, Ellison v State.

The filings in the above proceeding are conclusive that the State of Montana, as represented by counsel in these Post Conviction proceedings, has legally waived and conceded the Petitioner's claims of Double Jeopardy, Actual Innocence and three Malicious Prosecution claimed issues, by the State refusing to argue, dispute or brief these issues and evidence. This abandonment of those issues by the State, through it's former (D) Attorney Attorney, illegally overturns the State conviction and Judgement to punish the Petitioner, where no evidence shows crimes committed.

The Montana Rules of Civil Procedure, Rule 12(b) and (h) govern as follows:

§(b): "How to present Defenses. Every Defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required."

§(h): "Waiving and preserving the certain defenses.

(1) When some are waived. A party waives any defense listed in Rule 12(b)(2),

(5) by:

(B) failing to either:

(ii) include it in a responsive pleading..."

In Montana these Rules are codified as law by the Montana Legislature, under Montana Codes Annotated [MCA], Title 25, Civil Procedure; Chapter 20, Rules of Civil Procedure.

After the Petitioner was acquitted of Arson in §I, DC-14-0614, the State's (D) Attorney General and Yellowstone County, refused to dispute or brief that the Petitioner was wrongfully convicted, as prohibited by the Double Jeopardy Clause of the 5th Amendment, and per Art.II, §25- Double Jeopardy of the State Constitution; and in violation of MCA: §46-11-410- Multiple Charges, and MCA: §46-11-503, Prosecution based upon the same transaction barred by prosecution. (1)...prosecution is barred if: (a) the former prosecution resulted in acquittal. Both Montana Double Jeopardy law, and both waived.

The United States Supreme Court unanimously held in Wood v Milyard, 566 US 463, 466, 132 S.Ct 1826(2012), "A court is not at liberty, we cautioned, to bypass, override, or excuse a state's deliberate waiver..."

As opined by Justice Ginsburg, and the Court further held at 465:

"This case concerns the authority of a federal court to raise, on it's own motion...defense to a habeas corpus petition."

The Court held that the 10th Circuit Court of Appeals had 'abused its discretion' unfairly; "excuse of a state's deliberate waiver...". Showing bias, as shown here.

The Montana Supreme Court has thus 'abused its discretion' to continue to excuse the State's deliberate waiver here, that the Petitioner is wrongfully convicted as prohibited by the Double Jeopardy Clauses of both the State and Federal Constitutions.

This holding brings forth the Petitioner's right to the 'Equal Protection Clause' under the Fourteenth Amendment, for the same relief, and where the Court has held, "Relief is proper because counsel failed to brief two [5 here] arguable issues." Smith v Robbins, 528 US 259, 269, 120 S.Ct 746(2000).

The record shows in Appendix D, in the State Post Conviction Proceeding, in the Montana 13th Judicial District that the State legally waived the Petitioner's Double Jeopardy Claim. At this point the State District Court lost jurisdiction, as held by the Supreme Court in *Brown v Davenport*, 142 S.Ct 1510, n.1, 212 L.Ed.2d 463(2022), ("a sentence violating the Double Jeopardy Clause was "beyond the jurisdiction of the Court", because an express provision of the Constitution bounds and limits jurisdiction.") quoting *In re Nielson*, 131 US 176,185 (1889).

The Court has consistently warned the lower courts that:

"Trial courts, must be cautious, about raising a presumption *bar sua sponte*, thereby eroding the principle of party presentation so basic to our system of adjudication." *Arizona v California*, 530 US 392, 413, 120 S.Ct 2304(2000).

Montana is in the Ninth Circuit, and the Court recently held that the Ninth Circuit Court of Appeals abused its discretion in the Court's unanimous decision, also opined by Justice Ginsburg, in *United States v Sineneng-Smith*, 140 S.Ct 1575, 206 L.Ed.2d 866 (2020), where the Ninth Circuit's decision, like the State Court's here: "is a drastic departure from the principle of party presentation constitutes abuse of discretion."

"In our adversarial system of adjudication, we follow the principle of party presentation. As this court stated in *Greenlaw v United States*, 554 US 237, 128 S.Ct 2559, 171 L.Ed.2d 399(2008), "in both civil and criminal cases, in the first instance and appeal..., we rely on the parties to frame the issues for decision and assign to the courts the role of neutral arbiter of matters on which the parties present." *Id* at 243, 128 S.Ct 2559, 171 L.Ed.2d 399. In criminal cases, departure from the party presentation principle have usually occurred "to protect a pro se litigant's rights" *Id* at 244, 128 S.Ct 2559, 171 L.Ed.2d 399; See *Castro v United States*, 540 US 375, 381-83, 124 S.Ct 786, 157 L.Ed.2d 778 (2003)(affirming courts authority to recast pro se litigant's motions to "avoid an unnecessary dismissal" or inappropriately stringent application of formal labeling requirements, or to create a better correspondence between the substance of a pro se motion's claim and its underlying legal basis"). But as a general rule, our system "is designed around the premise that [parties represented by competent counsel] know what is best for them, and are responsible for advancing the facts and argument entitling them to relief." *Id* at 386, 124 S.Ct 786, 157 L.Ed.2d 778" (quoting *Greenlaw* at 243-244).

