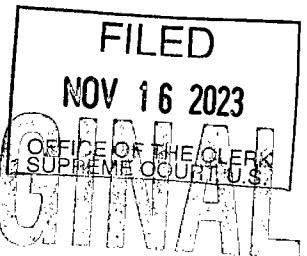


24-6106

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



IN THE

SUPREME COURT OF THE UNITED STATES

In Re Freeman William Stanton — PETITIONER  
(Your Name)

ON PETITION FOR A WRIT OF MANDAMUS

SECOND JUDICIAL DISTRICT COURT

PETITION FOR WRIT OF MANDAMUS

Freeman William Stanton

(Your Name)

700 Conley Lake Road

(Address)

Deer Lodge, Montana 59722

(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

1. WHETHER OR NOT THE PETITIONER IS ENTITLED TO BE RESENTENCED IN ACCORDANCE WITH THE TERMS OF THE PLEA AGREEMENT THAT INVOLVES A "QUID PRO QUO" AND WAS HIS COURT APPOINTED COUNSEL INEFFECTIVE.
  
2. WHETHER OR NOT THE PETITIONER IS ENTITLED TO HAVE ALL SENTENCES TO RUN "CONCURRENT" SINCE NO MENTION OF "CONCURRENT" OR "CONSECUTIVE" SENTENCES WERE EVER EVEN MENTIONED IN HIS PLEA AGREEMENT OFFER.
  
3. WHETHER OR NOT THE PETITIONER IS ENTITLED TO HAVE HIS "NO PAROLE" STIPULATION REMOVED AFTER 42 YEARS OF INCARCERATION SINCE HE HAD AND HAS MENTAL DISABILITIES THAT PROVES MITIGATING CIRCUMSTANCES AND THAT HE WAS INCOMPETENT TO ENTER HIS GUILTY PLEAS.

## 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

Petitioner ask the Court to consider and help him Regarding Related Cases because Petitioner doesn't have proper Legal documents or cases to answer this question.

Petitioner would like to offer this Court these cases that would also apply to him.

U.S. V HYDE, 117 S. Ct. 1630, 1631 (1997). The defendant can withdraw his plea without providing a fair and just reason only if the District Court rejects the plea agreement after accepting the plea Id, at 1633.

A defendant has the burden of demonstrating fair and just reason to withdraw guilty plea. U.S. v Williams, 23 F.ed 629, 635 (2d Cir. 1994).

U.S. v MYERS, 993 F2d 713, 715 (9th Circuit 1993). Defendant not entitled to withdraw plea because defendant failed to produce evidence to support claim he was incompetent when plea made.

This Petitioner can prove now that he was incompetent to enter his pleas. See Appendix "K".

Rardon v Rave, Has to do with Plea Agreements the Court doesn't Honor. This is a Montana State Case.

In Panetti V. Quaterman, on occasion spoke of "gross delusions" in explaining its holding. And similarly, Ford v. Wainright talked about the "insane" which sometimes refers to persons with other mental conditions, so long as they are severe enough to prevent a person from having legal capacity and excuse the person from criminal or civil responsibility.

This applies to the Petitioner in the instant case. Panetti used more inclusive terms, such as "Mental Illness", "Mental Disorder", and "Psychological Dysfunction". And most important, Panetti standard concerns not the diagnosis of such illness, but a consequence-to wit, the prisoners inability to rationally understand his punishment.

When deciding what sentence the District Court should have handed down in the Petitioner's case, the Court may have considered the Petitioner's mental information had it been available to the Court.

In Appendix "K" the Attorney General of Montana stated that the Petitioner was not competent to enter his guilty pleas as a result of his mental deficiencies.

These are clearly "mitigating circumstances" Petitioner ask's this Court to take into consideration. Mitigating circumstances do not, in any way, dismiss the fact that the Petitioner violated the law, but they may have lessened the penalties that the Petitioner received for committing his crimes.

Petitioner should have been afforded the availability of "mitigating circumstances" during the pre-sentencing phase & sentencing phase of his trial. He never was due to the fact of the ineffective assistance he received from counsel. The State of Montana violated his Due Process rights and ARTICLE V, of the United States Constitution by knowingly allowing him to make an involuntary plea due to his mental defects and, Petitioner made an involuntary plea which is already part of the record.

At Appendix "A" Judge Krueger stated Petitioner filed multiple Petitions for Habeas Corpus and Motions. If they would of honored the Laws and Due Process regarding Petitioners agreed upon Plea Agreement Petitioner would have never had to file any Legal Litigation. Since he did file Legal Litigation the Montana Supreme Court struck the Persistent Felony Status and 100 year sentence. It took 34 years to accomplish that.

They still have failed to HONOR Petitioner's Plea Agreement.

