

NO. 17-6595

JANUARY TERM, 2018

In The Supreme Court of the United States

WILLIAM A. LINDSEY, Petitioner

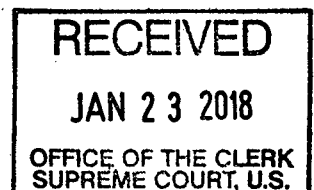
v.

STATE OF COLORADO, Respondent(s)

*On Petition for Writ of Certiorari to the
State of Colorado Supreme Court*

MOTION FOR LEAVE TO FILE PETITION FOR REHEARING

The Petitioner, William A. Lindsey, unrepresented, moves that this court grant leave to file a Petition for Rehearing of the denial by this Court of Petition for a Writ of Certiorari to the United States Supreme Court.



CERTIFICATION: Petitioner, William A. Lindsey, an inmate, unrepresented by counsel, presents this in good faith and not for delay.

The accompanying petition sets out intervening circumstances which represent substantial grounds for granting the Petition for Rehearing and for Writ of Certiorari.

Pursuant to Rule [12.2], application is hereby made to [suspend] the order denying the Petition for Certiorari, pending the filing and final disposition of the Petition for Rehearing which it is contemplated will be filed with this Motion by Petitioner. It is intended that such a Petition for Rehearing is based on grounds permitted by Rule [44.1]. One of the grounds included in such Petition for Rehearing relates to this Court's recent ruling in *Rippo v. Baker*, 137 S. Ct. 905 (U.S. 2017) which was not available to the Petitioner because of limitations of the Bent County Correctional Facility law library, in which Petitioner is only allowed (1) one, (3) three hour appointment for research per week, and the legal research database is updated (2) two times per year, resulting in him not having the holding in *Rippo* at the time he prepared the Writ of Certiorari, as it relates to the legal sufficiency of a motion to recuse and the effect that trial court's failure to rule has broad reaching effects on not just Petitioner but all litigants in the state.

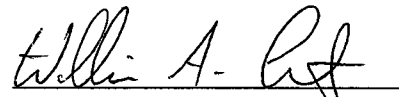
As more fully set forth in his Petition for Rehearing which Petitioner incorporates herein by reference, Petitioner asserts good and sufficient grounds for entry of an Order suspending the January 8, 2018 Order which denied his Petition for Writ of Certiorari. Petitioner requests leave to file a Petition for Rehearing in forma pauperis and that this Court liberally construe his

constitutional allegations by reason he is unrepresented by counsel and not trained in the legal lexicon. See *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972); *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991).

Included with this motion is (1) Petition for Rehearing pursuant to Rule 44; (2) a copy of the original Motion to Disqualify and accompanying affidavits (minus evidence); and (3) Order from District Court Judge for the Court's convenience.

Completed on this 18th day of January, 2018.

Respectfully submitted,



WILLIAM A. LINDSEY

DOC# 169718

Unrepresented Inmate

Bent County Correctional Facility

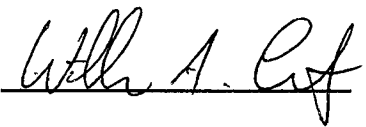
11560 CO. RD. FF. 75

Las Animas, CO 81054

CERTIFICATION OF TRUTH

I, William A. Lindsey, hereby, certify under penalty of perjury that the foregoing is true and correct to the best of my knowledge. See 28 U.S.C. § 1746; 18 U.S.C. § 1621.

Executed on: January 18, 2018

Signed
Affiant: 

NO. 17-6595

JANUARY TERM, 2018

In The Supreme Court of the United States

WILLIAM A. LINDSEY, Petitioner

v.

STATE OF COLORADO, Respondent(s)

*On Petition for Writ of Certiorari to the
State of Colorado Supreme Court*

PETITION FOR REHEARING PURSUANT SUPREME COURT RULE 44

Petitioner respectfully requests that this Court grant Rehearing of it's Order dated January 8th, 2018, which denied Certiorari. The Petition for Certiorari previously filed herein presented three questions. The Petition for Certiorari discussed the importance of the judge's failure, and the Colorado Supreme Court's failure to entertain motion to recuse and does Colorado Supreme

Court's passing on the legal question violate Due Process Clause and it's impact upon the administration of justice in the Colorado Courts. It is clear that the trial judge's standards differ significantly. There is a distinct and difference in the standard trial judge applied in this case and authority held by State's highest Court and this Court. This Court should resolve the conflicting standard by granting this Petition for Rehearing and Writ of Certiorari to the Lindsey case.

The question presented herein was not previously present.

