

3 Original

EXHIBIT
9
MT.S.C. App. A
Case Number: OP 23-0683

IN THE SUPREME COURT OF THE STATE OF MONTANA

OP 23-0683

LIONEL SCOTT ELLISON,

Petitioner,

v.

PETER BLUDWORTH, WARDEN,
AUSTIN KNUDSEN, STATE OF MONTANA
ATTORNEY GENERAL, AND
PATRICK MOODY, ASSISTANT ATTORNEY
GENERAL for the STATE OF MONTANA,

Respondents.

FILED

DEC 19 2023

Bowen Greenwood
Clerk of Supreme Court
State of Montana

ORDER

Lionel Scott Ellison has filed a Petition for Writ of Habeas Corpus and two motions, titled: "Motion for 'Relief from [Judgment]' As Applicable Under Rule 60(b)/(d)(3) of the Montana Rule of Civil Procedure" and "Motion for Plain Error Review Per Rule 52(b) of the Montana Rules of Civil Procedure Based on the Addendum of 'Common Scheme'[" Attached to the pleadings are several pages of listed federal and state authorities.

As an initial matter, all of Ellison's pleadings, although type-written, are excessively over-length pursuant to the Montana Rules of Appellate Procedure. A writ for extraordinary relief may not exceed 4,000 word or twelve pages if typewritten. M. R. App. P. 14(9)(b). Ellison's Petition is thirty-three pages. A motion may be 1,250 words, or five pages of text, pursuant to M. R. App. P. 16(3). Ellison's motions are nine pages and twelve pages, respectively. Ellison is warned that he must comply with the Rules and that if he files such over-length pleadings in the future, regarding any matter, they will be subject to summary dismissal without consideration of his arguments.

This Court is very familiar with Ellison's criminal history in Montana because he has brought twelve matters before the Court since 2009. The State charged Ellison with felony arson in the Yellowstone County District Court (felony arson) in 2007 (Cause No. DC 07-907). After the District Court denied his motion to withdraw the guilty plea he had

entered therein, and sentenced him, Ellison appealed, arguing the court erred in denying his motion. *State v. Ellison*, No. DA 09-0305, 2009 MT 408N, 2009 Mont. LEXIS 560 (Nov. 25, 2009) (*Ellison I*). Ellison had argued in support of his motion before the District Court “that there was new exculpatory evidence,” his plea had been induced by threats, and that the State “lost potentially exculpatory evidence.” *Ellison I*, ¶ 5. On appeal, Ellison argued through counsel that his plea had been induced by misrepresentation and was involuntary. *Ellison I*, ¶ 6. We affirmed. *Ellison I*, ¶ 15.

In 2011, Ellison appeared before this Court in his appeal of the Yellowstone County District Court’s denials of his motion to supplement the record and supplement the issues on appeal of his conviction in the Justice Court of misdemeanor partner or family member assault (misdemeanor PFMA) (Cause No. DC 10-281). *State v. Ellison*, 2012 MT 50, 364 Mont. 276, 272 P.3d 646 (*Ellison II*). Ellison argued “the District Court erred when it declined to consider on appeal evidence that he alleges was withheld by the prosecution in violation of his due process rights according to *Brady v. Maryland*, 373 U.S. 83, 83 S. Ct. 1194 (1963), and § 46-15-322, MCA.” *Ellison II*, ¶ 2. We affirmed his conviction. *Ellison II*, ¶¶ 1, 21.

Also in 2011, Ellison sought postconviction relief of his felony arson conviction in the District Court. He alleged ineffective assistance of counsel and the court’s misinterpretation of the arson statute. The District Court denied his petition, and Ellison appealed. *Ellison v. State*, 2013 MT 376, ¶ 1, 373 Mont. 159, 315 P.3d 950 (*Ellison IV*). We affirmed. *Ellison IV*, ¶¶ 1, 24.

Ellison then sought postconviction relief of the misdemeanor PFMA and appealed the District Court’s denial of his petition to this Court. This Court remanded Ellison’s petition for the court to hold an evidentiary hearing. *Ellison v. State*, No. DA 12-0624, Order Remanding for Hearing (Mont. Aug. 28, 2013) (*Ellison III*). The District Court held a hearing on remand. Ellison appealed the District Court’s subsequent denial of his petition, arguing “he did not waive his right to a jury trial [in Justice Court] and that his constitutional right to a jury trial was violated.” *Ellison v. State*, No. DA 13-0846, 2015

MT 16N, ¶ 9, 2015 Mont. LEXIS 18 (Jan. 20, 2015) (*Ellison V*). This Court affirmed the denial of the petition. *Ellison V*, ¶¶ 2, 17.

In July 2015, Ellison petitioned this Court to exercise supervisory control over the Yellowstone County District Court regarding a new, underlying criminal matter (Cause No. DC 14-0614). *Ellison v. Jones and Thirteenth Judicial Dist. Ct.*, No. OP 15-0453, Order denying writ (Mont. Aug. 12, 2015) (*Ellison VI*). Ellison argued the court was proceeding under a mistake of law and wanted this Court to assume jurisdiction. He stated that:

he is “not the person identified” or “responsible for the attempted arson on their home on March 14, 2013” He explains that he was arrested on July 31, 2014, and charged with felony “arson and fabrication of evidence.” He further requests counsel because, it appears, he has been dissatisfied with some or all previous counsel.

