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 "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).

Kurt Krueger
District Court Judge, Dept. I
Butte-Silver Bow County Courthouse
155 West Granite Street
Butte, Mt 59701
(406) 497-6410

MONTANA SECOND JUDICIAL DISTRICT, BUTTE-SILVER BOW COUNTY

STATE OF MONTANA, Plaintiff, v. FREEMAN WILLIAM STANTON, Defendant.	Cause No. 82-CR-41 **ORDER DENYING MOTION TO CORRECT FACTUALLY ERRONEOUS SENTENCE OR JUDGMENT**

This matter comes before the Court on the Defendant Freeman William Stanton's *Motion to Correct a Factually Erroneous Sentence or Judgment at Any Time Pursuant to MCA 46-18-116(3).* Though Stanton makes his motion on the basis of MCA 46-18-116(3), which governs corrections to errors in a written judgment, that statute provides that the remedy for illegal sentences or substantive relief is appeal or post-conviction relief. Instead, the Court construes his motion as substantively seeking post-conviction relief for the following: (1) breach of a plea agreement; (2) post-conviction ineffective assistance of counsel; and (3) mental disease or defect at the time of entering a plea.

Stanton was sentenced in this Court on June 21, 1982. He has since filed with the Montana Supreme Court multiple petitions for *habeas corpus* and motions for out-of-time appeals. That Court has denied all of his appeals, except to strike the penalty for persistent felony offender status and amend the judgment accordingly. It is now long past the time for any post-conviction relief and this Court is not empowered to grant relief that is properly reserved for appeal. Accordingly, it is hereby:

ORDERED that the *Motion* is **DENIED.**

DATED this 7 day of June, 2024.

KURT KRUEGER
District Court Judge

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 PLEAS.

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 PLEAS.

Bowen Greenwood
CLERK

State of Montana
Office of Clerk of the Supreme Court
P.O. Box 203003
Helena, MT 59620-3003
406-444-3858 phone
406-444-5705 fax

May 7, 2020

FREEMAN WILLIAM STANTON
13817
MONTANA STATE PRISON
700 CONLEY LAKE ROAD
DEER LODGE, MT 59722

Dear Mr. Stanton:

This office received documents from you entitled "Motion for Leave to File etc." Those documents are being returned unfiled. The court elected not to grant leave.

Sincerely,

BOWEN GREENWOOD
Clerk of the Supreme Court

Enc.

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 "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

General Docket

United States Court of Appeals for the Ninth Circuit

Court of Appeals Docket #: 08-35917 **Docketed:** 11/07/2008
Nature of Suit: 3530 Habeas Corpus **Termed:** 11/19/2010
Freeman Stanton v. Sam Law, et al
Appeal From: U.S. District Court for Montana, Butte
Fee Status: IFP

Case Type Information:
1) prisoner
2) state
3) 2254 habeas corpus

Originating Court Information:
District: 0977-2 : 2:08-cv-00057-RFC-CSO
Trial Judge: Richard F. Cebull, Senior District Judge
Date Filed: 08/15/2008

Date Order/Judgment:	Date Order/Judgment EOD:	Date NOA Filed:	Date Rec'd COA:
10/22/2008	10/22/2008	10/31/2008	11/06/2008

Prior Cases:
None

Current Cases:
None

FREEMAN WILLIAM STANTON (-: 13817) Petitioner - Appellant,	David F. Ness, Assistant Federal Public Defender Email: david_ness@fd.org [COR LD NTC Assist Fed Pub Def] FDMT - FEDERAL DEFENDERS OF MONTANA (GREAT FALLS) 104 2nd Street South Suite 301 Great Falls, MT 59401-3645 Freeman William Stanton [NTC Pro Se] MSPD - MONTANA STATE PRISON (DEER LODGE) 700 Conley Lake Road Deer Lodge, MT 59722
v.	
SAM LAW, Warden Respondent - Appellee,	Mardell Lynn Ployhar, Assistant Attorney General Direct: 406-444-9839 Email: mployhar@mt.gov [COR NTC Dep State Aty Gen] AGMT - Office of the Montana Attorney General (Helena) 215 N Sanders Street

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FREEMAN WILLIAM STANTON, Petitioner - Appellant, v. SAM LAW, Warden and ATTORNEY GENERAL OF THE STATE OF MONTANA, Respondents - Appellees.	No. 08-35917 D.C. No. 2:08-cv-00057-RFC District of Montana, Butte ORDER

Before: TASHIMA, BERZON, and CLIFTON, Circuit Judges.

We construe Stanton's "Motion for the Reappointment of Counsel to Proceed with Appeal to the United States Supreme Court with Writ of Certiorari," received on July 15, 2011, as a motion to recall the mandate. So construed, the motion is denied.

No further filings will be accepted in this closed case.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FREEMAN WILLIAM STANTON, Petitioner-Appellant, v. MICHAEL FLETCHER; et al., Respondents-Appellees.	No. 17-35378 D.C. No. 2:17-cv-00001-DLC-JCL District of Montana, Butte ORDER

Before: O'SCANNLAIN and GOULD, Circuit Judges.