The Petitioner asks for the same consideration and protection of Constitutional Rights, as above. That the State of Montana did NOT present any argument to brief, the Petitioner's five claims, as has been legally waived. Justice Ginsburg held at 1577: "That principle forecloses the controlling role the Ninth Circuit took on the case. No extraordinary circumstances justified the panel's takeover of the appeal."

The Montana Supreme Court did not present a justifiable reason to deny the Petition for Habeas Corpus other than that the Petitioner is diligent. Appendix N

Justice Ginsburg remanded the case back at 1577 stating: "The Ninth Circuit's radical transformation of this case goes well beyond the pale. On remand, the case is to be considered shorn of the overbreadth inquiry interjected by the appellate panel and bearing a fair resemblance to the case shaped by the parties."

The Montana Supreme Court seems to be using this case to excuse a procedural default and waiver by the State of Montana, for future unconstitutional decisions, and overturn well settled 'Stare Decisis', as a means to disregard State Law, and allow the State to not have to abide by the Rules of Procedure, by 'Overbreadth'.

Justice Thomas concurred that this is an abuse of discretion. The Court then held: "There may be reasons to ignore that rule in one or another everyday case. But to do so in pursuit of overturning precedent is nothing short of extraordinary."

"Stare Decisis can not be overturned unless a party requests overruling..."
See *Edwards v Vannoy*, 141 S.Ct 1547, 1580-81(2021)

The Petitioner asks that the Court apply the above principles as 'Stare Decisis', established in both *Wood* and *Sineneng-Smith* by the Honorable Justice Ginsburg in both opinions, as unanimously agreed upon by the Justices of this Court; and issue Certiorari, and grant the proper relief based upon the State's waiver that the Petitioner is wrongfully convicted. Where like each Justice here, our 1st Amendment rights have been violated, to send and receive mailed pleadings to the Court.

The Petitioner brings this case from the Montana Supreme Court, directly to the Supreme Court because of the 'Local' cronyism in Montana, and because:

"The principle of party presentation cautions decisionmakers against asserting it for him...Where...Innocence is what makes the state action wrongful, it makes no sense to require a federal suit to be filed until innocence or its equivalent is established."
Albright v Oliver, 510 US 266, 280-81, 114 S.Ct 807(1994).

In this case the Petitioner has presented evidence of Actual Innocence in both §I, the attack on our home, and §II, the car trunk exploding with Petitioner driving.

In §I, the State has waived the "equivalent" to innocence as Double Jeopardy, and the Actual Innocence Forensic DNA Science that establishes the innocence; and that the State waived probable cause did NOT exist, which was Count II: Tampering; and waived that the Petitioner did NOT make the calls to get the Petitioner fired from employment 4 times, under Rule 901 of the MT.R.Evid.

There is no actual controversy, as required under Article III of the Constitution.

Where the Warden at the State Prison did destroy the Certiorari, at the direct order of the (D) Montana Attorney General, 'Fraud upon the Court' is further shown.

Done solely to suppress the criminal activity in Montana, and the fact that the (D) former Attorney General for Montana knowingly waived the (5) Five Constitutional violation claims, as defined in *Kontrick v Ryan*, 540 US 443, 458 n.13, 124 S.Ct 906 (2004): "Waiver is the intentional relinquishment or abandonment of a known right." quoting *United States v Olano*, 507 US 725, 733, 113 S.Ct 1770(1993).

The State was ordered to respond to (7) Post Conviction Claims, in DV-18-1629, *Ellison v State*, [Appendix D]. The State only responded to (6) Six, and by so doing "relinquished" and "abandoned" that claim, and thus conceded and waived that the Petitioner was wrongfully convicted under Petitioner's Claim #7: Collateral Estoppel, Double Jeopardy, violation of MCA: §46-11-410, Multiple Charges and §46-11-503, Prosecution based upon the same transaction barred by former prosecution, [Montana Double Jeopardy Prohibition Law], where §(1)(a), the former prosecution resulted in acquittal." Which is the circumstances claimed here and waived as true by the State.

Where the State, as represented by the (R) Attorney General, has refused to honor this waiver, and knowingly maintained a wrongful conviction and imprisonment, to hide the Corruption and Conspiracy; in relation to the criminal acts and 'Fraud upon the Court' previously. Waiver is a procedural default of the 'Fraud' in Montana, which

"We enforce waiver and forfeiture against criminal defendants and the government equally." *United States v Dowdell*, 70 F.4th 134, 140(3rd Cir. 2023); quoting *United States v Olano*, 507 US 725, 733, 113 S.Ct 1770(1993), that

"A party's waiver should be enforced." and
"we cannot reach waived arguments..."

The Montana Supreme Court's denial of Habeas Corpus, shows the 'Abuse of Discretion', by NOT enforcing the (5) claims waived herein, further violating the Petitioner's right to Due Process in relation to the Double Jeopardy violations, as are waived.

"almost without exception, the requirement of a knowing and intelligent waiver has been applied only to those rights which guarantee to a criminal defendant in order to preserve a fair trial". *United States v Frescas*, 932 F.3d 324, 340 (5th Cir 2019); quoting *Schneckloth v Bustamonte*, 412 US 218, 237, 93 S.Ct 2041 (1973)

The State knowingly, voluntarily and deliberately waived the Double Jeopardy Claim, with the awareness that it acknowledges that Ellison is wrongfully convicted, and qualifies for immediate release from arbitrary imprisonment, deprivation of liberty.