Petitioner, William A. Lindsey, respectfully moves this Court for an Order vacating the denial of his Petition for Writ of Certiorari, and granting the Petition for Rehearing. This Petition is made upon the grounds that this Court's decision of granting Certiorari in a similar case *Rippo v. Baker*, 137 S. Ct. 905 (U.S. 2017), clearly establishes that the United States Supreme Court held (1) that "... the Due Process Clause may sometimes demand recusal even when a judge " 'ha[s] no actual bias,' "... Recusal is required, when, objectively speaking," the probability of actual bias on the part of the judge or decision maker is too high to be constitutionally tolerable." **Id.** @ **907**; (2) "[A]ffidavits and Certificate of good faith of counsel, being legally sufficient in establishing that the judge's impartiality might reasonably be questioned, required that the judge disqualify himself ..." The *Spires* Court held, "... allegations contained in the Affidavits must be taken as true and the Court has "no power" or "authority" to contest in any way what-so-ever the necessary acceptance of truthfulness of the facts alleged ..." *Spires v. Hearst Corp.*, 420 F. Supp. 304, 306 (*emphasis added*) and; (3) When ruling on a motion to disqualify a judge, a trial court must accept as true the factual statements contained in the motion and supporting affidavits; the

trial court must determine as a **matter of law** whether the statements allege legally sufficient facts to warrant disqualification. *People v. Hagas*, App. 2009, 250 P.3d 596, modified on denial of rehearing, certiorari denied 2010 WL 3529276, certiorari denied 131 S. Ct. 1701, 562 U.S. 1297, 179 L.Ed.2d 634, habeas corpus denied 2013 WL 674026, appeal dismissed 548 Fed. Appx. 540, 2013 WL 6404957, certiorari denied 135 S. Ct. 340, 190 L.Ed.2d 146. (Emphasis added)

I. In Granting Statutory Right State Must Conform To Federal Equality, Fairness and Due Process Rights. When A Judge's Impartiality Is Challenged.

The opportunity to disqualify a judge is statutory and not a constitutional right, except as it may be implicit in a right to a fair trial. *Hirning v. Dooley*, 2004 SD 52, 679 N.W.2d 771 (S.D. 2004). However, Colorado provides as a right, recusal of a judge when certain conditions exist and the procedure to do so. This Court held in *Griffin v. Illinois* (citations omitted), that when a state provides a statutory right, that right must comport to the 14th Amendment of the United States Supreme Court.

In Colorado, Section 16-2-201; and Criminal Procedure Rule 21(b) is the only remedy to compel assertedly disqualified judge to recuse self or certify his disqualification. Under these statutes, the judge is required to treat as true the facts are legally sufficient to support a rational inference of bias that will prevent the judge from dealing fairly with the movant, and if the facts evidence bias; it is an abuse of discretion for the judge to refuse to withdraw from the case.

Venard v. Department of Corrections, 72 P.3d 446 (Colo. Ct. App. 2003). Section 16-6-201(3)

reads in pertinent part,

“A motion for change of judge on any grounds must be verified and supported by the affidavits of at least two credible persons not related to the defendant, stating facts showing existence of grounds for disqualification. If the verified motion and supporting affidavits state facts showing grounds for disqualification, the judge must enter an order disqualifying himself.”

Rule 21(3) provides the same,

“Upon the filing of a motion under this section (b), all other proceedings in the case shall be suspended until a ruling is made thereon. If the motion and supporting affidavits state facts showing grounds for disqualification, the judge shall immediately enter an order disqualifying himself or herself.”

The statutes provide that if a substitution motion and affidavits for cause is procedurally sound, the judge must either voluntarily disqualify himself, or request the Chief Judge to assign another judge to hear the motion, and the judge may contradict the motion, and any factual disputes may require an evidentiary hearing, which should be conducted before another judge.

Additionally, Colorado provides that, “[a] judge must consider the Code of Judicial Conduct [2.11] sua sponta or in response to a disqualification motion in determining whether to serve on the case. Colorado Code of Judicial Conduct 2.11; *People v. Julien*, 2002, 47 P.3d 1194, modified on denial or rehearing; on remand 2002 WL 2027533, rehearing denied, certiorari denied.

II. Federal Constitution, State Law, And Court Rule Do Not Allow Discretion To Deny Legally Sufficient Motion to Disqualify Less Citizens Rights Suffer.

Petitioner on June 6, 2017, submit Motion for Disqualification with accompanying affidavits from (2) two Federal Investigators and (1) one Federal Employee who are not related to him in full compliance to statutory requirements, stating in good faith the reason of good cause why it was filed outside of the 14 day time recommendations in Rule 21(b)(1). Subsequently, trial judge denied motion not ruling on the legal sufficiency only choosing to attack the truthfulness of motion and affidavits.

It is clear that trial judge's ruling differs significantly from state, and this Court's standards. There is a distinct and significant difference in the standard trial judge Todd L. Vriesman applied in this case and the authority held by State highest Court, this Court, and other jurisdictions. This Court should resolve the conflicting standards by granting Petition for Rehearing and Certiorari to the Lindsey case on the following grounds:

On Motion to Disqualify judge, Court must look solely to sufficiency of motion and accompanying affidavits. *People in the Interest of A.L.C.*, App. 1982, 660 P.2d 917. And determining whether motion for substitution of judge is legally sufficient, trial court may consider only motion and affidavits and must accept facts contained in those documents as true. *Comisky v. District Court In and For County of Pueblo*, 1996, 926 P.2d 539, rehearing denied. Further, trial judge has no discretion in the matter of recusing himself upon finding the affidavits sufficient to allege prejudice; trial judge immediately loses all jurisdiction in the matter except to

grant the change. *People v. District Court In and For Third Judicial District*, 1977 560 P.2d 828, 192 Colo. 503.