The motion for reconsideration (Docket Entry No. 6) is denied. *See* 9th Cir. R. 27-10.

No further filings will be entertained in this closed case.

APPENDIX "D"

APPENDIX "D"

U.S. DISTRICT COURT CASES ARE D.C. No. 2:08-cv-00057-RFC No.08-35917 August 9th,2011 and No. 17-35378 October 3rd, 2017 Please see Appendix "C" which contains these Court Docket Numbers for the U.S. District Court in Montana. They should be on the LEGAL COMPUTER. Petitioner dosen't have all the Documents.

APPENDIX 'E"

APPENDIX 'E"
THE ACKNOWLEDGEMENT OF WAIVER OF RIGHTS BY PLEAS

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF MONTANA -
IN AND FOR THE COUNTY OF SILVER BOW

FILED
JUN 3 1982
DAN DUNIVICH, CLERK
By [signature]
DEPUTY CLERK

STATE OF MONTANA,
Plaintiff,

vs.

Freeman Stanton,
Defendant.

ACKNOWLEDGEMENT OF WAIVER OF RIGHTS BY PLEA OF GUILTY

82-CR-41

I, Freeman Stanton, am prepared to enter a plea of Guilty in the above entitled matter. This plea is being voluntarily made and not the result of force or threats or of promises.

I acknowledge that my attorney has explained to me and advised me of the following and I fully understand that:

1. I am charged with the offenses of Kidnapping, Sexual assault, attempted [illegible], and the maximum possible penalty provided by law is imprisonment in the State Prison for a term of 100 years, ~~imprisonment in the County Jail for one (1) year and/or a fine of~~ _____ dollars. (Strike out inapplicable)

2. I have the right to plead Not Guilty or to persist in that plea if it has already been made.

3. I have the right to be tried by a Judge or a jury, and at that trial, I have the following rights:

a. The right to the assistance of counsel.
b. The right to have witnesses testify on my behalf.
c. The right to confront and cross-examine witnesses against me.
d. The right not to be compelled to incriminate myself.
e. The right to require my guilt to be proven beyond a reasonable doubt.

4. By pleading Guilty I give up the right to a trial by Jury or Judge, the right to have witnesses testify on my behalf, the right to confront and cross-examine witnesses against me, the right not to be compelled to incriminate myself, and the right to appeal any finding of Guilty; and the chance, if any to be adjudged guilty of a lesser offense by a jury.

5. I understand that the County Attorney has agreed to recommend to the Court a sentence of none except no death penalty but I realize that such a recommendation is not binding upon the Court in passing sentence. (Strike out if inapplicable.) non-dangerous

6. I acknowledge that I am satisfied with the services of my attorney and that there has been ample time to prepare a defense.

7. I am not suffering any emotional or mental disability from any cause including mental defect or impairment or the taking of drugs, alcohol or prescription medicine and I fully understand what I am doing.

8. The following are the facts of this incident which causes me to plead guilty of this offense.

I believe I am guilty of this offense because I did the following: (Set forth facts in Defendant's words.)

Robbed Circle K. Kidnapped lady, raped her and accidentally shot her.

9. I am satisfied that my lawyer has been fair to me and has represented me properly.

10. I acknowledge receiving a copy of this statement.

Dated this 3 day of June, 19 82.

Freeman Stanton
Defendant

I certify that the defendant has read the above or I have read the above to the defendant, (Strike out inapplicable) and I have advised the defendant of the above and explained it to him and I am satisfied that he understands all his rights and that his plea of Guilty is being voluntarily made, and that he understands he is waiving such rights by entry of said plea.

Joseph C. Douglas
Attorney for Defendant.

APPENDIX 'F"

INFORMATION CONTAINING THE ORIGINAL CHARGES

APPENDIX 'F"

INFORMATION CONTAINING THE ORIGINAL CHARGES

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF MONTANA
IN AND FOR THE COUNTY OF SILVER BOW

FILED

MAY 6 1982

[illegible], CLERK
By [illegible]
DEPUTY CLERK

STATE OF MONTANA,

Plaintiff,

-vs-

No. 2-82-41

FREEMAN WILLIAM STANTON,

Defendant.

I N F O R M A T I O N

In the above entitled Court, on this 6th day of May, 1982, by leave of Court first had and obtained, FREEMAN WILLIAM STANTON is accused by Robert M. McCarthy County Attorney in and for the County of Butte-Silver Bow, State of Montana, by this information, of the felony crimes of:

Count I. ROBBERY, a violation of Section 45-5-401(1)(b) M.C.A., 1981.

Count II. AGGRAVATED KIDNAPPING, a violation of Section 45-5-303(1)(a) M.C.A., 1981.

Count III. SEXUAL INTERCOURSE WITHOUT CONSENT, a violation of Section 45-5-503(1) M.C.A., 1981.