The controlling rule for the waiver by the (D) former Attorney General's Office, in the Appeal of the Petition for Post Conviction Relief, in the Montana Supreme Court, cause 2020 MT 324N, Ellison v State, is Montana Rules of Appellate Procedure, Rule 12 Briefs. §(2): "Answer brief of the Appellee." [Montana is Appellee here].

"The answer brief of the appellee shall conform to requirements of section (1)(a) through (h) of this rule, except that a statement of the issues or of the case need not be made unless the appellee is dissatisfied with the statement of the appellant."

Thus based on Montana Lawful Rules, Montana as represented by Mr. Fowler as the appellee is NOT dissatisfied with the Petitioner's claims on appeal, and is thusly satisfied with the 'Secondary DNA Transfer' Findings evidence establishing Petitioner's Actual Innocence. Satisfied that the Petitioner was a victim of Abduction, Torture, and Rape by Detective Fritz, and the Sininola/ MS 13 Cartel, with 'collusion' by Rhonda Mae Ellison, Prosecutor Linneweber and the Oregon Company.

This waiver negates the judgement by the State District Court, as does the (3) Malicious Prosecution Misconduct claims, including lack of probable cause, Perjury by prosecutor Linneweber in the charging affidavit and at trial concerning the facts involving the Petitioner being Abducted, Tortured, Raped and 'Dumped' in Park County, that he tried to cover up by suppressing the Deputy dashcam video and the State Investigation and report by Dr. Virginia Hill, confirming the 'Bounty' on the Petitioner, and the "Collusion" between Rhonda and Detective Fritz.

The State also waived issue #1 in the Malicious Prosecutorial Misconduct claim, and is satisfied that the State lacked probable cause to charge in §I and §II.

"That the gravamen of the Fourth Amendment claim for malicious prosecution, as the Court has recognized it, is the wrongful initiation of charges without probable cause." Thompson v Clark, 142 S.Ct 1332, 1337-38(2022)

("To account for this "problem of causation" in retaliatory prosecution claims, Hartman adopted the requirement that plaintiff plead and prove the absense of probable cause for the underlying charge...As Hartman explained, that showing provides a "distinct body of highly valuable circumstantial evidence" that is "apt to prove or disprove" whether retaliatory animus caused the injury: "Demonstrating that there was no probable cause for the underlying criminal charge will tend to reinforce the retaliation evidence, and show that retaliation was the but-for basis for instigating the prosecution." Nieves v Bartlett, 139 S.Ct 1715,1723, 204 L.Ed.2d 1(2019). Opined by Chief Justice Roberts.

"presumption of regularity" to unreasonably press charges is unreasonable, if NOT supported by probable cause, which neither §I, nor §II, was supported by evidence, just malice and vindictive intent by Linneweber, to cover up his prior misconduct and escape suit.

Recently the Federal Courts have ruled again concerning probable cause to charge for an Arson charge, or charges relating to Arson, as follows:

("As the Supreme Court has made quite clear, "to secure a warrant to investigate the cause of a fire, an official must show more than the bare fact that a fire occurred," Michigan v Tyler, 436 US 499,507, 98 S.Ct 1942, 86 L.Ed.2d 456(1978)), quoted in United States v Waide, 60 F.4th 327,337(6th Cir. 2022).

The State did NOT have any evidence at all that was actual or admissible to be presented to the Court, based on the 3 month Gap in the custody of the car, at the Fromberg, Montana demolition car racers home, which holds that the car itself is not admissible, nor that the State knew where or what caused the fire, both elements of a charge of arson, which the car's value being less than the \$1,000 minimum for the charge of arson, and being \$500, or salvage value. It must be conceded that the State, through Yellowstone County, did again commit 'Fraud upon the Court' by Perjury.

("The affidavit's assertions that the fire was "incendiary in nature" and an "arson", without additional factual support, was thus a conclusionary statement equating the occurrence of the fire with a criminal act...such a conclusion "ignores basic common sense"...")

"Nor does the existence of surveillance camera attached...add probable cause. A valid search [or arrest] warrant requires reliable evidence that some crime has been committed. United States v Abernathy, 843 F.3d 243,249(6th Cir 2016).

In both §I and §II, based on the complete lack of evidence, and the perjury in both affidavits, it is proper that:

("Courts are required to suppress evidence that is directly or indirectly "the tainted 'fruit' of unlawful government conduct". Nix v Williams, 467 US 431,441, 104 S.Ct 2501, 81 L.Ed.2d 377 (1984); Waide at 338.

Based on the above, the State in §II, the car exploding while Petitioner was driving, the State thru Yellowstone County had to rely on the threat to arrest the Petitioner's mother, rather than actual evidence of a crime, which the County knew ahead of time, so it resorted to deceptive 'Bad Faith' practice's, similar to what the (R) Montana Attorney General resorted to in ordering the destruction of all evidence against the State in both §I, the Attack; and §II, the car exploding.