The sufficiency of the petition and affidavits supporting the same, in an application for change of judge in a criminal case on the grounds of bias or prejudice is a question of law. If the trial Court passes upon the question, it's finding has no bearing upon the issue when the question is presented to a higher tribunal for review. *People ex rel. Burke v. District Court of Third Judicial District*, 1915, 152 P. 149, 60 Colo. 1. A trial judge's [lack of a] decision regarding the legal sufficiency of a motion for substitution of judge is a question of law subject to de novo review. *People v. Thoro Products Co.*, App. 2001, 45 P.3d 737, certiorari granted, modified on denial of rehearing, affirmed 70 P.3d 369. Finally the state held, "[i]n reviewing trial court's consideration of motion for disqualification and accompanying affidavits, Supreme Court must take facts asserted in motions and affidavits as true. *Klinck v. District Court of Eighteenth Judicial District*, 1994, 874 P.2d 1270 (Rule made absolute).

Other jurisdictions have held under Code of Judicial Conduct, judge's having knowledge of a grounds for self-disqualification must disqualify themselves on their own motion, regardless of a request to do so. *Bailey v. Duling*, 2013 S.D. 15, 827 N.W. 2d 351 (S.D. 2013). At a minimum, procedural due process requires a hearing before an impartial tribunal. United States Constitution Amendment 14; *Shanko v. Lake County*, 116 F. Supp.3d 1055 (N.D. Cal. 2015). While the right of a litigant to unilaterally disqualify a judge is one of the keystones of our legal administrative edifice, the power to disqualify a judge is a privilege and may not be used to achieve irrational

ends. Recusal is left to the discretion of the trial judge, whose decision will not be reversed absent a showing of an abuse of discretion. *Kaufman v. Court of Appeals*, 31 Cal. 3d 933, 184 Cal. Rptr. 302, 647 P.2d 1081 (1982); *Haddad v. Gonzalez*, Mass. 855, 576 N.E.2d 658 (1991). While it is established that to be entitled to relief ordering recusal, the Petitioner must establish a clear indisputable right to such relief. *Armstrong v. Cornish*, 102 Fed. Appx. 118 (10th Cir. 2004).

Applying the United States Constitution Due Process Clause, this Court's holdings, state law and authority; trial court deprived Due Process by passing on the legal sufficiency of the motion and affidavits and the determination of the legal sufficiency of an application for disqualification does not involve the exercise of judicial discretion. A challenge to an assigned judge for want of impartiality presents an issue of constitutional dimension. United States Constitution 14th Amendment 2 §§ 6, 7; *Fields v. Saunders*, 2012 OK 17, 278 P.3d 577 (Okla. 2012). This is an impermissible situation which endangers the rights of all litigants in the state not only the Petitioner, by reason the sacred power of a judge unchecked leads to a very dark and hopeless place for all citizens.

It is consistently held in all jurisdictions but most aptly stated by the *First District Court*, [I]f the affidavit is untimely or legally insufficient on its face, the challenged jurist may strike it, despite a proscription against him ruling on his own disqualification. A judge who looks beyond the mere legal sufficiency of the motion and attempts to refute charges of prejudice has exceeded

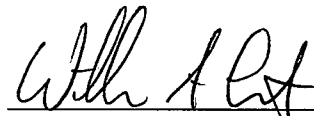
the proper scope of his inquiry, and “this alone mandates recusal.” *Lee Memorial Health System v. State, Agency for Health Care Admin.*, 910 So.2d 892 (Fla. Dist. Ct. App. 1st Dist. 2005).

CONCLUSION

Although Constitutional Amendment, authority, and rule of law mandate that the question of the legal sufficiency of a recusal be addressed it has not in any way shape or form been dealt with in this case and that created a clear and express conflict of the decision by trial judge contrary to State and this Court on this important question affects all litigants in the state. Compelling reasons are evident why the question presented should be reviewed definitively by this Court.

For the reasons set forth in this Petition for Rehearing, as well as in the Petition for Writ of Certiorari previously filed, Rehearing and Certiorari should now be granted to ensure the rights of all citizens are upheld before state court judges.

Respectfully submitted,



WILLIAM A. LINDSEY

DOC# 169718

Unrepresented Inmate

Bent County Correctional Facility

11560 CO. RD. FF. 75

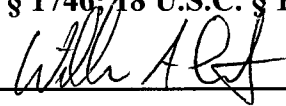
Las Animas, CO 81054

CERTIFICATION OF TRUTH

I, William A. Lindsey, hereby, certify under penalty of perjury that the foregoing is true and correct to the best of my knowledge. See 28 U.S.C. § 1746; 18 U.S.C. § 1621.

Executed on: January 18, 2018

Signed Affiant:

_____