

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Freeman William Stanton

(Your Name) — PETITIONER
PRO Se

Michael Fletcher, ^{vs.} Warden,
Montana State Prison; et al;

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

9TH Circuit Court of Appeals, San Francisco, California

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Freeman William Stanton

(Your Name)

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(Address)

Deer Lodge, Montana 59722

(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

1. WHETHER OR NOT THE PETITIONER IS ENTITLED TO RELIEF SINCE THE DISCOVERY OF "NEWLY DISCOVERED EVIDENCE" REGARDING THE PETITIONERS PHYSICAL AND MENTAL IMPAIRMENTS WERE NOT KNOWN TO THE STATE OR THE PETITIONER AND HIS COUNSEL AT THE TIME OF SENTENCING.
2. WHETHER OR NOT THE PETITIONER IS ENTITLED TO RELIEF REGARDING THE INADEQUACY OF HIS PLEA BARGAIN DUE TO THE NEWLY DISCOVERED EVIDENCE SURROUNDING HIS HISTORY OF PHYSICAL AND MENTAL IMPAIRMENTS UNKNOWN TO HIM OR THE STATE AT THE TIME OF SENTENCING.
3. WHETHER OR NOT THE PETITIONER IS ENTITLED TO HAVE ALL SENTENCES ORDERED TO RUN "CONCURRENT" SINCE NO MENTION OF "CONCURRENT" OR "CONSECUTIVE" SENTENCES WERE EVEN MENTIONED IN HIS PLEA AGREEMENT OFFER. IN ADDITION THERE ARE MITIGATING CIRCUMSTANCES.
4. WHETHER OR NOT THE PETITIONER IS ENTITLED TO HAVE HIS "NO PAROLE" stipulation removed after 35 YEARS OF INCARCERATION SINCE THE MONTANA SUPREME COURT JUST RECENTLY REMANDED HIS CASE BACK TO THE DISTRICT COURT AND ORDERED THE COURT TO REMOVE THE 100 YEAR CONSECUTIVE SENTENCE FOR PFO ((PERSISTENT FELONY OFFENDER)). PETITIONER WAS SENTENCED BEFORE 1989 which CREATED A FEDERAL LIBERTY INTEREST IN PAROLE.

1. PETITION FOR A WRIT OF CERTIORARI.

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:

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2008 EEOC Regulations similarly defined "Physical or Mental Impairments" as any mental or psychological disorder, such as disabilities 29 C.F.R. 1630, 2(h) (2008). See Appendix "I" and, Zukle v. Regents of Univ of CA, 166 F3d 1041, 1046 (9th Cir. 1999) See "Appendix I".

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

☐ For cases from **federal courts**:

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

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

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

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

☐ For cases from **state courts**:

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

☐ reported at _____; or,

☒ has been designated for publication but is not yet reported; or,

☐ is unpublished.

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

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was September 7th, 2017.

☐ 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: October 3rd, 2017, and a copy of the order denying rehearing appears at Appendix D.

☐ 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 September 6th, 2016.
A copy of that decision appears at Appendix C.

☐ 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).

PETITION FOR A WRIT OF CERTIORARI

Petitioner Freeman William Stanton respectfully petitions for a writ of certiorari to review the judgement of the United States Court of Appeals for the Ninth Circuit, denying Petitioner's application for Certificate of Appealability.

STATEMENT OF JURISDICTION

The District Court and the Court of Appeals for the Ninth Circuit denied Petitioner's request for Certificate of Appealability. In Hohn v. United States, 524 U.S. 236 (1998); this Court held that, pursuant to 28 USC 1254(1), the United States Supreme Court has jurisdiction, on certiorari, to review a denial of a request for Certificate of Appealability by a circuit judge or panel of a Federal Court of Appeals.

Standard of Review:

DENIAL OF CERTIFICATE OF APPEALABILITY

In Miller-El v. Cockrell, 537 U.S. 322, 123 S.Ct. 1029 (2003), this Court clarified the standards for issuance of a Certificate of Appealability [hereafter "COA"];

A prisoner seeking a COA need only demonstrate a "substantial showing of the denial of a constitutional right". A petitioner satisfies this standard by demonstrating that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further....

Id., 123 S.Ct. at 1034, citing Slack v. McDaniel, 529 U.S. 473, 484 (2000).

Petitioner asserts the Ninth Circuit Court of Appeals failed to to grant Petitioner's ["COA"] to consider the ISSUES PRESENTED in his Writ of Certiorari to see if in fact if his Constitutional Rights were violated and if the Ninth Circuit and U.S. District Court has decided an important Federal Question in a way that conflicts with relevant decisions of this Court and the U.S. Constitution.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution

Amendment (5) Due Process of Law

Amendment (6) Effective Assistance of Counsel

Amendment (14) Equal Protection of the Laws

Constitutional Entitlement to Plea Bargain Agreement

STATEMENT OF THE CASE

Petitioner was charged by information on May 6th, 1982, for the following charges:

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

Count II: Aggravated kidnapping, a violation of Section 45-5-303 (1) (a), MCA, 1981.

Count III: 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.