Count IV. ATTEMPTED DELIBERATE HOMICIDE, a violation of Section 45-4-103(1) and Section 45-5-102(1)(a)M.C.A., 1981

Count V. THEFT, a violation of Section 45-6-301(1)(a) M.C.A., 1981.

committed as follows, to-wit:

That in the County of Butte-Silver Bow, State of Montana, on or about the 19th day of April, 1982, and before the filing of this information, the said Defendant, FREEMAN WILLIAM STANTON,

Count I. in the course of committing a Theft of money from the Circle K Store on Front Street and Arizona Street, Butte-Silver Bow, purposely or knowingly put Delores Reiss in fear of immediate bodily injury by pointing a .22 caliber revolver at her, in violation of the above named statute.

Count II. knowingly or purposely and without lawful authority restrained Delores Reiss by using or threatening to use physical force with the purpose of holding Delores Reiss as a hostage or shield, in violation of the above named statute.

Count III. a person, knowingly had sexual intercourse without consent with Delores Reiss, a person of the opposite sex not his spouse. Delores Reiss suffered bodily injury in the course of the commission of the crime, in violation of the above named statute.

Count IV. purposely or knowingly attempted to cause the death of Delores Reiss by shooting her in the chest with a .22 caliber revolver, in violation of the above named statute.

Count V. purposely or knowingly obtained or exerted unauthorized control over a Dodge Power Wagon, owned by Delores Reiss, with the purpose of depriving the owner of the property, in violation of the above named statute.

all of the above acts are contrary to the form, force and effect of the statute in such case made and provided, and against the peace and dignity of the State of Montana.

DATED this 6th day of May, 1982.

ROBERT M. McCARTHY
COUNTY ATTORNEY
BUTTE-SILVER BOW

By _____ 5/6/82
ROSS RICHARDSON
Deputy County Attorney

W I T N E S S E S

Delores Reiss
202 Pintlar Road
Anaconda, Montana

Dan Dosen
2241 South Colorado
Butte, Montana

Dennis O'Donald
206 Silver Bow Homes
Butte, Montana

Bessie Wonnacott
2501 Ottawa
Butte, Montana

Charles Cerise
1900 Thornton Avenue
Butte, Montana

Dave Breeden
Butte, Montana

Steve Matte
327 West Boardman
Butte, Montana

Dave Rice
603 49th Street North
Phoenix, Arizona
or 1019 Lewishon Street
Butte, Montana

Maxine Torres
2215 George
Butte, Montana

Richard Lucey
3209 Howard
Butte, Montana

Donald Miller
Montana Bar or Percy's Plac
Butte, Montana

Richard Jenkins
2026 Elm Street
Butte, Montana

Dale Manchester
623 West Galena
Butte, Montana

Ray Rubick
Marthas's Cafe
Butte, Montana

Charlene Hoffman
631 South Wyoming
Butte, Montana

Janet Gayle Hollingshead
318 West Gold
Butte, Montana

APPENDIX "G'

APPENDIX 'G'
ACKNOWLEDGEMENT BY THE MONTANA SUPREME COURT THAT
PETITIONER DID ENTER INTO A PLEA AGREEMENT

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. 04-504

FILED

AUG 17 2004

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

FREEMAN WILLIAM STANTON,

Petitioner,

v.

MIKE MAHONEY, Warden, Montana State Prison, et al.,

Respondents.

ORDER

Petitioner, Freeman William Stanton, has filed a petition for writ of habeas corpus. He delineates three reasons why the 100 year persistent felony offender enhancement to his 290 year sentence without parole, making the sentence a total of 390 years without parole, should be deleted.

In two of his claims, Mr. Stanton argues that he was not given proper notice of the intention of the Silver Bow County Attorney to seek persistent felony offender status back in 1982, when the charges against him were pending in District Court. This claim could have been the subject of an appeal. No appeal was filed.

Stanton's third claim is that the plea agreement he entered into states that he agreed to plead guilty to sexual assault, an offense with a 20 year maximum penalty, when he received a 40 year sentence for the offense of sexual intercourse without consent. However, he makes no direct claim that his sentence should be reduced because of this alleged error.

The judgment Mr. Stanton attacks was legally entered on June 21, 1982. His claims in the present petition for habeas corpus constitute collateral attacks on the validity of his sentence and thus, pursuant to § 46-22-101(2), MCA, cannot be the subject of a habeas petition. Section 46-22-101(2), MCA, provides that a "writ of habeas corpus is not available to attack the validity of the conviction or sentence of a person who has been adjudged guilty of an offense in a court of record and has exhausted the remedy of appeal." We conclude that Stanton's petition for a writ of habeas corpus filed August 3, 2004, attempts to collaterally challenge his conviction and sentence and cannot be the subject of habeas relief.

We note that Mr. Stanton filed a petition for habeas corpus on July 31, 1985, which, *inter alia*, alleged he was not given proper notice of the prosecution's intent that he be

sentenced as a persistent felony offender. As a part of this proceeding, a record was developed that he was indeed given proper notice. Before the Court entered an order on this prior petition, Stanton moved that it be dismissed and such motion was granted.