The nexus between the three above, has now been undeniably shown, based on the refusal by the (R) Attorney General to respond to the attached "Request for Admissions" which by law, he concedes to each point submitted, after 30 days. The (R) Attorney General is NOT immune from the law, and by law, must correct the present wrongful conviction, that he now admits to, as well as his (D) predecessor. [See Appendix N].

§I and §II, ACTUAL INNOCENCE CLAIM, LACK OF EVIDENCE JURISPRUDENCE.

As stated in both §I, The Attack on the Ellison home; and §II, the car trunk exploding with Petitioner driving; the Petitioner claims his Actual Innocence in both matters, claims the State lacked sufficient evidence for probable cause and lacked evidence of a criminal act by the Petitioner in either matter.

In support of the Petitioner's Actual Innocence in §I, and the remaining count II: Tampering, the Petitioner presented Forensic Science Findings, concerning the Petitioner's DNA, found at his own home, the State does not dispute the following.

The Journal of Forensic Science has published the Findings, known as 'Secondary DNA Transfer', in the accepted (5) Five published studies herein. The Journal's publication in September 2015, confirms this 'Act of God' natural phenomenon, in the study "Could Secondary DNA Transfer falsely place someone at the scene of a crime?", is an accepted natural occurrence, verifying that a person's DNA will transfer from one object that is directly touched, onto another object 85% of the time, and it is impossible to differentiate between direct or secondary DNA transfer from the human skin cells shed by all person's onto objects at their home, and anywhere onto objects that person touches. This is commonly referred to as 'Dust' in any home.

'Secondary DNA Transfer' occurred here, and the State was aware it would, and unreasonably claimed that the Petitioner's DNA, found on the ropes tying the Petitioner and his parents inside our home was 'probable cause' and was also Count II: Tampering.

But the United States Supreme Court addressed this natural occurrence, before the Petitioner was charged, in its holdings and DNA principles in 2009, in its opinion in D.A. v Osborne, 557 US 52, 55, 82, 129 S.Ct 2308(2009), holding that DNA tests are so sensitive that they can detect DNA transferred from person X to a towel (with which he wipes his face), from the towel to Y (who subsequently wipes his face), and from Y's face to a murder weapon later wielded by Z (who can use STR technology to blame X for murder).

This is what has occurred here, where the Yellowstone County detective, seen running away and with the prosecutor Linneweber's help, used the Petitioner's DNA that was supposed to be at our home, on objects like the doorknobs that the rope was tied to, and would naturally be present and transferred to any object that touched the doorknobs.

The Petitioner is person X here, and detective Fritz is person Z, who committed the crime, and Linneweber is his accomplice, to misuse the DNA, to protect both the Detective Fritz and Prosecutor Linneweber, from a civil suit against them for their criminal acts in Park County, where the Cartel man from the Sininola/ MS13 organized criminal gang admitted to MSP prison authorities that he, Carlos Molina, had been hired by the detective and the Petitioner's then wife, Rhonda Mae Ellison [Quarters], to Abduct, Torture by Tazer and Rape the Petitioner for \$50,000.00, of a 'Bounty' placed on Ellison. See Appendix B, the Prison 'Separation' document and Molina's handwritten Note, and his confession.

The Montana Attorney Generals Office has known that the Petitioner's DNA, as claimed here by the State, was NOT an indicator of guilt, when used in the present context, that the Petitioner's DNA was found on objects in his home, and that if used in this context, would result in a known wrongful conviction, as was waived by the former (D) Montana Attorney General.

Every State's Attorney General was submitted the Garret and Nuefied Report, "Invalid Forensic Science Testimony and Wrongful Conviction", 95 Va.L.rev. 1,14(2009), and cited in the National Academy of Science, that "imprecise and exaggerated testimony has contributed to the admission of erroneous and misleading evidence", that the "unsound use of forensic [DNA] science has contributed to wrongful convictions." See Melendez-Diaz v Massachusetts, 557 US 305,319, 129 S.Ct 2527,174 L.Ed.2d 314(2009).

The State of Montana; as represented by Mr. Linneweber, knowingly "relied upon evidence presented in a false context", State v Favel, 2015 MT 336, ¶128; in both §I, the attack on our home by Fritz, and in §II, the car trunk exploding on video, while the Petitioner was driving...it is unreasonable to ever believe that the Petitioner could drive and somehow access the trunk to cause it to explode, and to damage my lungs and cause my hearing loss.

The only conclusion for this 'Fraud upon the Court', in both matters, must be to maintain the known wrongful conviction, in order to escape a civil suit for wrongful arrest in Park County, and in that suit it would expose the connection between the State, Yellowstone County, the Cartel, and the Oregon Company's 'Bounty' on the Petitioner. Hiding the dismissal of that false charge in Park County; suppress Dr. Hill's State Investigation and Report on the Park County matter, and documenting the 'Bounty' as offered to the two Seattle Organized Crime brothers, and the "collusion" of Rhinda Mae Ellison, with Fritz. Suppressing the Park County Deputy Sheriff's dashcam video, which documents and confirms that the murder-for-hire was done on Federal Commerce facility property, being Federal Interstate I-90, outside Livingston in Park County, Montana, which definitely documents their Abducting, Torturing, and Raping the Petitioner, as the photos and Rape Report herein confirms. [Appendix B].