## TABLE OF CONTENTS

OPINIONS BELOW .....	1
JURISDICTION .....	
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED .....	
STATEMENT OF THE CASE .....	page 1
REASONS FOR GRANTING THE WRIT .....	pages 2- through 13
CONCLUSION .....	13,14

## INDEX TO APPENDICES

**APPENDIX A** The Second Judicial District Court Judge Kurt Krueger denying Petitioner's MOTION TO CORRECT AN FACTUALLY ERRONEOUS SENTENCE OR JUDGEMENT AT ANYTIME PURSUANT TO MCA 46-18-116 (3)

**APPENDIX B** THE MONTANA SUPREME COURT DENYING PETITIONER'S MOTION FOR LEAVE TO FILE A HABEAS CORPUS OR OUT OF TIME POST CONVICTION RELIEF RE: HONORING THE PLEA AGREEMENT & MONTANA'S ATTORNEY GENERAL'S STATEMENT WHICH IS AT APPENDIX K ABOUT PETITIONER'S GUILTY

**APPENDIX C** NINTH CIRCUIT COURT OF APPEALS DENYING PETITIONER'S APPEAL AND DENYING HIM PROPER ACCESS TO THE COURT ACCORDING TO ARTICLE 11 SECTION 16, COURTS OF JUSTICE SHALL BE OPEN TO EVERY PERSON.

**APPENDIX D**

THE NUMBERS FOR THE U.S. DISTRICT COURT IN MONTANA ARE D.C. No. 2:08-cv-00057-RFC No. 08-35917 Aug 09, 2011 and No. 17-35378 Oct 3, 2017 Please see APPENDIX "C" WHICH ALSO CONTAINS THESE TWO DOCUMENTS.

**APPENDIX E**

THE ACKNOWLEDGEMENT OF WAIVER OF RIGHTS BY PLEA OF GUILTY WHICH CONTAINS THE WRITTEN PLEA AGREEMENT THAT INVOLVES A "QUID PRO QUO".

**APPENDIX F**

INFORMATION CONTAINING THE ORIGINAL CHARGES.

**APPENDIX G**

ACKNOWLEDGEMENT BY THE MONTANA SUPREME COURT THAT PETITIONER DID ENTER INTO A PLEA AGREEMENT.

**APPENDIX H**

THE MONTANA SUPREME COURT ONCE AGAIN ACKNOWLEDGED THAT PETITIONER ENTERED INTO A PLEA AGREEMENT IN THEIR FINAL ORDER.

**APPENDIX I**

WHEN WRITTEN CONTRACT TAKES EFFECT ACCORDING TO MONTANA LAW 28-2-906

**APPENDIX J**

WHEN A CONTRACT IS REDUCED IN WRITING ACCORDING TO MONTANA STATE LAW  
28-3-303 MCA 1981.

**APPENDIX K**

STATEMENT BY THE ATTORNEY GENERAL OF MONTANA AFFIRMING THAT MR. STANTON  
WAS NOT COMPETENT TO ENTER HIS GUILTY PLEAS BECAUSE OF HIS MENTAL  
DEFICIENCIES.

**APPENDIX L**

LETTER FROM ATTORNEY BRIDGITT ERICKSON STATING PETITIONER'S APPENDIX "E"  
IS IN FACT A PLEA AGREEMENT AND A "quid pro quo" NECESSARY TO CONSTITUTE  
AN AGREEMENT.

**APPENDIX M**

EXTREMELY IMPORTANT FEDERAL AND STATE CASE LAW FOR THE COURT'S CONVIENENCE.

## TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
<u>McMann v. Richardson</u> , 379 U.S. at 771	2
<u>State v. Allen</u> , 197 Mont. 204, 208, 645 P. 2d 380-81 (1981).	4
<u>United States v. Nolan Cooper</u> , 155 F.3d at 236 (citation omitted).	4
<u>U.S. v. Stokes</u> , 124 F.3d 304, 313 (1st Cir. 1996).	5
<u>State v. Rogers</u> , 2001 Mont. 165, 306 Mont. 130, 32 P.3d 724.	8
<u>Dretke v. Haley</u> , 541 U.S. 386, 158 L.Ed.2d 659 (2004)	8
<u>Santobello v. New York</u> , 404 U.S. 257, 92 S. Ct. 495, L Ed. 2d 427 (1971).	9
<u>State v. Horton</u> , 2001, Mt 100, 305 Mont. 25 P.ed 886.	9
<u>U.S. v. Going</u> , 200 F3d 539 (8th Cir. 2000).	11
<u>Strickland v. Washington</u>	12
<u>Lockhart v. Terhune</u> , 250 F.3d 1223, 2001.	12

### STATUTES AND RULES

Montana Code Annotated § 28-2-906	4
Montana Code Annotated § 28-3-303, MCA, 1981	4
Statutory Intent of § 46-12-211 (1)(b), MCA.	10

### OTHER

See additional Case Law INFRA CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.

HANES v. KERNER, 92 S. Ct. 594

State v. Beavers, September 12th, 2007

INS v. St. Cyr, Supreme Court of the United States.