From the copy of the plea agreement Stanton filed, there is an indication that he was charged with sexual assault. However, in the same document he acknowledged that he "raped" the victim. He pled guilty as charged to sexual intercourse without consent. The record of the sentencing hearing shows that Mr. Stanton twice admitted that he forcibly had sexual intercourse with the victim, and that he did not wish to withdraw his plea of guilty to sexual intercourse without consent. There can be no question that he knew what offense he was charged with , that he pled guilty as charged, admitted he was in fact guilty of the offense, and that his plea was voluntary.

Petitioner Stanton has shown neither a legal nor a factual basis for habeas or other relief.

NOW, THEREFORE, IT IS ORDERED as follows:

1. The petition of Freeman William Stanton for a writ of habeas corpus must be, and is hereby, DENIED. The petition is DISMISSED.

2. The Clerk of this Court shall mail a copy of this Order to Petitioner Stanton, the Department of Corrections and the Attorney General.

DATED this 17th day of August 2004.

Chief Justice

Justices

APPENDIX "H"

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

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

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. OP 07-0086

STATE OF MONTANA,

Plaintiff and Respondent,

v.

FREEMAN WILLIAM STANTON,

Defendant and Petitioner.

ORDER

Petitioner Freeman William Stanton (Stanton) has filed a Motion for Leave to File an out-of-time Appeal, or in the alternative, to file an out-of-time Petition for Postconviction Relief. Stanton bases his motion on the fact that his trial counsel provided ineffective assistance of counsel in failing to challenge the State's request for persistent felony offender designation for Stanton, and his trial counsel's failure to file a notice of appeal. Stanton further alleges that he is being denied due process of law and equal protection of the law regarding his plea agreement.

Stanton entered pleas of guilty to five charges in 1982, including felony robbery, felony aggravated kidnapping, felony sexual intercourse without consent, felony attempted deliberate homicide, and felony theft. The State earlier had provided Stanton with notice of its intent to seek persistent felony offender status. Stanton entered his pleas pursuant to a plea agreement that placed no restriction on the State's ability to argue for a harder sentence.' The District Court sentenced Stanton to a term of 390 years on all charges, including 100 years as a persistent felony offender enhancement, and further determined that Stanton would be ineligible for parole. Stanton filed no appeal.

Stanton filed a petition for writ of habeas corpus with this Court in 2004. He argued in his petition that he was not given proper notice of the intention of the State to seek persistent felony offender status in 1982. Stanton also claimed in his habeas petition that he agreed to plead guilty to sexual assault, an offense with a 20-year maximum

penalty, when he received a 40-year sentence for the offense of sexual intercourse without consent. In denying Stanton's petition, we noted that he had filed a similar petition for habeas corpus on July 31, 1985. In that first petition, he alleged, among other matters, that he was not given proper notice of the State's intent that he be sentenced as a persistent felony offender. The court developed a record as part of that proceeding that demonstrated that Stanton indeed was given proper notice of the State's intent. Stanton moved to dismiss this initial petition before this Court had entered an order and we granted Stanton's motion. We further determined that the plea agreement filed in Stanton's case indicated that he was charged with sexual assault. He admitted in the plea agreement that he "raped" the victim. He entered a guilty plea to the charge of sexual intercourse without consent. The record of the sentencing hearing indicates that Stanton twice admitted he forceably had sexual intercourse with the victim and that he did not wish to withdraw his guilty plea to sexual intercourse without consent. As a result, we concluded that Stanton knew the nature of the offenses with which he was charged, that he entered pleas of guilty as charged, that he admitted in fact he was guilty of the offense, and that his plea was voluntary.

Stanton now seeks leave to file an out-of-time appeal, or in the alternative, an out-of-time petition for postconviction relief. Res judicata "bars the same parties from re-litigating the same cause of action." *State v. Young*, 259 Mont. 371, 377, 856 P.2d 961, 965 (1993). Stanton now seeks leave to challenge on appeal or through postconviction proceedings the issues that we resolved in his petition for habeas corpus in an Order dated August 17, 2004. Moreover, § 46-21-102, MCA, requires that a petition for postconviction relief must be filed within one year of the date of the judgment being final. The judgment in Stanton's case became final in 1982. Similarly, M. R. App. P. 5(b) requires the appeal in a criminal case to be taken within 60 days of entry of judgment. Stanton has failed to demonstrate any good cause or an excusable neglect why he waited nearly 25 years in which to seek leave to file his motion for an out-of-time appeal or an out-of-time petition for postconviction relief. Accordingly,

IT IS HEREBY ORDERED that Stanton's motion is DENIED.

The Clerk of Court shall mail a copy of this Order to Freeman Stanton and to all counsel of record.

DATED this 14th day of February 2007.

Chief Justice

Justices

APPENDIX 'I"

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

APPENDIX " I,

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

28-2-906, MCA

Current through all 2023 legislation, inclusive of the final Chapter 783 of the 68th Legislature's concluded Regular session.