In support of the Petitioner's Actual Innocence in §II, the car explosion, and recorded on video, the Petitioner has presented the video's analysis from the State expert Douglas McShane, that the video did NOT contain evidence to support a criminal offense, or as probable cause; and NOT grounds to secure a warrant. The Perjury in the charging documents in §II, is conclusive based on the State's inability to establish the "heat source" [what caused the fire], nor knew where the fire started, nor could the State establish the actual monetary value element for arson. Nor could the car itself be placed or claimed as material evidence after the 3 month 'Gap' in the car's 'Chain of Custody' before being seen by investigators. So the State again relied on 'BAD FAITH' deceptive practice to obtain a guilty plea, by threats to Petitioner's mother.

"Furthermore, it is impossible to determine anything remotely associated with actions or intent.", only "dancing imaginary" of fire and smoke. as found by the State's own video expert, Douglas McShane, in his expert analysis of the video.

Thus the Montana Rules of Evidence, Rule 901, Authenticity and Identification, which could not be met in §II, that without any evidence at all, the State could not legally, or constitutionally charge the defendant with any crime, and the only existing statement allowed is the truth, from the Petitioner, which at no time ever represented Arson, and that the Petitioner was forced to plead guilty, or the State through County Attorney Twito would charge Marlene Ellison with Tapmoring, unless the Petitioner paid them \$10,000.00 or to the plea, that was supposed to be a deferred misdemeanor, as promised by Attorney Michael.

The Petitioner's plea of 'Guilty' was NOT legal, under Supreme Court jurisprudence, and not made Knowingly, Voluntarily or Intelligently [KVI], where there was no factual basis for a plea of guilty, the Court held:

"a guilty plea is not voluntary if induced by misrepresentation, including an unfulfilled promise." McMann v Richardson, 397 US 759, 90 S.Ct 1411(1970); and Tollett v Henderson, 411 US 258,267, 93 S.Ct 1602(1973); Leperay v U.S., 587 F.2d 433, 436, n.4(9th Cir 1978); citing Brady v U.S. 397 US 742,755,90 S.Ct 1472(1970).

INEFFECTIVE ASSISTANCE OF COUNSEL, TO ESTABLISH ACTUAL INNOCENCE:

In both §I, an §II, the Petitioner has shown the continued 'Fraud upon the Court' and collusion between defense counsel, and the County Attorney's office, where because attorney Elizabeth Honaker was representing the Petitioner, and the Petitioner filed charges against Jeff Michael, he threatened her with violence for representing the Petitioner. Both in the Yellowstone County Clerk of Court Office, and by voice mail. [See Appendix F, Honaker's affidavit and local treatise, documenting the voicemail, released to the public]. This as after Michael had tried to extort \$10,000 more from the Petitioner for representation, and to get County Attorney Twito to drop the Arson charge.

Ms Honaker was afraid after that, and the Petitioner was forced to use a Public Defender in §I, the attack on our home, named Michael Kakuk. Kakuk's only action was to go to the two eyewitnesses and ask them to change their testimony, and NOT name Detective Fritz. He did the same with the Petitioner. All three Ellison's refused.

The elder Ellison's were kept out of the courtroom during trial, and not allowed to present testimony for the defense. Kakuk did not cross-examine Detective Fritz, and failed to object to the perjury by County Prosecutor Linneweber, and only stood and stated "Defense Rest", contrary to making the promised defense submitted by Ellison, violating Petitioner's Sixth Amendment Right to Competent Counsel, free of prejudice. See Strickland v Washington, 466 US 668, 80 L.Ed.2d 674, 104 S.Ct 2052(1984).

Kakuk could not allow any Ellison to testify, as his conflict of interest would have been exposed. The Petitioner, is a hypoglycemic and was not allowed food for two days during trial, as confirmed by 2 jail grievances. [See Appendix I].

- The two prongs of Strickland are met and of record in the transcripts in Appendix D.
- for 1)"Petitioner's Counsel had a conflict of Interest which materially compromised the defense." *Mickens v Taylor*, 535 US 162,170-71, 122 S.Ct 1237(2002).
 - 2)"Failure to conduct a reasonable pre-trial investigation" [refused to investigator assistance, and his office 200 miles west] *Wiggins v Smith*, 539 US 510(2003).
 - 3)"Failed to defend charges, trial equivalent to a guilty plea...abandonment". *United States v Cronk*, 466 US 648, 104 S.Ct 2039(1984).
 - 4)"Ineffective assistance at sentencing"[failed to claim Double Jeopardy after acquittal of Count I: Arson] *Williams v Taylor*, 528 US 362,397-99,120 S.Ct. 1495(2000).
 - 5)"Failure to file Appeal, as requested" [Refused to], *Garza v Idaho*, 139 S.Ct 738(2019).

At no point was Petitioner given a fair trial, or represented by effective counsel, to defend his Actual Innocence at the §I trial.

The Petitioner has presented evidence of his Actual Innocence to the Montana Supreme Court, in both §I and §II, and has stood on consistantly as 'Stare Decisis' law in relation to this 'Miscarriage of Justice', as the State conceded to and waived.