Saravia-Paguada v. Gonzales, 488 F.3d 1122

State v. Laverdure, 212 Mont. 31 34; 685 P.2d 375, 377; Mont LEXIS; 1004, 5.

State v. Enoch, 269 Mont. 8, 14 887 P.2d 175, 179; 1994 Mont.

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

Petitioner respectfully prays that a writ of mandamus issue.

**OPINIONS BELOW**

**[x] For cases from federal courts:**

The opinion of the United States court of appeals appears at Appendix C to the petition and is Refusing to allow Petitioner to file any Legal Litigation to the Ninth Circuit.  
[ ] 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 D to the petition and is

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

**[x] For cases from state courts:**

The opinion of the highest state court to review the merits appears at Appendix B to the petition and is Refusal to allow Petitioner to file any Legal Litigation.  
[ ] reported at \_\_\_\_\_; or,  
[ ] has been designated for publication but is not yet reported; or,  
[ ] is unpublished.

The opinion of the SECOND JUDICIAL DISTRICT COURT court appears at Appendix A to the petition and is

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

## JURISDICTION

For cases from federal courts:

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

No petition for rehearing was timely filed in my case.

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

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

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

For cases from state courts:

The date on which the highest state court decided my case was \_\_\_\_\_.  
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).

The date the Second Judicial District Court in Butte, Montana is at Appendix "A" and dated June 7th, 2024. Petitioner is receiving some Legal Help because he has a Mental Disability (Intellectual Deficit). He prays and hopes this Court will understand and help him. He has been honest with all the Courts but it seems his Honesty doesn't have any effect on the other Courts.

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. VIOLATION OF DUE PROCESS.
2. VIOLATION OF CONTRACT LAW.
3. VIOLATION OF SIXTH AMENDMENT  
RIGHT TO EFFECTIVE ASSISTANCE  
OF COUNSEL.
4. VIOLATION OF EQUAL PROTECTION  
OF THE LAW.

All explained in Pages One (1) through Fourteen (14) in Petition FOR WRIT OF MANDAMUS, with APPENDIXS' ATTACHED.

For every wrong there is a remedy. Passage of time does not confirm a void act. TITLE 2 VOLUMN 1 MCA MAXIMUS OF JURISPRUDENCE.

ARTICLE 11 Section 16 Courts of Justice shall be open to every person.

Petitioner humbly and respectably states A Judge is supposed to accommodate Pro Se Litigants. HANES V. KERNER, 92 S. Ct. 594.

In State v. Beavers, September 12, 2007, Decided Cause No: DC 97-0119.

The Acknowledgement of Waiver of Rights by Plea of Guilty set forth

the charge against the Defendant and the Maximum possible penalty associated therewith, as well as a recitation of rights he waived by pleading guilty. Please see APPENDIX 'E" attached to Writ of Mandamus.

In INS V. St. Cyr, Supreme Court of the United States. A Plea Agreement involve a quid pro quo between a criminal defendant and the government. Please see APPENDIX'S 'L" and "M".

In Saravia-Paguada V. Gonzales, 488 F.3d 1122 Plea Agreements involve a quid pro quo. In State v. Laverdure, 212 Mont. 31, 34; 685 P.2d 375, 377; Mont. LEXIS 1004, 5 The Acknowledgement of Waiver of Rights contains the Plea Agreement with the charges that involves a quid pro quo.

In State v. Enoch, 269 Mont. 8, 14 887 P.2d 175, 179; 1994 Mont. The Acknowledgement of Waiver of Rights by Plea of Guilty contain the charges. See STATE v. Enoch, The Acknowledgement of Waiver of Rights by Plea of Guilty is the Document that contained the Plea Agreement that involves a quid pro quo.

For the HONORABLE U.S. Supreme Court's convience Petitioner and with the Court's permission would like to offer two meanings of "QUID PRO QUO", INFRA.

QUID PRO QUO- The consideration for a contract. That which is supplied by one party in consideration of that which is supplied.

The Law Dictionary- Quid pro Quo 1., something for something, a consideration. Is Latin for this for that or these for these. Please see APPENDIX "L" attached to Petitioner's Petition for Writ of Mandamus. Also APPENDIX "M" Third Document Second Paragraph, Line 9 Stating Plea Agreement.

RULE 20.1

PROCEDURE on a PETITION for an EXTRAORDINARY WRIT

1. How the Writ will be in aid of the Court's appellate jurisdiction?

Petitioner's Writ of Mandamus is authorized by 28 U.S.C. §1651 (a) This Court should allow at this time to be considered as newly discovered evidence. See APPENDIX "K".

On March 8th, 2012 the U.S. Supreme Court set new standards for criminal Plea Bargains which should apply to the Petitioner in this case "retroactively" due to the fact of newly discovered evidence.