STATEMENT OF FACTS

On June 18th, 1982, the Petitioner was sentenced to the following years for the charges mentioned supra in the Information:

Count I: Robbery, forty (40) years, Montana State Prison.

Count II: Aggravated Kidnapping, One Hundred Years (100), Montana State Prison.

Count III: Sexual Intercourse Without Consent, forty (40) years, Montana State Prison.

Count IV: Attempted Deliberate Homicide, One Hundred (100) years, Montana State Prison.

Count V: Theft, Ten (10) years, Montana State Prison.

All sentences were Ordered "consecutively". Finally, the Petitioner was sentenced to an additional One Hundred (100) years

as a "Persistent Felony Offender" to run "consecutive" to the five consecutive sentences supra.

The Petitioner filed a Writ of Habeas Corpus in the Montana Supreme Court challenging the legality of his One Hundred (100) year sentence designation as a "Persistent Felony Offender". The Montana Supreme Court granted Petitioner's Writ of Habeas Corpus in part and Ordered the Second Judicial District Court to enter an Amended Judgement, striking the portion of the sentence that imposes upon the Petitioner a Persistent Felony Offender status and an associated prison sentence "for an additional term of One Hundred (100) years". See Appendix "C" attached hereto. This Order was ordered on September 6th, 2016.

On September 27th, 2016, the Second Judicial District Court Ordered the Amended Judgement. See Appendix "E" attached hereto.

The Court also stipulated in Petitioner's original Sentencing Judgement Order that the Petitioner be designated a "dangerous offender" contrary to Petitioner's original Plea Agreement which will be reflected infra.

In addition, the Sentencing Court also stipulated the Petitioner be ineligible for parole. See Appendix "F" attached hereto. Every aspect of the Petitioner's Sentencing and Judgement Order are contrary to Petitioner's Plea Agreement. These issues will also be addressed in the Argument of this Petition infra. See Appendix " " attached hereto.

ARGUMENT

Petitioner presents a prima facie case in the Petition for his

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Writ for Certiorari containing prima facie evidence good and sufficient on its face.

Such evidence as, in the judgement of the law, is sufficient to establish a given fact, or the group or chain of facts constituting the Petitioner's claim or defense, and which if not, rebutted or contradicted, will remain sufficient.

Such evidence is sufficient to sustain a judgement in favor of the issue which it supports. Once a trier of fact is faced with conflicting evidence, it must weigh the prima facie evidence with all the other probative evidence that was presented.

In the instant case, the Petitioner suffered from mental and physical impairments unknown to him until recently which will be supported with Appendixs' herein infra.

Evidence of mental disease or defect or developmental disability is admissible to prove state of mind pursuant to 46-14-102, MCA. If the Petitioner suffered from a mental disease or developmental disability, then this evidence should be admissible in order to prove that the Petitioner did or did not have a state of mind that is an element of the offenses he committed.

All of the newly discovered evidence regarding the relevance of mental disease or defect is in fact "relevant evidence". Relevant evidence is evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

All evidence (relevant) is admissible, except as otherwise pro-

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vided by constitution, statute, or other Rules applicable in the Court's of the State.

Petitioner will be introducing his newly discovered evidence infra pursuant to the M.R.Ev., Rule 1004. The newly discovered evidence regarding the Petitioner's physical & mental impairments are the copies of the original documents by school psychologist's when he was in public school and by professional psychologist's and medical consultants of the United States Air Force all of which were just recently discovered. This evidence is also in accordance with M.R. Ev., Rule 1005.

Had these newly discovered evidence documents been available at Petitioner's plea bargain phase of his trial, as well as his sentencing phase, it is clearly evident that there would have been a completely different outcome, i.e., lenght of sentences.

Pursuant to 46-14-311, MCA, none of these considerations were taken into account because this crucial evidence was not available at the time. The capacity of the Petitioner to appreciate the criminality of the Petitioner's conduct or to conform the Petitioner's conduct to the requirements of the law was substantially impaired, 46-18-304, MCA.

Petitioner asserts that this present case with newly discovered evidence is proper for reopening and addressing the issues presented in this Writ. Because this newly discovered evidence was never available to the Petitioner, some of which was actually hidden from him until the United States Air Force Medical Consultant discovered negligence and/or malice regarding physical and

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mental impairments, this should entitle the Petitioner to a re-opening of his case under newly discovered evidence provision of Rule 60(b), M.R.Civ.P. See Nicholson v. Cannon, 207 M 476, 674 P.2d 506, 41 St. Rep. (1984).

The Ninth Circuit has recognized that a learning disability can constitute a disability under the ADA's definition. Other Court's, in conducting individualized inquiries, have assessed the degree to which a mental impairment someones ability to learn or work.

It is clearly evident that the Petitioner suffered from major mental impairments during his time in school as a child and teenager. Had the Petitioner been aware of these psychological tests there is the very good possibility that he could and would have conveyed this information to his defense counsel so that his counsel could have motioned the Court for the appropriate psychological examinations which is his constitutional right. See Appendix "G" attached hereto.