The Court demands that a State must present "facts needed to establish every element of a criminal offense" and " must be beyond a reasonable doubt." See *McClinton v United States*, 143 S.Ct 2400,2404, 216 L.Ed.2d 1258(2023); *In re Winship*, 397 US 358,364, 90 S.Ct 1068(1970); *Dretke v Haley*, 541 US 386,395,124 S.Ct 1847(2004).

The Petitioner has shown he has been deprived of his Constitutional Right, that prohibits Double Jeopardy, after being acquitted at trial. That combined with the State legally waiving that claim as true, and on appeal is satisfied with the evidence presented of Actual Innocence, and the (3) Malicious Prosecutorial Misconduct claims, activates *Schlup v Delo*, 513 US 298, 115 S.Ct 851(1995), and the Courts holding that:

"actual innocence with substantial claims of constitutional violations at trial, which is sufficient to bring him within the narrow class of cases...implicating a fundamental 'Miscarriage of Justice'..."

This also brings forth *Murray v Carrier*, 447 US 478, 106 S.Ct 2639, 2649(1986), with this case falling under the "Miscarriage of Justice" exception, which the Montana Supreme Court's Justice McGrath, continues to ignore in any Ellison case before him, which are 'Beyond the Bounds of Acceptable Behavior' by any Judge, in any Court. This present bias, stems from a relative in the State Legislature, who opposed McGrath as a Justice. This and the Montana court refusing to hold the State "police" accountable.

The Petitioner cites *McQuiggin v Perkins*, 569 US 383,386, 133 S.Ct 1924(2017);

"We hold that actual innocence, if proved, serves as a gateway through which a Petitioner may pass whether the impediment is a procedural bar, as it was in *Schlup* and *House*, or as in this case, expiration of the statute of limitations." [*House v Bell*, 547 US 518, 126 S.Ct 2064(2006).].

The Montana Supreme Court, in denying this Habeas Corpus, did NOT address the most serious claim in that Petition at all. That the (R) Montana Attorney General had, as the State's top "police officer", committed crimes of Fraud, Conspiracy, and Solicited others to Obstruct Justice, and Tamper with evidence and mail.

The Petitioner has shown that the State lacked probable cause to charge in both §I and §II, and lacked any evidence to support that the Petitioner had committed a crime. The Court has ruled that the complete lack of evidence in a case falls under *Herrera v Collins*, 506 US 390, 113 S.Ct 853, 122 L.Ed.2d(1993). The Petitioner claims and stands on that decision as applicable precedent.

This is not the first time a State Court in the Ninth Circuit has completely disregarded State Statutes. In Nevada, in *Smith v Patrick*, 508 F.3d 1256(9th Cir:2007)

"this case presents merely one more instance where evidence presented by the state is wholly insufficient to permit a constitutional conviction. Jackson makes clear that such cases can not constitutionally stand if the evidence was insufficient "to convince a trier of fact beyond a reasonable doubt of the existence of every element of the offense." citing *Jackson v Virginia*, 443 US 307, 316, 99 S.Ct 2781, 61 L.Ed 560(1979).

"The standard is not as severe for defendants as that applied in *Thompson v Louisville*, 362 US 199, 80 S.Ct 624(1960), which held it is a violation of due process to convict on no evidence. Jackson makes clear that a conviction is unconstitutional even if there is some evidence of guilt." Id 1258-59.

"the prosecutions evidence falls so short that it was unreasonable for the appellate courts to conclude that it met the Jackson standard."

The State of Montana's cases against the Petitioner, in both §I and §II, are "wholly insufficient" to permit the present conviction, and both "falls so short that it is unreasonable" to deprive the Petitioner of his Liberty, and punish him without evidence of guilt. §I and §II, "can not constitutionally stand", by Jackson.

"it is a violation of due process to convict and punish a man without evidence of guilt." *Thompson* at 206.

This is the "NO EVIDENCE CRITERION", which the Petitioner has met and overcome, and also where the continued 'Fraud upon the Court' is absolute, as here. Both being cause for the immediate release of the Petitioner, with all charges reversed and the judgements vacated with prejudice, which the Petition prays the Court will issue.

The States cases are completely devoid of any reasonable evidence that a honest trier of fact could conclude as a criminal act, if presented with all evidence.

The Montana Supreme Courts denial of Habeas here, essentially ratifies the weaponization of the Judicial system in Montana, to protect the criminal acts of a County criminal "police officer", E. Fritz; and the State's Top "police officer" Knudsen, to be above the law, and do as he please. This shows Montana's protective policy of government officials, and is a documented serious constitutional error:

("And because that constitutional error clearly and concededly resulted in the imposition of an unauthorized sentence, it follows that [the Petitioner] is a "victim of a miscarriage of justice". *Wainwright v Sykes*, 433 US 72, 92 S.Ct 2497(1977), entitled to immediate and unconditional release.")
Dretke v Haley, 541 US 386, 397, 124 S.Ct 1847(2004).

The Petitioner begs for the same consideration from the Court, as a directive remand to the Montana Supreme Court, to reverse judgements with prejudice. See *O'Brien v O'Laughlin*, 557 US 1301, 1302, 130 S.Ct 5(2009) by unanimous Justice Breyer opinion.