Ellison VI, at 1. We denied his petition for writ and advised him to refrain from seeking relief in this Court as a *pro se* litigant when he was represented by counsel.

In February 2016, Ellison appealed his convictions of two counts of tampering with or fabricating physical evidence and one count of impersonation of a public servant, after a jury found him guilty (Cause No. DC 14-0614) (tampering and impersonation). *State v. Ellison*, 2018 MT 252, 393 Mont. 90, 428 P.3d 826 (*Ellison VII*). While his appeal was pending, Ellison sought to secure copies of transcripts via a writ of mandamus with this Court for his criminal convictions of tampering and impersonation. *Ellison v. State & Thirteenth Judicial Dist. Ct.*, No. OP 16-0115, Order (Mont. Mar. 8, 2016) (*Ellison VIII*). We denied his mandamus request, explaining transcripts would be obtained by his appointed appellate counsel. *Ellison VIII*, at 2. In October 2018, this Court issued a decision on the merits of Ellison’s appeal. *Ellison VII*. We explained that while the jury convicted him of two counts of tampering and impersonation, the jury acquitted him of felony arson. *Ellison VII*, ¶ 7. We addressed three issues, including, of relevance here, Ellison’s claims that the court erred in allowing evidence of his prior bad acts and that his counsel was ineffective to object to the two counts of tampering. *Ellison VII*, ¶¶ 9-26. We

reversed the second count of tampering under the multiple convictions statute, § 46-11-410, MCA, and remanded the matter for resentencing. *Ellison VII*, ¶¶ 26, 29.

Ellison brought three more matters before this Court regarding his tampering and impersonation convictions. In 2016, Ellison petitioned for habeas corpus relief, “seeking immediate release and dismissal of ‘All charges due to Actual Innocence and the other following grounds.’” *Ellison v. Kirkegard et al.*, No. OP 16-0273, Order denying writ, at 1 (Mont. May 18, 2016) (*Ellison IX*) (emphasis in original). Ellison listed nine grounds for the petition, “including ‘forced upon’ mental impairment, prosecutorial misconduct, ineffective assistance of counsel, perjury by law enforcement, court error, and judicial bias. He recount[ed] his facts, beginning in 2011, even though his petition mainly concern[ed] his most recent conviction.” *Ellison IX*, at 1. We denied his petition due to his pending appeal of the convictions of tampering and impersonation.

In early 2019, Ellison appealed his sentence after this Court remanded for resentencing in his tampering and impersonation case. *State v. Ellison*, No. DA 19-0028, 2019 MT 217N, 2019 Mont. LEXIS 460 (Sept. 10, 2019) (*Ellison X*). While the appeal was pending, Ellison filed several motions that this Court denied. We affirmed his new sentence. *Ellison X*, ¶ 14. We denied his petition for rehearing. *State v. Ellison*, No. DA 19-0028, Order (Mont. Oct. 15, 2019).

In February 2020, Ellison appealed the denial of his second petition for postconviction relief challenging his felony arson conviction. *Ellison v. State*, No. DA 20-0100, 2020 MT 228N, 2020 Mont. LEXIS 2297 (Sept. 8, 2020) (*Ellison XI*). In our decision, we provided a brief summary of this case’s background:

Ellison pleaded no contest to felony arson, in violation of § 45-6-103, MCA, on April 1, 2008. He appealed, asserting that the District Court erred in denying his motion to withdraw his plea. We affirmed his conviction. *State v. Ellison*, No. DA 09-0305, 2009 MT 408N, 2009 Mont. LEXIS 560 (“*Ellison I*”). Ellison then sought post-conviction relief, asserting that he received ineffective assistance of counsel and that the District Court misinterpreted the arson statute. We again affirmed. *Ellison v. State*, 2013 MT 376, 373 Mont. 159, 315 P.3d 950 (“*Ellison II*”). Ellison filed a second post-conviction relief petition on September 17, 2019, claiming that the State

obtained his arson conviction through “fraud upon the court” and by misrepresenting material evidence. The District Court held that the petition was time-barred.

Ellison XI, ¶ 3 (footnote omitted). We affirmed therein the District Court’s determination that Ellison’s petition for postconviction relief was time-barred. *Ellison XI*, ¶ 15.

Ellison then sought further postconviction relief of his tampering and impersonation convictions. In July 2020, Ellison appealed the Yellowstone County District Court’s denial of his petition for postconviction relief. *Ellison v. State*, No. DA 20-0375, 2020 MT 324N, 2020 Mont. LEXIS 2629 (Dec. 29, 2020) (*Ellison XII*). We affirmed and denied his petition for rehearing.