LexisNexis® Montana Code Annotated > Title 28 Contracts and other Obligations (Chs. 1 — 11) > Chapter 2 Contracts (Pts. 1 — 22) > Part 9 Written Contracts (§§ 28-2-901 — 28-2-907)

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 the party's agent.

History

En. Sec. 2187, Civ. C. 1895; re-en. Sec. 5019, Rev. C. 1907; re-en. Sec. 7521, R.C.M. 1921; Cal. Civ. C. Sec. 1626; Field Civ. C. Sec. 796; re-en. Sec. 7521, R.C.M. 1935; R.C.M. 1947, 13-608; amd. Sec. 787, *Ch. 56, L. 2009.*

Annotations

Notes to Decisions

Contracts Law: Formation: Tender & Delivery

In a suit for breach of contract, substantial evidence supported the district court's finding that the general contractor's acceptance of the subcontractor's bid formed a contract. The subcontractor's compliance with the subcontract agreement's payment procedures failed to establish the parties had modified the contract, because the subcontractor never returned a signed subcontract agreement to the general contractor in accordance with *Mont. Code Ann. § 28-2-906*. *AAA Constr. of Missoula, LLC v. Choice Land Corp., 2011 MT 262, 362 Mont. 264, 264 P.3d 709, 2011 Mont. LEXIS 365 (Mont. 2011)*.

Research References & Practice Aids

Hierarchy Notes:

Title 28, Ch. 2, MCA

Title 28, Ch. 2, Pt. 9, MCA

State Notes

Notes

APPENDIX "J"

APPENDIX "J"

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

28-3-303, MCA

Current through all 2023 legislation, inclusive of the final Chapter 783 of the 68th Legislature's concluded Regular session.

LexisNexis® Montana Code Annotated > Title 28 Contracts and other Obligations (Chs. 1 — 11) > Chapter 3 Interpretation of Contracts (Pts. 1 — 7) > Part 3 Intention of the Parties (§§ 28-3-301 — 28-3-307)

28-3-303 Writing generally to determine intention.

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

History

En. Sec. 2204, Civ. C. 1895; re-en. Sec. 5028, Rev. C. 1907; re-en. Sec. 7530, R.C.M. 1921; Cal. Civ. C. Sec. 1639; Field Civ. C. Sec. 804; re-en. Sec. 7530, R.C.M. 1935; R.C.M. 1947, 13-705.

Annotations

Notes to Decisions

Business & Corporate Law: Corporations: Shareholders: Actions Against Corporations: General Overview

Civil Procedure: Summary Judgment: Standards: General Overview

Civil Procedure: Alternative Dispute Resolution: Arbitrations: Arbitrability

Civil Procedure: Alternative Dispute Resolution: Arbitrations: Federal Arbitration Act: Arbitration Agreements

Contracts Law: Contract Interpretation: General Overview

Contracts Law: Contract Interpretation: Ambiguities & Contra Proferentem

Contracts Law: Contract Interpretation: Ambiguities & Contra Proferentem: General Overview

Contracts Law: Contract Interpretation: Intent

Contracts Law: Contract Interpretation: Parol Evidence: General Overview

Contracts Law: Remedies: Rescission & Redhibition

Energy & Utilities Law: Oil, Gas & Mineral Interests: Royalty Interests

Environmental Law: Natural Resources & Public Lands: Mineral Resources & Mining

Family Law: Marital Duties & Rights: Property Rights: Postnuptial & Separation Agreements: General Overview

APPENDIX "K"

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.

this alleged mitigation evidence, or remand for resentencing. (Pet. at 16-18, Ex. E at 2.) Although he was not competent to enter his guilty pleas as a result of his mental deficiencies, *see* Pet. at 15-16, he does not request to withdraw his guilty pleas, *see id.* at 16-18.)

The purpose of the writ of habeas corpus is "to inquire into the cause of imprisonment or restraint and, if illegal, to be delivered from the imprisonment or restraint." Mont. Code Ann. § 46-22-101(1) (1981). The petitioner bears the burden of proving entitlement to habeas relief. *Miller v. District Court*, 2007 MT 58, ¶ 14, 336 Mont. 207, 154 P.3d 1186. Conclusory allegations are insufficient. *Ellenburg v. Chase*, 2004 MT 66, ¶ 16, 320 Mont. 315, 87 P.3d 473.

> Under Montana's statutory scheme for reviewing claims by convicted offenders, habeas corpus is not the method for collaterally reviewing the conviction or sentence of a person who has been adjudged guilty of a crime and has exhausted direct appeal. Section 46-22-101(2), MCA. Rather, a petition for postconviction relief is the method by which an offender who has been found guilty may collaterally attack his conviction or sentence. Section 46-21-101(1), MCA.

Beach v. State, 2015 MT 118, ¶ 6, 379 Mont. 74, 348 P.3d 629 (*Beach II*).