The Petitioner cites this Courts 'Stare Decisis' as cause why the State previously waived this Petitioner's Claim of Double Jeopardy, and cause for the present (R) Montana Attorney General's 'Elective Franchise' to order destruction of evidence.

The Petitioner cited Yeager v United States, 557 US 110, 129 S.Ct 2360(2009):

"an apparent inconsistaancy between a jury's verdict of acquittal on some counts and its failure to return a [like] verdict on other counts does not affect the preclusive force of the acquittal under the Double Jeopardy Clause of the Fifth Amendment"... "a jury's acquittal unquestionably, terminates a defendants jeopardy to the issues finally decided by the courts...the Clause embodies two vitally important interests. The first is the 'deeply engrained' principle that the State with all it's resources and power should not be allowed to make repeated attempts to convict an individual for the offense, and thereby subjecting him to embarrassment expense and ordeal and compelling him to live in a continuing state of anxiety and insecurity, as well as enhancing the possibility that even though innocent he may be found guilty." Id at 119; quoting Green v United states, 355 US 184,187-88 78 S.Ct 221, 2 L.Ed.2d 199(1957); Benton v Maryland,395 US 784,795,89 S.Ct 2056 (1969)

The Court also held:"The Jurisdiction of the United States Supreme Court to review a states final judgement under 28 USC §1257 is properly invoked where the State court has finally rejected a claim that the constitution forbids, on the grounds of former jeopardy and collateral estoppel...of a person who was acquitted..."

See Harris v Washington, 404 US 53,56-57, 92 S.Ct 183, 30 L.Ed.2d 212(1971).

"Issue preclusion, also known as collateral estoppel, bars relitigation of issues actually adjudicated in a previous litigation." Janjua v Neufeld,933 F.3d 1061, 1065(9th Cir 2019).

The Petitioner cited United States Supreme Court jurisprudence concerning both 'Fraud on the Court' by Knudsen, and 'Conspiracy' to commit criminal acts at his directive to destroy Petitioner's Certiorari to this Court, and all §1983 civil suit evidence, which the Warden and his Staff, have done by admission, including hearing aids that the Petitioner needs for Court, and now the MTDOC defies ADA and CFR law to NOT replace the aids, nor give Petitioner access to a TTY telephone to call this Court, or try to ask attorney's for representation. Issues that have been denied in violation of the 1st Amendment as criminal under 18 USC §371- Conspiracy to commit offenses...

All to suppress the Petitioner's "claim that the constitution forbids"[Harris @ 56].

("A court's power to grant relief from judgement for fraud on the court stems from "a rule of equity to the effect that under certain circumstances, one of which is after-discovered fraud, relief will be granted against judgement regardless of the term in their entry." United States v Sierra Pac Indust. Inc, 862 F.3d 1157,1167(9th Cir 2017); quoting Hazel-Atlas Glass Co. v Hartford-Empire Co., 332 US 238,244, 64 S.Ct 997,88 L.Ed. 1250, 1944 Dec. Comm'r Pat 675(1944).

With the holding above that relief will be granted against judgements in §I and §II, where perjury is shown in each. See 12 J.W. Moore, Moore's Federal Practice §60.21[4][c]; "perjury may constitute fraud on the court if it involves or is suborned by an officer of the court." Sierra at 1168. This qualifies Linneweber's Perjury.

Conspiracy in Montana is defined in MCA:§45-4-12. "A person commits the offense of conspiracy when, with the purpose that an offense be committed, he agrees with another to the commission of the offense. No person may be convicted of conspiracy to commit an offense unless an act in furtherance of the agreement has been committed by the person or a coconspirator." [This qualifies Mr. Knudsen].

On official State of Montana letterhead, with (R) Attorney General Knudsen's "police" badge insignia, and under the full force and prestige of that office, with the assistance of his assistant Moody, committed the 'Fraud upon the Court' conspiracy by ordering the MSP Warden Salmonsens to destroy the Petitioner's evidence, which had been taken and supplied to Mr. Knudsen's office. [See Appendix L, to view order]. These subordinates committed the crimes cited, and as coconspirators, are all equally guilty of the Federal criminal acts of Obstruction, Tampering with evidence and witnesses, Solicitation, and are then coconspirators to the criminal offenses committed earlier by the Yellowstone County detective Fritz, Rhonda Ellison, Prosecutor Linneweber, and in actuality, Montana Supreme Court Justice McGrath, by 'aiding and abetting' the State "police officers" in escaping punishment and accountability. This Conspiracy is then linked to the Oregon Company, LCG Pence; and the Cartel men, Molina and Jacobsen. In which in a State investigation, the Sininola gang member, Molina has confessed to his involvement in the Abduction, Torture and Rape of the Petitioner, to extort a signature on a release of liability, for the Oregon Company to escape culpability in their 'Bond Fraud' scheme. The Court in *Iannelli v U.S.*, 420 US 770, 95 S.Ct 1284 (1975): The crime of conspiracy as defined above requires two elements:

"(1) a knowing and purposeful agreement to commit an offense, and (2) an act in furtherance of the agreement." *State v Houchin*, 235 Mont. 179, 180 (MT.1988)

(the essence of conspiracy is an agreement to commit an unlawful act): 16 Am. Jur.2d Conspiracy §3 (in conspiracy law, the focus is primarily on the purpose of the conspirators: Comment, Conditional Objectives of the Conspiracy (1985)).