Ellison’s instant petition again seeks relief from his felony arson and tampering and impersonation convictions. Asserting “extreme seriousness of the matter” and “Extraordinary Circumstances,” Ellison throws up an array of claims, including constitutional claims, fraud, fraud upon the court, confiscation of his pleadings, violations of 42 U.S.C. § 1983, and “conspiracy by the [] AG in collusion with Yellowstone County.” Ellison requests issuance of various forms of relief: (1) a writ of habeas corpus discharging Ellison “from unlawful detention[;]” (2) an order that his criminal charges be reversed and his convictions; (3) a writ of scire fascias;¹ and (4) “Order the Respondents to bring forth the entire record of both the State and Federal proceedings that the State illegally ordered destroyed [for § 1983].”

Ellison’s references and citations to federal law and to the Montana Rules of Civil Procedure are unavailing. While a petition for habeas corpus—or any writ for extraordinary relief—is considered a civil proceeding, it is a state action defined by this Court’s rules, statutes, and Montana caselaw. “Proceedings commenced in the supreme

¹ A writ of scire fascias is “[a] writ requiring the person against whom it is issued to appear and show cause why some matter of record should not be enforced, annulled, or vacated[.]” Black’s Law Dictionary, Eleventh Ed., at 1614 (2019). In 2011, when this Court adopted a newer version of the Montana Rules of Civil Procedure, many writs for other relief were abolished, leaving writs of habeas corpus, mandamus, prohibition, review, and supervisory control. M. R. App. P. 14(2); M. R. Civ. P. 60(e). *In the Matter of Revisions to the Montana Rules of Civil Procedure*, No. AF 07-0157, Order (Mont. Apr. 26, 2011).

court originally to obtain writs of habeas corpus . . . shall be commenced and conducted in the manner prescribed by the applicable sections of the Montana Code Annotated” M. R. App. P. 14(2). *See also* §§ 46-22-101, through 46-22-307, MCA. The Montana Rules of Civil Procedure apply to district courts in Montana. M. R. Civ. P. 1.

Ellison’s multitudinous repetitive pleadings and actions have more than exhausted his rights of review of all his convictions, and his actions are excessive and frivolous. Ellison has challenged his convictions. *Ellison I, II, IV, VII, VIII, IX* (habeas corpus), and *X*. He has challenged the effectiveness of his counsel’s assistance. *Ellison III, IV, V*, and *X*. He has pursued his theory of being kidnapped and/or framed. *Ellison V*, ¶ 8, *VII, X*, and *XII*. He has challenged his guilty pleas. *Ellison I* and *IV*. He has asserted prosecutorial misconduct. *Ellison IX* and *X*. He has alleged misrepresentation, inducement, or exculpatory evidence. *Ellison I, II, IV, VI, IX*, and *X*. He has alleged he was incorrectly identified as the defendant. *Ellison V* and *VI*. He has alleged judicial bias. *Ellison IX, X*, and *XII*. He has sought postconviction relief multiple times, wherein we have affirmed the District Court’s denial. *Ellison V, XI*, and *XII*. Ellison has exhausted his remedy of appeal, and the new issues raised by his present petition cannot be addressed through a writ of habeas corpus, as we explained to him in *Ellison IX*. *See also* § 46-22-101(2), MCA.

Ellison is not entitled to relief. Nor is he entitled to litigate his complaints repeatedly. We have previously denied all of these challenges, and they are final. Res judicata applies to bar further civil actions. Since the receipt of his Petition and Motions, Ellison has filed “Addendum to Statutory Jurisdiction, Based on the Extraordinary Circumstances of New Evidence” citing to the statutes for postconviction relief. We decline to address it. Therefore,

IT IS ORDERED that:

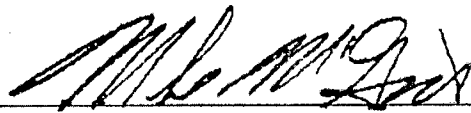
1. Ellison’s Petition for Writ of Habeas Corpus is DENIED and DISMISSED;
2. Ellison’s Motions are both DENIED, as moot;
3. Henceforth, prior to filing any original petition with this Court regarding any of his underlying criminal cases from Yellowstone County—DC 07-907, DC

10-281, and DC 14-0614—or related to any of his postconviction proceedings related to those cases, Ellison shall be required to first file a motion for leave to file the action or petition with this Court and obtain pre-approval for filing. The motion must be sworn under oath before a notary public, not to exceed three pages in length, and make a preliminary showing that the motion has merit and meets the criteria to state a *prima facie* case under M. R. App. P. 14(5). Only when this Court has reviewed the motion and issued an order granting leave to file may the Clerk of Court file the petition. The Clerk shall reject any other original petition that Ellison seeks to file, and shall inform Ellison accordingly; and

4. This matter is CLOSED as of this Order's date.

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

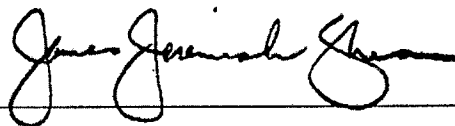
DATED this 19th day of December, 2023.

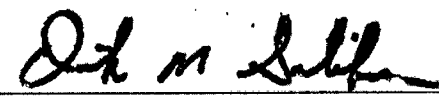


Chief Justice









Justices