Pursuant to the law in effect at the time of his offenses, Stanton was required to file a petition for postconviction relief within five years of the date of his conviction. Mont. Code Ann. § 46-21-102 (1981). That time has long since passed. While there was no statutory exception to the time bar in 1982, this Court has recognized two exceptions to the statute of limitations where failure to do so

APPENDIX "L'

APPENDIX 'L"

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

Bridgitt Erickson
PO Box 265
Lincoln, MT 59639

March 12, 2020

Freeman W. Stanton #13817
Montana State Prison
700 Conley Lake Rd.
Deer Lodge, MT 59722

RE: Response to your request for Information

Dear Mr. Stanton:

I have received and reviewed the letter and attached document that you sent me. The "Acknowledgement and Waiver of Rights by Plea of Guilty" is a rudimentary document from back in the "old days" before plea agreement were done as separate documents.

It appears that back in 1982, Butte was using this form with a "fill-in-the-blank" space in paragraph 5 to describe any plea agreement in the case. Recall that in 1982, desktop computers, "PCs," had not yet been invented.)

In this case, the difficulty lies in paragraph 5 in that it says first, there is no sentencing recommendation (i.e., a plea agreement); it is modified by the phrase "except no death penalty" but the primary word "none" makes clear that this was the only term of the agreement. It has your signature and meets the elements of a "quid pro quo" necessary to constitute an agreement.

Again, it is rudimentary, and certainly not the way it would be done since the advent of desktop computers, but it does meet he elements necessary to constitute an agreement in exchange for your guilty plea.

I am sorry this is not an encouraging assessment, but it is honest and impartial. Please convey my best regards to Burly.

Sincerely,

Bridgitt Erickson

APPENDIX 'M"

488 F. 3d 1122, *1130; 2007 U.S. App. LEXIS 11889, **20 Page 10 of 13 Second Column, Second Paragraph.

2007 Mont. Dist. LEXIS 690, *2, Page 2 of 5 First Column, [*3] First Paragraph. Second Column, First Paragraph, First 4 Lines.

533 U.S. *289; 121 S. Ct. 2271, **2271; 150 L. Ed. 2d 347, ***347; 2001 U.S. LEXIS 4670, ****6 Page 12 of 36. Column 1 paragraph 2, See Landgraf, 511 U.S. at 270. IIRIRA's elimination of 212 (c).

APPENDIX 'M"

right." 8 U.S.C. § 1252(d)(1). However, "due process claims . . . are exempt from this administrative exhaustion requirement." Garcia-Ramirez v. Gonzales, 423 F.3d 935, 938 (9th Cir. 2005) ("Retroactivity challenges to immigration laws implicate legitimate due process considerations that need not be exhausted in administrative proceedings because the Board of Immigration Appeals cannot give relief on such claims."). The Government's exhaustion defense is thus foreclosed by Garcia-Ramirez. [11]

Proceeding to the merits, we are guided by our circuit's interpretation of the analytical framework for retroactivity established in Landgraf v. USI Film Products, 511 U.S. 244, 114 S. Ct. 1483, 128 L. Ed. 2d 229 (1994), [**21] and as applied in the immigration context in INS v. St. Cyr, 533 U.S. 289, 121 S. Ct. 2271, 150 L. Ed. 2d 347 (2001). See generally Armendariz-Montoya v. Sonchik, 291 F.3d 1116 (9th Cir. 2002).

HN10[↑] Under the test in *Landgraf*, when a statutory provision lacks an effective date, we first ask whether Congress has prescribed its temporal reach. See 511 U.S. at 280. [12] "If there is no congressional directive on the temporal reach of a statute, we determine whether the application of the statute to the conduct at issue would result in a retroactive effect." Martin v. Hadix, 527 U.S. 343, 352, 119 S. Ct. 1998, 144 L. Ed. 2d 347 (1999) (internal quotation marks omitted). Absent an unmistakable congressional directive, we may determine that a statute is impermissibly retroactive if it "takes away or impairs vested rights acquired under existing laws, or creates a new obligation, imposes a new duty, or attaches a new disability, in respect to transactions or considerations already past." Landgraf, 511 U.S. at 269 (internal quotation marks and citation omitted).

HN11[↑] In the immigration context, the Supreme Court in *St. Cyr* concluded that "IIRIRA's elimination of any possibility of § 212(c) relief for people who entered into plea agreements with the expectation that they would be eligible for such relief clearly 'attaches a new disability, in respect to transactions or considerations already past.'" 533 U.S. at 321 (quoting Landgraf, 511 U.S. at 269). Central to the *St. Cyr* analysis was the nature of the plea agreement and a petitioner's reliance on the pre-IRRIRA availability of § 212(c) relief:

> Plea agreements involve a *quid pro quo* between a criminal defendant and the government. . . . In exchange for some perceived benefit, defendants waive [**23] several of their constitutional rights (including the right to a trial) and grant the government numerous tangible benefits, such as promptly imposed punishment without the expenditure of prosecutorial [*1131] resources. . . . There can be little doubt that, as a general matter, alien defendants considering whether to enter into a plea agreement are acutely aware of the immigration consequences of their convictions. . . . [P]reserving the possibility of such relief would have been one of the principal benefits sought by defendants deciding whether to accept a plea offer or instead to proceed to trial.