The agreement between Mr. Knudsen's Office and the Warden Jim Salmonsens, was in furtherance of silencing the Petitioner. Silence his First Amendment Rights, and the the rights of the U.S. Supreme Court Justices to receive the mailed Certiorari. See *Lamont v Postmaster General*, 381 US 301, 307 (1965) (Government imposition of affirmative obligation on addressee to receive mail constitutes an abridgement of addressee's 1st Amendment rights). The Rule of the Supreme Court, as the required written 1st Amendment obligation to each Supreme Court Justice to receive and review the Certiorari that Warden Salmonsens's staff removed from the prison internal mail, is; S.Ct. rule 29.2.

The Conspiracy as a whole violated the Federal Free Trade and Commerce statutes: Sherman Anti-Trust Act, 15 USC §1, Trust, etc., in restraint of trade illegal penalty:

"Every Contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several states, or with foreign nations is hereby declared illegal. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding \$100,000,000.00 if a corporation, or if any other person, \$1,000,000.00 or imprisonment not exceeding 10 years or both said punishments, in the discretion of the Court." [The Court can deem MT & LCG guilty now].

Federal Trade Commission Act, 15 USC §45, Unfair Methods of competition unlawful...

"(a) Declaration of unlawfulness; power to prohibit unfair practices; inapplicability to foreign trade.

(1) Unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce...declared illegal."

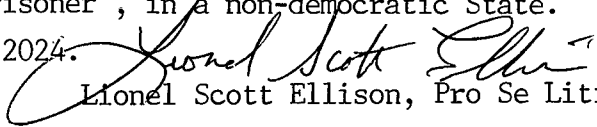
CONCLUSION

The Montana Supreme Court's denial of Habeas Relief, should be reversed, with charges vacated as unconstitutional, and demonstrates the "drastic departure" from "accepted and usual course of judicial proceedings", S.Ct.R. 10(a); by 'aiding and abetting' a State criminal act; by it's top 'Policeman', to deny Constitutional right of a conceded innocent man, and the violation of Petitioner's, Double Jeopardy Rights, after being acquitted at trial, by ordering the destruction of evidence. This violates the 1st Amendment rights of the Petitioner, and each Court Justice, and essentially all American's rights. This departure ratifies a two-tier judicial system, violating the Equal Protection Clause, and overturns Trump v Vance, 140 S.Ct 2412,2432(2020), where the Court is resolute "In our system of Government...no one is above the law." To vary now, would endorse and ratify government criminal acts to suppress their own wrongdoing. "If the government becomes the lawbreaker, it breeds contempt for the law, it invites every man to become a law unto himself; it invites anarchy." Mapp v Ohio, 367 US 643,659, 81 S.Ct. 1684(1961)."...and would seem to present all elements of ratification." Olmstead v U.S., 277 US 438,483, 48 S.Ct 564(1928).

The Montana Courts shocking disparity in the treatment of the Petitioner and the State, defeats the purpose of the Equal Protection Clause, and defies the Due Process safeguards against judicial bias, which Montana Chief Justice McGrath has constantly shown. Thus making Habeas "futile if the courts do not consider claims... that litigants bring forward", for a "fair and impartial" decision. Love v Texas, 142 S.Ct 1406,1409(2022). Especially when the Petitioner's "life is in the line".

The Petitioner asks the Court to recognize the former (D) Attorney General's waiver as absolute, because "We enforce waiver...against criminal defendants and the government equally." Olano at 733; and where the Court "cannot reach waived arguments", U.S. v Dowdell, F.4th 134,140(3rd Cir 2023). Where the States waivers have been deliberate, that the Petitioner is wrongfully convicted, with the awareness that the State had NO EVIDENCE to support a conviction in either §I or §II, with both having been initiated without probable cause and with malicious vindictive intent by Yellowstone County for the State. With both done by 'Fraud upon the Court', and then the Conspiracy continued by the (R) Montana Attorney Generals malfeasance, to maintain a "Political Prisoner". The Court holds that upon waiver "Relief is proper", Smith v Robbins; and the Petitioner asks that the Court rightfully conclude that the State must release the Petitioner immediately, and reverse the convictions in both §I and §II, due to the 'Fraud upon the Court', as after-discovered, where "relief will be granted against judgement", Hazel-Atlas, 332 US 238,244(1944). With the Court recognizing the abuse of discretion by Montana Courts to disregard their own laws, and the bias by the Montana Court, to maintain a "political prisoner", in a non-democratic State.

Dated this 10th day of February, 2024.


Lionel Scott Ellison, Pro Se Litigant.

CERTIFICATE OF COMPLIANCE

No.

LIONEL SCOTT ELLISON,

Petitioner(s)

v.

STATE OF MONTANA,

Respondent(s)

As required by Supreme Court Rule 33(2)(b) I certify that the petition for a writ of certiorari contains 40 pgs. ~~words~~, excluding the parts of the petition that are exempted by Supreme Court Rule

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

Executed on February 10th, 2024