The Court went on to say that the Court now elevates plea bargaining from a necessary evil to a constitutional entitlement. The Petitioner has exhausted all state and lower Federal Court Remedies including the 9th Circuit Court of Appeals. The Montana Supreme Court and the Ninth Circuit Court of Appeals has denied the Petitioner access to file any more Legal Litigation. Please see APPENDIX "B" and "C" incorporated herein.

Jurisdiction is properly before this Court pursuant to the U.S. Constitution Amendments SIXTH, EIGHTH, and Fourteenth, and because Petitioner exhausted all State and Lower Federal Court Remedies.

2. What exceptional circumstances warrant the exercise of the Court's discretionary powers?

It has been an element of an ongoing Unlawful Incarceration for 42 years by the State of Montana, The U.S. District Court in the State of Montana, The Ninth Circuit Court of Appeals and the Second Judicial District Court in Butte, Montana for denying the Petitioner Due Process, Equal Protection of the Laws, Violating Contract Law, Federal and State laws regarding Honoring Petitioner's Plea Agreement with two reduced charges and a NON-Dangerous Designation in exchange for his Guilty Pleas.

Defendants have a Sixth Amendment Right to counsel, a right that extends to the plea bargaining process. During plea negotiations Defendants are "entitled to the effective assistance of counsel".

The Sixth Amendment to the U.S. Constitution requires Effective ASSISTANCE of COUNSEL at critical stages of a criminal proceeding.

When Defense Counsel in Petitioner's case allowed the original plea agreement to become a "breach of contract", by not adhering to the original plea agreement, defense counsel did not render the effective assistance the U.S. Constitution requires.

The U.S. Constitution guarantee applies to pretrial critical stages that are part of the whole course of a criminal proceeding. A proceeding in which Defendants cannot be presumed to make critical decisions without counsel's advice.

The Petitioner herein contends that under the circumstances of his particular case, he has been exposed to CRUEL AND UNUSUAL PUNISHMENT as depicted under the EIGHTH AMENDMENT to the U.S. CONSTITUTION of the UNITED STATES by being unlawfully incarcerated for 42 years in violation of an agreed upon plea agreement in exchange for his Guilty Pleas that contains two reduced charges and a Non-Dangerous Designation. See APPENDIX "E" which contains the written plea agreement.

It is quite clear that Petitioner has been denied the proper protection of the law as is afforded to him under the FOURTEENTH AMENDMENT to the UNITED STATES CONSTITUTION.

It is not the mere tribunal into which a person is authorized to proceed by a State which determines whether the equal protection of the Law has been afforded, but whether in the tribunals which the State has provided equal laws prevail. American Motorist Ins. Co. v. Starnes, 425 U.S. 637, 96 S. Ct. 1800.

Based on the factors mentioned supra. Petitioner ask that this Court consider the significance of the Petitioner's rights that were clearly violated and grant his Writ with relief.

3. Why adequate relief cannot be obtained in any form or from any other court.

Petitioner went through the Courts' progressively and exhausted all remedies. The Courts bar relief and violates Due Process, and Equal Protection of the Laws. Since the Attorney General of Montana clearly stated at APPENDIX "K" first paragraph that the Petitioner was not competent to enter his Guilty Pleas as a result of his mental deficiencies there should be no time bar.

Petitioner alleges that he fits the criteria as afforded to other inmates RE: His Plea Agreement should be Honored after 42 years of unlawful incarceration and that he has been deprived of his rights under the Equal Protection Clause.

## STATEMENT OF THE CASE

Freeman William Stanton, Petitioner in this matter, is currently an inmate at the Montana State Prison in Deer Lodge, Montana. On May 6th, 1982 Petitioner was charged by Information with the following charges:

Count 1: ROBBERY, a violation of Section 45-5-401 (1) (b), MCA 1981.

Count 11: AGGRAVATED KIDNAPPING, a violation of Section 45-5-303 (1) (a), MCA, 1981.

Count 111: SEXUAL INTERCOURSE WITHOUT CONSENT, a violation of Section 45-5-503 (1), MCA, 1981.

Count IV: Attempted Deliberate Homicide, a violation of Section 45-4-103 (1) (a), MCA, 1981.

Count V: Theft: a violation of Section 45-6-301 (1) (a), MCA, 1981.  
See APPENDIX F" attached hereto.

On June 3rd, 1982, Petitioner signed a Acknowledgement of Waiver of Rights by Plea of Guilty which contains the Plea Agreement that involves a "QUID PRO QUO". which clearly reflects the "reduced charges". Petitioner agreed to plead guilty to and, the "Non Dangerous" designation. See Appendix 'E" paragraph 3, Line 1 and paragraph 8, line 5, attached hereto.

On June 18th, 1982, Petitioner was sentenced in the Second Judicial District Court, Silver Bow County, Butte, Montana to a term of 290 years for the five felony charges, the maximum sentence on every original charge on the Information.

In addition, Petitioner was sentenced to an additional 100 year sentence as a Persistent Felony Offender which after 34 years of incarceration was striked by the Montana Supreme Court September 6th, 2016 and ordered the Second Judicial District Court to enter an

Amended Judgement striking the 100 year sentence as a PFO.