Id. at 321-23 (internal quotation marks, citations, and footnotes omitted).

HN12[↑] In our circuit, we have generally limited *St. Cyr* to the factual context of a guilty plea. In *Toia*, we considered a challenge by an LPR to the retroactive application of the bar to § 212(c) relief under § 511(a) of the IMMACT after the petitioner was convicted of a drug-related aggravated felony on a guilty plea in 1989 and sentenced to ten years imprisonment. 334 F.3d at 918. In that case we held that *St. Cyr* compelled making § 212(c) relief available to the alien [**24] despite the pre-IMMACT convictions because his guilty plea evinced the alien's reliance on relief under the then-existing law. Id. at 921 ("Extinguishing the availability of § 212(c) relief for aliens who pleaded guilty . . . upsets 'familiar considerations of fair notice, reasonable reliance, and settled expectations.'") (quoting St. Cyr, 533 U.S. at 323).

Outside of the plea bargain context, however, we have declined to invalidate retroactive elimination of § 212(c) relief. In *Armendariz-Montoya*, we held that there was no impermissibly retroactive effect in applying § 440(d) of AEDPA to a petitioner who was convicted pre-AEDPA after a jury trial for a drug-related aggravated felony, but was still in deportation proceedings when AEDPA was enacted. See 291 F.3d at 1121-22. In that case, we reasoned that aliens who chose to go to trial "cannot

---

[11] Because *Garcia-Ramirez* exempts Petitioner from the exhaustion requirement, we need not address his futility argument.

[12] Here, it is undisputed that the IMMACT provision is ambiguous with respect to whether Congress intended to apply the five-year eligibility bar to aliens whose convictions occurred before the statute's effective date. See Toia, 334 F.3d at 920 ("Section 511(a) lacks clear, strong language, . . . which can be subject to only one interpretation.").

19, 1997. Defendant also completed an Acknowledgement of Waiver of Rights by Plea of Guilty on May 21, 1997. Pursuant to this agreement, in exchange for Defendant's [*3] guilty plea, the charge was reduced from Criminal Sale of Dangerous Drugs to Criminal Possession of Dangerous Drugs. The Plea Agreement and Acknowledgement of Waiver of Rights by Plea of Guilty were complete. The Acknowledgement of Waiver of Rights by Plea of Guilty set forth the charge against Defendant and the maximum possible penalty associated therewith, as well as a recitation of rights he waived by pleading guilty. The Plea Agreement provided the State would recommend the five year maximum sentence permitted by law and Defendant could argue for a lesser sentence. The Plea Agreement stated: Beavers is voluntarily entering into this plea agreement. There have been no threats made against Beavers to accept the agreement. There have been no promises made to Beavers, other than those contained in this agreement. Plea Agreement P 2 (May 20, 1997).

P8. Defendant appeared in Open Court again on May 21, 1997, and was allowed to plead guilty to the lesser charge. During the Change of Plea Hearing on May 21, 1997, Defendant stated he understood the maximum penalty for the Felony Criminal Possession of Dangerous Drugs charge to be five years imprisonment and $ 50,000. Transcr. of Change [*4] of Plea Hrg., Cause No. DC 97-119, pg. 2, Ins. 1-5 (May 21, 1997). Defendant acknowledged receiving and signing the Acknowledgement of Waiver of Rights By Plea of Guilty. *Id.* at pg. 3, Ins. 6-9. Defendant also stated he reviewed the Waiver of Rights by Plea Agreement with his attorney. *Id.* at pg. 3, Ins. 10-12. In the Acknowledgement of Waiver of Rights by Plea of Guilty, Defendant stated he was satisfied with the services of his attorney. When asked if he understood the contents of the Plea Agreement he responded "Yes." *Id.* at pg. 3, Ins. 13, 14. Defendant acknowledged giving up his right to a jury trial and all other rights contained in the Waiver of Rights by Plea Agreement, he acknowledged he knew the State would recommend the maximum sentence permitted for a Felony Criminal Possession of Dangerous Drugs charge. *Id.* at pg. 3 Ins. 15-22. When asked if he fully understood that the Court did not have to follow the recommendations set forth in the Plea Agreement and if the Court did not follow the recommendations Defendant could not withdraw his guilty plea Defendant responded "Yes, Your Honor." *Id.* at pg. 3, In. 23-pg. 4, In. 3. Defendant stated he still wished to pursue a plea of [*5] guilty after Judge Barz finished verifying he understood the Plea Agreement and its consequences. *Id.* at pg. 3, Ins. 4, 5. Defendant admitted to the charge and admitted the drug found in his possession was cocaine. *Id.* at pg. 3, In. 6 - pg. 4, In. 3.

