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FILED
OCT 23 2024
OFFICE OF THE CLERK,
SUPREME COURT U.S.

IN THE
SUPREME COURT OF THE UNITED STATES

Benny Roe Stewart - Petitioner

V.

Jim Salmonsen, Warden
Montana State Prison - Respondent

ON PETITION FOR WRIT OF CERTIORARI TO
THE SUPREME COURT OF THE STATE OF MONTANA

PETITION FOR WRIT OF CERTIORARI

Benny Roe Stewart
#3007159
Montana State Prison
700 Conley Lake Road
Deer Lodge, MT 59722

(406) 846-1320

QUESTION PRESENTED

1. The validity of Montana Statute M.C.A. (46-22-101) (1) and M.C.A. (46-22-101 (2) is drawn in question on the ground of its being repugnant to the Constitution, or laws of the United States whenever lack of Subject Matter Jurisdiction is raised against the sentencing court, which violates:
2. Due Process of the law
3. Equal Protection of the law.

LIST OF PARTIES

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

RELATED CASES

2015, CV 15-36-BU-DLC-JCL	Stewart V. Green
2016, 16-35779 Ninth Circuit	Stewart V. Green
2016, 16-91000 U.S. S.Ct.	Stewart V. Green
2018, 18-9561 U.S. S.Ct.	In Re Benny Stewart
2009, DC-09-194 Second Judicial District Court,	State V. Stewart

INDEX TO APPENDICES

Appendix A - In the Supreme Court of the State of Montana, order, in Cause No. OP 24-0582, Petition for Writ of Habeas Corpus, filed October 23, 2024.

Appendix B - In the Supreme Court of the State of Montana, Cause No. OP 24-0582, Petition for Writ of Habeas Corpus, filed October 02, 2024.

Appendix C - U.S. District Court, District of Montana (Butte), Civil Docket for Case No. 2:15-CV-00036-DLC-JCL.

TABLE OF AUTHORITIES CITED

Cases	Page Number
State v. Abe, 2001 MT 260	3
Lee v. Lee, 2000 MT 67	3

STATUTES AND RULES

- M.C.A. 46-22-101 (1)
- M.C.A. 46-22-101 (2)

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 State Courts:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is reported at Stewart V. Jim Salmonsen, Warden Montana State Prison, 2024 Mont. Lexis 1163.

STATEMENT OF THE CASE

Montana Statute, M.C.A. 46-22-101 (1) and M.C.A. 46-22-101 (2) are in conflict with the United States Constitution, Amendments 5 & 14 Due Process of Law and Equal Protection of the Law, whenever lack of Subject Matter Jurisdiction is raised against the sentencing court.

46-22-101 - Applicability of Writ of Habeas Corpus.

(1) Except as provided in subsection (2), every person imprisoned or otherwise restrained of liberty within this state may prosecute a Writ of Habeas Corpus to inquire into the cause of imprisonment or restraint and, if illegal, to be delivered from the imprisonment or restraint.

(2) The 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. The relief under this chapter is not available to attack the legality of an order revoking a suspended or deferred sentence.

State V. Abe, 2001 MT 260

HN6 - Lack of Subject Matter Jurisdiction can be raised at anytime. Rule 12 (h)(3) M.R.CIV.P..

Lee V. Lee, 2000 MT 67

[*P20] HN2 In order for a court to act within its jurisdiction, it must have: (1) cognizance of the subject matter; (2) presence of the proper parties; and (3) the courts action must be invoked by proper pleadings and the judgment within the issues raised.

State ex rel. Porter V. First Judicial Dist. (1950), 123 Mont. 447, 454, 215 P.2d 279, 283. A court lacks or exceeds such jurisdiction by any acts which exceed the defined power of a court in any instances, whether that power be defined by constitutional provision, express statutory declaration, or rules developed by the courts and followed under the doctrine of stare decisis.

Montana courts have a history of not adhering to the laws of Montana and the United States Constitution. The Montana Supreme Court has stated in many cases that, the lack of Subject Matter Jurisdiction can be raised at anytime in both criminal and civil cases which mirror this Honorable Court's decision's. Therefore, Subject Matter Jurisdiction cannot be procedurally barred by the restrictions of M.C.A. (46-22-101) (1) and M.C.A. (46-22-101) (2).

The Montana Supreme Court has denied Benny Roe Stewart the right to Due Process of Law and Equal Protection of the Law in it's denial of Benny Roe Stewart's petition for Writ of Habeas Corpus in Cause Number OP 24-0582 dated the 23rd day of October, 2024. The Montana Supreme Court's decision was based on the restrictions of M.C.A. (46-22-101) (1) and M.C.A. (46-22-101) (2), which allowed the court to avoid debating the merits of Benny Roe Stewart's petition for Writ of Habeas Corpus. This action by the Montana Supreme Court violated Benny Roe Stewart's right to Due Process and Equal Protection of the Law as provided by the United States Constitution. See Appendix A.

Benny Roe Stewart was not adjudged guilty of an offense in a court of record having Subject Matter Jurisdiction to pronounce judgment and sentence on Benny Roe Stewart in Cause Number DC-09-194. Therefore, the petition for Writ of Habeas Corpus is proper. See Appendix B.

After this Honorable Court's decision of M.C.A. (46-22-101) (1) and M.C.A. (46-22-101) (2), Benny Roe Stewart requests this Honorable

court to reach the merits of the petition for Writ of Habeas Corpus in Cause Number OP-24-0582. (Appendix B).

Petitioner, Benny Roe Stewart would move this Honorable Court to compel the State of Montana or the U.S. District Court for the District of Montana-Butte, to transfer the electronic record which includes trial transcripts in State Cause Number DC-09-194 or U.S. District Court Cause Number CV 15-36-BU-DLC-JCL, to this Honorable Court. (see Appendix C, page 3).

The affect of this Honorable Court's decision would go far beyond Benny Roe Stewart. It would assure that all citizens of the State of Montana and the citizens of the United States that travel to the State of Montana have the protected rights of the United States Constitution.

REASONS FOR GRANTING THE PETITION

Montana Statute, M.C.A. 46-22-101 (1) and M.C.A. 46-22-101 (2) are in conflict with the United States Constitution, Amendments 5 & 14 Due Process of Law and Equal Protection of the Law, whenever lack of Subject Matter Jurisdiction is raised against the sentencing court.

Benny Roe Stewart was not adjudged guilty of an offense in a court of record having Subject Matter Jurisdiction to pronounce judgment and sentence on Benny Roe Stewart in Cause Number DC-09-194, violating Benny Roe Stewart's Due Process of Law and Equal Protection of the Law as provided by the United States Constitution.

Benny Roe Stewart has worked diligently to correct these grievous wrongs without abusing the judicial system.

The affect of this Honorable Court's decision would go far beyond Benny Roe Stewart. It would assure that all citizens of the State of Montana and the citizens of the United States that travel to the State of Montana have the protected rights of the United States Constitution.

CONCLUSION

The Petition for a Writ of Certiorari should be granted.

Respectfully Submitted

Benny Roe Stewart

Benny Roe Stewart

Date: October 28th, 2024