## REASONS FOR GRANTING THE PETITION

### Statement and Argument for Question 1

After being incarcerated 22 years, the Montana Supreme Court "finally" acknowledged that the Petitioner did enter into a plea agreement wherein he agreed to plead guilty to Sexual Assualt instead of Sexual Intercourse Without Consent. In addition, the Montana Supreme Court did so indicate that APPENDIX "E" was in fact a plea agreement. See APPENDIX "G" paragraph 3 & 6 attached hereto.

On February 28th, 2007, the Montana Supreme Court once again acknowledged that the Petitioner entered into a plea agreement in their final Order from the filing of an out of time petition for Post Conviction Relief by the Petitioner. See APPENDIX 'H" , paragraph 3, Line 12, attached hereto.

The Sixth Amendment to the Constitution simply provides that in relevant part that "[i]n all criminal prosecutions, the accused shall have the assistance of counsel for his defense."

In the decision of of McMann v. Richardson, 379 U.S. at 771. The Court observed that it has long been recognized that the right to counsel is the right to "effective assistance" of counsel.

"I[f] the right to counsel guaranteed by the Constitution is to serve its purpose, defendants cannot be left to the mercies of Incompetent Counsel." See McMann v. Richardson, 379 U.S. at 771.

Petitioner asserts that his counsel, Joseph Engle, at the time of sentencing, failed to object to the "prosecutorial misconduct" regarding the "breached" plea agreement by the State and the presiding Judge, Arnold Olsen. See APPENDIX E" attached hereto.

## 2. PETITION FOR WRIT OF MANDAMUS

The Second Judicial District Court, County Attorney, and Petitioner's Counsel, failed in their respective duties when neither of the above-mentioned "objected" whatsoever to the obvious "breached plea agreement." Petitioner only agreed to plead guilty to the "reduced" charges reflected in APPENDIX 'E" as well as being designated Non-Dangerous.

As a direct result of negligence by all parties involved, Petitioner was denied his Due Process and Equal Protection of the Law afforded him by and through the Constitution of the United States of America.

In addition to the reduced charges reflected in APPENDIX "E", there was never any mention made either verbally and/or in the plea agreement itself, regardingt a "No Parole" stipulation, "Consecutive Sentences", and, "Ineligibility" to participate in any work Furlough and Pre-Release Programs.

In the Petitioner's plea agreement which involves a "QUID PRO QUO", he signed his name to the contract with the understanding that he would only be pleading guilty to the following which once again is reflected in APPENDIX 'E".

- (1) Kidnapping
- (2) Sexual Assualt
- (3) Attempted Deliberate Homicide
- (4) Robbery
- (5) Theft

In addition, Petitioner was to be designated "Non Dangerous" as part of the plea agreement contract. Had the Petitioner in this case been aware of any deception on the part of the state and/or presiding Judge, as well as his counsel, the Petitioner certainly would have never pleaded guilty to all the original charges reflected in APPENDIX 'F". "[P]lea bargain agreements presuppose fundamental fairness

### 3. PETITION FOR WRIT OF MANDAMUS

in securing such agreements between the accused and the prosecutor."

See State v. Allen, 197 Mont. 204, 208, 645 P. 2d 380-81 (1981).

"[T]he doctrine that the government must adhere to its bargain in the plea agreement is so fundamental that even though the government's breach probably did not influence the Judge (which it should have) in the sentence imposed, Due Process and equity require that the sentence be vacated. See United States v. Nolan Cooper, 155 F. 3d at 236 (citation omitted.).

A Plea Agreement is by nature nothing less than a "Contract". The State "breached" their contract in a number of areas regarding the Petitioner's plea agreement as reflected in APPENDIX E".

See APPENDIX 'I', which states:

§28-2-906 When written contract takes effect. A contract in writing takes effect upon its delivery to the party in whose favor it is made or to his agent.

The writing of a contract generally to determine intention is reflected in APPENDIX 'J' "attached hereto, §28-3-303, MCA, 1981, which states:

"When a contract is reduced in writing, the intentions of the parties is to be ascertained from the writing alone if possible, subject, however, to the other provisions of this chapter."

When the government is in breach, there are several remedies available, including allowing the defendant to withdraw his guilty plea or Ordering a "specific performance" by the government which the Defendant/Petitioner believes he is entitled to as a direct result of the State's "breached plea agreement" and the "Ineffective assistance" of counsel. Petitioner asserts that his right to Due Process and Equal Protection of the Law was violated which is guaranteed by the Fifth and Fourteenth Amendment of the United States Constitution.

#### 4. PETITION FOR WRIT OF MANDAMUS

The Constitution of the State of Montana, Section 4, guarantees that "no person shall be denied the equal protection of the law."