P9. Without objection to pronouncement of his sentence, Defendant was sentenced for the August 22, 1995, drug offense on July 2, 1997. Judge Barz followed the recommendations contained in the Plea Agreement, and sentenced Defendant to five years in the Montana State Prison, all suspended.

P10. On January 23, 1998, Defendant was charged in federal court with three counts of Criminal Distribution of Dangerous Drugs stemming from the November 1996 drug sales to confidential informants. Defendant entered into a plea agreement and pled guilty to Count I of the indictment and Counts II and III were dismissed. As part of the Plea" Agreement, the United States recommended probation and asked for downward departure to a guideline range that permitted probation. Judge Shanstrom sentenced Defendant in accordance with the United States' recommendation. Defendant was sentenced to time served and a three year supervised release sentence.

not shown by the comprehensiveness of IIRIRA's revision of federal immigration law, see *Landgraf v. USI Film Products, 511 U.S. 244, 260-261, 128 L. Ed. 2d 229, 114 S. Ct. 1483*, by the promulgation of IIRIRA's effective date, see *id. at 257*, or by IIRIRA § 309(c)(1)'s "saving provision." Pp. 24-30.

(b) The second step is to determine whether IIRIRA attaches new legal consequences to events completed before its enactment, a judgment informed and guided by considerations of fair notice, reasonable reliance, and settled expectations. *Landgraf, 511 U.S. at 270*. IIRIRA's elimination of § 212(c) relief for people who entered into plea agreements expecting that they would be eligible for such relief clearly attaches a new disability to past transactions or considerations. Plea agreements involve a *quid pro* **[****7]** *quo* between a criminal defendant and the government, and there is little doubt that alien defendants considering whether to enter into such agreements are acutely aware of their convictions' immigration consequences. The potential for unfairness to people like St. Cyr is significant and manifest. Now that prosecutors have received the benefit of plea agreements, facilitated by the aliens' belief in their continued eligibility for § 212(c) relief, it would be contrary to considerations of fair notice, reasonable reliance, and settled expectations to hold that IIRIRA deprives them of any possibility of such relief. The INS' argument that application of deportation law can never have retroactive effect because deportation proceedings are inherently prospective is not particularly helpful in undertaking *Landgraf*'s analysis, and the fact that deportation is not punishment for past crimes does not mean that the Court cannot consider an alien's reasonable reliance on the continued availability of discretionary relief from deportation when deciding the retroactive effect of eliminating such relief. That § 212(c) relief is discretionary does not affect the propriety of this Court's **[****8]** conclusion, for there is a clear difference between facing possible deportation and facing certain deportation. Pp. 30-36.

229 F.3d 406, affirmed.

Counsel: Edwin S. Kneedler argued the cause for petitioner.

Lucas Guttentag argued the cause for respondent.

Judges: STEVENS, J., delivered the opinion of the Court, in which KENNEDY, SOUTER, GINSBURG, and BREYER, JJ., joined. O'CONNOR, J., filed a dissenting opinion. SCALIA, J., filed a dissenting opinion, in which REHNQUIST, C. J., and THOMAS, J., joined, and in which O'CONNOR, J., joined, as to Parts I and III.

Opinion by: STEVENS

Opinion

[*357] [**2275] [*292]** JUSTICE STEVENS delivered the opinion of the Court.

LEdHN[1A][↑] [1A] *LEdHN[2A]*[↑] [2A]Both the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), enacted on April 24, 1996, 110 Stat. 1214, and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), enacted on September 30, 1996, 110 Stat. 3009-546, contain comprehensive amendments to the Immigration and Nationality Act (INA), 66 Stat. 163, as amended, *8 U.S.C. § 1101 et seq.* This case raises two important questions about the impact of those amendments. The first question is a procedural one, concerning the effect of those amendments on the availability of habeas corpus jurisdiction under *28 U.S.C. § 2241*. **[****9]** The second question is a substantive one, concerning the impact of the amendments on conduct that occurred before **[*293]** their enactment and on the availability of discretionary relief from deportation.

Respondent, Enrico St. Cyr, is a citizen of Haiti who was admitted to the United States as a lawful permanent resident in 1986. Ten years later, on March 8, 1996, he pled guilty in a state court to a charge of selling a controlled substance in violation of Connecticut law. That conviction made him deportable. Under pre-AEDPA law applicable at the time of his conviction, St. Cyr would have been eligible for a waiver of deportation at the discretion of the Attorney General. However, removal proceedings against him were not commenced until April 10, 1997, after both AEDPA and IIRIRA became effective, and, as the Attorney General interprets those statutes, he no longer has discretion to grant such a waiver.

In his habeas corpus petition, respondent has alleged that the restrictions on discretionary relief from deportation contained in the 1996 statutes do not apply to removal proceedings brought against an alien who pled guilty to a deportable crime before their enactment. The District Court **[****10]** accepted jurisdiction of his application and agreed with his submission. In accord with the decisions of four other Circuits, the Court of