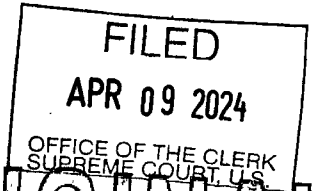


23-7277

No. \_\_\_\_\_



ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

\_\_\_\_\_  
Benny Stewart — PETITIONER  
(Your Name)

vs.

\_\_\_\_\_  
Warden Green & the State — RESPONDENT(S)  
of Montana

ON PETITION FOR A WRIT OF CERTIORARI TO

\_\_\_\_\_  
United States District Court, For The District Of Montana, Butte  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

\_\_\_\_\_  
Benny Stewart  
(Your Name)

\_\_\_\_\_  
700 Conley Lake Road  
(Address)

\_\_\_\_\_  
Deer Lodge, MT 59722  
(City, State, Zip Code)

\_\_\_\_\_  
(406) 846-1320  
(Phone Number)

## QUESTION(S) PRESENTED

Plain Error; Summary Judgment; Willful Blindness; Abuse of Discretion;  
Fairness; Integrity and Public Reputation of Judicial Proceedings;  
Ends of Justice.

## LIST OF PARTIES

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

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

## RELATED CASES

16-91000 U.S. S.Ct.

Stewart V. Green

16-35779 Ninth Circuit

Stewart V. Green

18-9561 U.S. S.Ct.

In Re Benny Stewart

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## TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
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## OTHER

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

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

**OPINIONS BELOW**

☒ For cases from **federal courts**:

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

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☒ is unpublished.

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

☒ reported at 2023 U.S. Dist. LEXIS 137143; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

☐ For cases from **state courts**:

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

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☐ is unpublished.

The opinion of the \_\_\_\_\_ court appears at Appendix \_\_\_\_\_ to the petition and is

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

## JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was March 04, 2024.

☐ 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: March 25, 2024, and a copy of the order denying rehearing appears at Appendix A.

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

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

☐ For cases from **state courts**:

The date on which the highest state court decided my case was \_\_\_\_\_.  
A copy of that decision appears at Appendix \_\_\_\_\_.

☐ 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.

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

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment 5 & 14

Due Process and Equal Protection of the Law.

Federal Rules of Civil Procedure, Rule 56 Summary Judgment.

Federal Rules of Evidence, Rule 201 (b)

Federal Rules of Civil Procedure, Rule 60 (b)(6)



## STATEMENT OF THE CASE

On February 2nd, 2024 Stewart's Motion for Summary Judgment was filed in Cause Number 23-1794, Docket Number 017 (see appendix E) and was served on the State of Montana and it's counsel. The State of Montana had a fair opportunity to dispute any or all of Stewart's claims. The State did not respond and Stewart filed a rebuttal to the State's response to the Motion for Summary Judgment as required by Rule 56 F.R.C.P., (see appendix D.) Docket Number 018.

Stewart has complied with Rule 56 F.R.C.P. and has shown by court document records, there is no genuine dispute as to any material fact and Benny Stewart is entitled to judgment as a matter of law.

Adickes V. Kress & Co., 389 U.S. 144, 153, 90 S.Ct. 1598, 26 L.Ed. 2d 142 (1970).

Celotex Corp. V. Cotrett, 477 U.S. 317, 323, 106 S.Ct. 2548, 91 L.Ed. 2d 265 (1986).

Long V. County of Los Angeles, 442 F.3d 1178  
(9th Cir. 2006).

The moving party has the burden of showing the absence of any genuine issue [14] of fact.

Adickes V. Kress & Co., 398 U.S. 144, 153, 90 S.Ct. 1598, 26 L.Ed. 2d 142 (1970). To defeat Summary Judgment the non-moving party must go beyond the pleadings and, by its own affidavits or discovery, "set forth specific facts showing that there is a genuine issue for trial." Fed.R.Civ.P. 56(e).

If the non-moving party fails to make this showing, "the moving party is entitled to judgment as a

matter of law." Celotex Corp. V. Cotrett, 477 U.S.  
317, 323, 106 S.Ct. 2548, 91 L.Ed. 2d 265 (1986).

Federal Rules of Appellate Procedure and Ninth Circuit Rules are silent on filing and use of Summary Judgments on appeal. Stewart's Rule 56 F.R.C.P., Motion for Summary Judgment is appropriate.

The United States Court of Appeals for the Tenth Circuit has acknowledged and ruled on Summary Judgment filed on appeal. Depineda V. Zavaras, 1994 U.S. App. LEXIS 23909.

The United States Court of Appeals for the Ninth Circuit with either plain error or willful blindness, abused its discretion by indicating docket entry numbers 17 & 18 are requests for a Certificate of Appealability. Rather, docket number 17 is clearly a Motion for Summary Judgment and docket number 18 is clearly a rebuttal to the State of Montana's response to the Motion for Summary Judgment.

The Ninth Circuit Court of Appeals with either plain error or willful blindness, abused its discretion which affects the fairness, integrity and public reputation of judicial proceedings which violates Stewart's United States Constitution 5th and 14th Amendments, Right To Due Process and Equal Protection of the Law, (see appendix C, D and E).

Stewart has shown that jurists of reason would agree that the District Court abused its discretion in denying Stewart's Rule 60 (b)(6) motion and jurists of reason would agree the underlying section 2254 petition states a valid claim of the denial of a Constitutional Right. (see appendix A through I).

Summary Judgment should have been granted.

Even if Summary Judgment was not at play, an analysis of the court docket records from the Ninth Circuit Court of Appeals, U.S. District Court and the Montana District Court would reveal that the Ninth Circuit Court of Appeals with either plain error or willful blindness abused its discretion by denying a Certificate of Appealability, which violates Stewart's United States Constitution 5th and 14th Amendments, Right To Due Process and Equal Protection of the Law.

The United States District Court with either plain error or willful blindness, abused its discretion by denying Stewart's Rule 60 (b)(6) and a C.O.A. which violates Stewart's Right To Due Process and Equal Protection of the Law.

The Montana District, Butte-Silver Bow, also violated Stewart's Right To Due Process and Equal Protection of the Law.

Benny Stewart has shown by the court docket record that a reversal of the judgment of the State of Montana is warranted.

## REASONS FOR GRANTING THE PETITION

USCS Federal Rules of Civil Procedure  
Rule 56, Summary Judgment

- (a) The court shall grant Summary Judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.
- (b) A party may file a motion for Summary Judgment at any time until 30 days after the close of all discovery.

Benny Stewart has shown by court document records, there is no genuine dispute as to any material fact and Benny Stewart is entitled to judgment as a matter of law.

Summary Judgment should have been granted.

Granting the petition, will protect the fairness, integrity and public reputation of judicial proceedings as well as to satisfy the ends of justice.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Benny Stewart *Benny Stewart*

Date: April 9th, 2024