The essential elements of due process of the law are notice and opportunity to be heard and to defend in an orderly proceeding adapted to the nature of the case, and guarantee of due process requires that every man have protection of his day in court.

A prosecutors use of the charging process may violate due process if it penalizes the exercise of constitutional statutory rights.

See U.S. v. Stokes, 124 F.3d 304, 313 (1st Cir. 1996).

Petitioner asserts that his constitutional rights were in fact violated the moment the State failed to adhere to the agreed upon "contract" and/or "plea agreement" they entered into with the Petitioner. In addition, the "ineffective assistance" exhibited by Petitioners counsel when he did not object and/or appeal the decision of the State, as well as the presiding Judge, violated his constitutional rights guaranteed him by the Sixth Amendment.

Consequently, and in addition to everything *supra*, double jeopardy protection depends on whether two offenses are considered the "same-transaction, episode and act, all sentences should have been Ordered concurrent."

A defendant, as well as the Petitioner in the instant case, who alleges that the government breached a plea agreement contract may be entitled to an Evidentiary Hearing or at the Court's discretion, discovery or expansion of the record. If the defendant demonstrates that the government did breach, the Court may allow withdrawal of the plea, ALTER THE SENTENCE, OR Order specific performance of the agreement.

As reflected in Appendix "E" herein, Petitioner has demonstrated

## 5. PETITION FOR WRIT OF MANDAMUS

that the State did in fact breach the plea agreement which subsequently resulted in the denial of Due Process and Equal Protection of the Law upon him.

Petitioner struggled for almost 25 years at an attempt to get the Montana Supreme Court to acknowledge and recognize the fact that the Petitioner did in fact "enter into a plea agreement" as is reflected in APPENDIX "G" & "H", the final Order and decision of the Montana Supreme Court.

Petitioner agreed to plead guilty to the "lesser charges" in the plea agreement contract only and not the Original Information. See APPENDIX "E", attached hereto, & APPENDIX "F" as well.

Clearly, on page 1, §2, Petitioner acknowledges that he will be charged with "KIDNAPPING" instead of "AGGRAVATED KIDNAPPING" and, "SEXUAL ASSUALT" instead of "SEXUAL INTERCOURSE WITHOUT CONSENT".

Petitioner was in fact deceived by the State in these regards that were agreed to upon plea negotiations as well as being designated Non-Dangerous. By definition alone, this was a breach of contract by the State and County Attorney.

The determination of whether or not an agreement has been breached is governed by the law of contracts, with some exceptions. Due Process requires that any ambiguity be construed against the government and in accordance with the Defendant's reasonable understanding of the agreement.

By the actions of the State in their "breach of contract" surrounding the plea bargaining process, they exhibited nothing less than "vindictive prosecution".

The Due Process Clause prohibits a prosecutor from using criminal charges vindictively in an attempt to penalize a defendant's valid exercise of constitutional or statutory rights. The Supreme Court

## 6. PETITION FOR WRIT OF MANDAMUS

has held that due process is offended by the possibility that "increased punishment" poses a realistic likelihood of vindictiveness."

Petitioner does not seek the withdrawal of his guilty pleas to the agreed upon plea agreement. Petitioner does however insist that he be entitled to the terms agreed upon in the plea agreement reflected in Exhibit "E". CORRECTION APPENDIX "E".

Petitioner's counsel never even attempted to appeal the "breach of Contract" issue and/or other benefits ensconced (established) in the plea agreement that involves a "QUID PRO QUO".

The proper standard for judging attorney performance is that of reasonably effective assistance, considering all of the circumstances.

When a convicted defendant complains of the ineffectiveness of counsel's assistance, the defendant must show that counsel's representation fell below an objective standard of reasonableness.

Petitioner's counsel was fully aware of the agreed upon plea agreement, which he also signed, and which the Petitioner plead guilty to, also he was aware of the State breaching the plea agreement contract and did absolutely Nothing regarding any appellate avenue, to correct and undue the injustice incurred upon the Petitioner.

From counsel's function as assistant to the Defendant/Petitioner derive the overaraching duty to advocate the Petitioner's cause and the more particular duties to consult with the Defendant/Petitioner during his trial and sentencing.

Petitioner's counsel is bound by a duty of "loyalty" to keep him informed of important developments in the course of the prosecution.

Clearly, when counsel for the Defendant/Petitioner failed to advise him that the State was in fact in violation of the agreed upon plea agreement contract. Therefore, counsel failed in his duties

## 7. PETITION FOR WRIT OF MANDAMUS

of "effective assistance" insofar as advising the Defendant/Petitioner of important developments.

Thus, a fair trial is one in which evidence subject to adversarial testing is presented to an impartial tribunal for resolution of issues defined in advance of the proceedings.

Here, Petitioner's counsel failed to present to the court, for adversarial testing or showing that the plea agreement which the Defendant/Petitioner plead guilty to with the two reduced charges and Non-Dangerous Designation was not what the Judge sentenced him to at the time of sentencing.

Judicial Proceedings are to ensure fundamental fairness which is the very essence of Due Process.

The Second Judicial District Court, Silver-Bow County, State of Montana, held the Petitioner was time-barred from filing the issues mentioned under Post Conviction Relief.

The Montana Supreme Court has consistently held that Post Conviction Relief may be filed when counsel has "failed to preserve" issues for appeal. See State v. Rogers, 2001 Mont. 165, 306 Mont. 130, 32 P.3d 724.

Likewise, the United States Supreme Court has recently held that exceptions to the "time-bar" can extend to those cases in which a "significant claim of Ineffective Assistance of Counsel and not just actual innocence" is raised, as was done herein. See Dretke v. Haley, 541 U.S. 386, 158 L.Ed.2d 659 (2004)

The Montana Supreme Court's Order dated August 17th, 2004, dismissing Defendant/Petitioner's Writ of Habeas Corpus, states that the claim mentioned in the Writ of Habeas Corpus could have been the subject of an appeal. Once again, Defendant/Petitioner's counsel

failed to appeal any justifiable issues to the Supreme Court of Montana. See Appendix "G" attached hereto.

Regarding the presence of substantial prejudice, this Court must consider the underlying merits of the case to come to a tentative conclusion as to whether Petitioner's claim, if properly presented, would be viable to prove Petitioner was prejudiced by counsel's ineffective assistance.

Petitioner only needs to show that he has "plausible" grounds for relief. Counsel for Defendant/Petitioner failed in his duties to object to the penalty phase of the trial and reserve the "breach of contract" issues for appeal knowing that the State and the presiding Judge were fully aware that the Defendant/Petitioner only intended to plead guilty to the agreed upon plea agreement.

Also, Prosecutorial Misconduct raises Due Process and Fifth Amendment concerns. A prosecutor offends Due Process when he breached a plea agreement. See Santobello v. New York, 404 U.S. 257, 92 S. Ct. 495, L.Ed. 2d 427 (1971).

Petitioner argues that his plea incorporated an implied promise not to subject him to additional prosecution and/or any type of deception on the part of the State or the prosecution. Petitioner asserts that the prosecutors induced his pleas with a material misrepresentation; guilty plea to lesser included charges.

In State v. Horton, 2001 Mt 100, 305 Mont. 25 P.ed 886, this case clearly states that a "plea agreement" is a contract which is subject to contract law standards." See APPENDIX 'I" & "J" attached hereto. Under contract law, one party relinquishes some rights in reliance upon the promise of the other party. In this case, Pet-

## 9. PETITION FOR WRIT OF MANDAMUS

itioner relinquished many rights and was still deceived by the State, presiding Judge and the Prosecuting Attorney, in believing that he the Defendant/Petitioner was only pleading guilty to the agreed upon charges in the original plea agreement that involves a "QUID PRO QUO".

If the State denies a Defendant the right to his agreed upon plea agreement, then it is clearly evident that prejudice can be shown. In this case, the State denied the Defendant/Petitioner his constitutional right to an agreed upon plea bargain.

The illegal actions of the State denying the Defendant/Petitioner his constitutional right to a plea bargain that is reflected in APPENDIX "E", is not giving him the benefit of agreed upon favorable deal, was in fact a deliberate deception by the State to secure an unlawful advantage.

When the State failed to abide by their offer of Sexual Assault and just Kidnapping as well as a Non Dangerous Designation as is indicated in the Petitioner's plea agreement of APPENDIX "E", they violated the statutory intent of §46-12-211 (1)(b), MCA, thereby denying the Defendant /Petitioner his Due Process Rights of the United States Constitution as well as the Montana Constitution. It is paramount that the Court give such construction to a statute as will preserve constitutional rights of parties.

Under Montana Law, if interpretation of statute can be accomplished from plain meaning of words used, the Court may not apply other means. The words of a statute are what the legislature has enacted as law, and all that it has the power to enact. Unenacted intentions or wishes cannot be given effect as law. A prosecutor violated Due Process when he seeks additional charges solely to punish a defendant

for exercising a constitutional right or statutory right. The prosecutor not only punished the Defendant/Petitioner but, decieved him as well when he did not adhere to the original plea agreement. Specifically, the two lesser charges (Sexual Assault & Kidnapping, and the Non Dangerous Designation.)

Where it is clear that the government violated the terms of a plea agreement, the defendant is typically given the option of withdrawing his guilty plea or demanding specific performance. See U.S. V. GOING, 200 F3d 539 (8th Cir. 2000).

The ATTORNEY GENERAL of the State of Montana stated in his response to the Defendant/Petitioner's Writ of Habeas Corpus in the Montana Supreme Court that the Petitioner "was not" competent to enter his pleas as a result of his Mental Deficiencies and did not request to withdraw his guilty pleas. See APPENDIX "K" attached hereto.

In addition, in the order from the Montana Supreme Court dated August 17th, 2004, the Court stated that the Petitioner could have brought up the plea agreement regarding the two (2) lesser included charges of Sexual Assault & Kidnapping on appeal. They forgot to mention that he could of brung up the Non-Dangerous Designation that was part of the Plea Bargain. Again, Defendant/Petitioner did not recieve effective assistance from his counsel regarding any kind of appellate issues.

#### Petitioner's Statement and Argument for Question 2.

If a plea bargain has been offered and it was and the Defendant/Petitioner agreed to and signed it, has the right to effective assistance of counsel in considering whether to accept it and the Defendant/Petitioner accepted the plea agreement. If that right is denied, prejudice can be shown if loss of the plea opportunity led

to a trial resulting in a conviction on more serious charges or the imposition of a more severe sentence.

This is exactly what happened to the Defendant/Petitioner in his plea bargaining process by and through his counsel and the State prosecutor. As APPENDIX 'E" clearly reflects, the Petitioner agreed to plead guilty to Sexual Assualt instead of "Sexual Intercourse Without Consent" and "Kidnapping" instead of "Aggravated Kidnapping".

Instead, Petitioner's counsel and the State prosecutor completely disregarded Defendant/Petitioner's agreed upon plea bargain and deceived him by moving forward with the original charges in the indictment. APPENDIX 'F" are the original charges that the Court sentenced the Petitioner to in violation of the plea agreement that involves a "QUID PRO QUO". The sentences were contrary to the plea agreement reflected in APPENDIX "E".

In Strickland v. Washington, a two part test of effective assistance of defense counsel held (1)reasonably effective assistance and (2) reasonable probability of a different result with effective assistance would have occurred. Had the Petitioner's counsel been effective during plea negotiations, he would have intervened and demanded that the State Prosecutor adhere to the original plea bargain.

A Defendant's Sixth Amendment Right to counsel includes the right to be represented by an attorney with undivided loyalty. See Lockhart v. Terhune, 250 F.3d 1223, 2001. In addition, there was no mention made whatsoever in Defendant/Petitioner's plea bargain regarding whether or not all the sentences would run concurrent or consecutive and no mention in writing the State could or would argue for a harder sentence.

Petitioner's Statement and Argument  
For Question 3.

Defendant/Petitioner asserts that he is entitled to the Court's consideration in having his "No Parole" stipulation removed since there was never an indication and/or mention whether or not his sentences were to run concurrent or consecutive, on the plea agreement that involves a "QUID PRO QUO". Petitioner is now 71 years old with physical and mental impairments who has now served 42 years in prison. His request for relief and/alternative will be mentioned in his Conclusion.

CONCLUSION

On March 8, 2012 the United States Supreme Court set new standards for criminal plea bargains which should apply to the Petitioner in this case "retroactively" due to all the evidence mentioned supra.

Under these new standards, plea negotiations between criminals and prosecutors will now come under constitutional scrutiny because a divided Supreme Court ruled that convictions can be overturned if defense lawyers don't adequately assist clients in deciding whether to accept such offers.

The Court went on to say that the Court now elevates plea bargaining from a necessary evil to a constitutional entitlement. The right to counsel is the right to effective assistance of counsel.

The Supreme Court now holds that, as a general rule, defense counsel has the duty to communicate formal offers from the prosecution to accept a plea on the terms and conditions that may be favorable to the accused. When the defense counsel allows the offer to expire and/or alter without advising the defendant or

allowing him to consider it, defense counsel did not render the effective assistance the Constitution requires. In the instant case, the Petitioner agreed only to the charges reflected in Appendix "E". The State deceived the Petitioner by not adhereing to its original plea agreement and subsequently did in fact "enhance" Petitioner's plea agreement by and through vindictive prosecution and breach of contract.

Pursuant to all the evidence presented supra in Petitioner's Writ of Mandamus, including the admission of the ATTORNEY GENERAL's response to Petitioner's Writ of Habeas Corpus in the Montana

Supreme Court, i.e., his admission stating that the Petitioner "was not competent to enter his guilty plea as a result of his mental deficiencies," Petitioner seeks the relief and/or "alternatives" to any relief this Court deems appropriate mentioned infra:

1. To have this case remanded back to the Second Judicial District Court in Butte, Montana to have all sentences "Ordered" to run concurrent since no mention of "Concurrent" or "Consecutive" were ever mentioned in the plea agreement which involves a "QUID PRO QUO. Petitioner is willing to agree that he will in fact "discharge" all sentences if Ordered to run concurrent which is another 7 or 8 years approximately. He will be approximately 80 years of age.
2. To have the "No Parole" stipulation removed since this too was never mentioned in Petitioner's plea agreement. To be re-sentenced in accordance with the plea agreement regarding the two (2) reduced charges and designated Non-Dangerous with all sentences ordered to run concurrently with each other. Any enhancements removed.
3. Whatever this Court deems appropriate.

#### 14. PETITION FOR WRIT OF MANDAMUS