Petitioner was totally unaware of his mental disabilities until he attempted and acquired his application for his Military Record regarding an unrelated matter surrounding the status of his military service through the VA (Veterans Administration). See Appendix "H" attached hereto. Specifically, page 2, paragraph 2, and page 3, paragraph 3.

According to the Federal Regulations promulgated under the ADA indicate that mental impairments include "any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities."

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The Ninth Circuit has recognized that a learning disability can constitute a disability under the ADA's definition. See Zukle v. Regents of Univ. of California, 166 F.3d 1041, 1046 (9th Cir. 1999). See Appendix "I" attached hereto.

Also, the 2008 EEOC regulations similarly defined "physical or mental impairments" as: Any mental or psychological disorder, such as disabilities. 29 C.F.R. 1630.2(h) (2008). Again, See Appendix "I".

Evidence is material only if it is offered to prove or disprove an element of a legally cognizable claim, offense, or defense that has been raised in the parties pleadings. The Petitioner has in fact raised a cognizable claim regarding the newly discovered evidence surrounding his mental disabilities and any reasonable capabilities of deciding what "is" and "is not" the right decision in making or during his plea negotiations.

M.R.Evi., Rule 401(a) provides that evidence is relevant if "it has any tendency to make a fact more or less probable than it would be without the evidence".

Under Rule 401, the evidence need not be sufficient to be admissible; it need only have some tendency, however slight, to support the party's claim with respect to that element.

If a party opposes the admission of an item of conditionally relevant evidence that has been admitted subject to subsequent proof of the conditions of fact, it is the responsibility of that party to move to strike the evidence if the proponent of the evidence fails to introduce the promised evidence.

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As with relevance generally, the fact that an inference is weak in that the evidence can be interpreted in multiple ways some consistent with the evidentiary hypothesis of the proponent of the evidence and others inconsistent with the hypothesis, bears only of the weight to be given to the evidence and does not bear on its relevance. See United States v. Carmona, 873 F.2d 569, 572, (2nd Cir. 1989).

In stark contrast to Rule 404's general declaration that evidence of a person's character is not admissible to prove action in conformity therewith, Rule 406 states that evidence of an individual's "habit" or an organization's routine practice is potentially admissible to prove action in conformity therewith (subject, of course, like virtually all other evidence, to exclusion under Rule 403.)

Petitioner in this current case had no previous "trait or habit" regarding any kind of sexual assault or otherwise. In fact, due to Petitioner's most recent discovery of his psychological and mental disorders unknown to him at the time of his crime and plea bargain discussions under newly discovered evidence reflected in Appendix's "G", "H", and "I", Petitioner obviously had no known previous traits or unusual habits regarding any type of sexual assault behavior.

Circumstances surrounding his crimes and the lack of appropriate procedures by his counsel (as well as the State), i.e., psychological evaluations, investigation into Petitioner's previous mental disabilities, will be discussed infra. Warm Springs State Hospital performed an improper diagnoses of Petitioner's Mental Disabilities.

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ISSUE TWO: WHETHER OR NOT THE PETITIONER IS ENTITLED TO RELIEF
REGARDING THE INADEQUACY OF HIS PLEA BARGAIN DUE TO
THE NEWLY DISCOVERED EVIDENCE SURROUNDING HIS HISTORY
OF PHYSICAL AND MENTAL IMPAIRMENTS UNKNOWN TO HIM OR
THE STATE AT THE TIME OF SENTENCING.

For a variety of reasons, most expediency, most criminal cases are resolved by the plea bargaining mechanisms under which the defendant pleads guilty to one or more charges in exchange for some concession from the prosecution.

A plea bargain is a process of give and take; if the defendant is free to accept or reject the plea bargaining agreement without fear "of punishment or retaliation," the plea is voluntary.

A plea of guilty is a grave and solemn act to be accepted only with care and discernment and has long been recognized as so. Central to the plea and foundation for entering judgement against the defendant is the defendant's admission in open court that he committed the acts charged in the indictment, hence the minimum requirement that his plea be voluntary expression of his own choice.

The plea is more than an admission of past conduct; it is the defendant's consent that judgement of conviction may be entered as in this case, without a trial, a waiver of his right to trial, before a jury or a judge.

Waivers of constitutional rights not only must be voluntary but must be knowing, intelligent acts done with sufficient "awareness" of the relevant circumstances and likely consequences. See Brady v. United States, 397 U.S. 742, 90 S.Ct.1463, L.Ed. 25 747

(1970).

The Petitioner specifically expressed to his counsel prior to any plea agreement process that he had something wrong mentally. Petitioner did not realize the severity of the possibility of more or "unknown" mental impairments and defects until recently under newly discovered evidence reflected in **Appendixs "G" "H" "I"** attached hereto.

Petitioner's counsel was negligent in his duties by failing to appropriately investigate and motion the Court for appropriate psychological evaluations. By doing so, the counsel for the Petitioner would have at the very least been exposed to the actual school psychological reports reflected in Appendix "G".

Obviously, Petitioners counsel had no way of knowing about the Petitioners psychological in the Petitioners application for his military record in Appendix "H". However, it does not take away from the fact that there is revealing newly discovered evidence that more than likely had a significant impact on the decision making by the Petitioner during the initial plea bargaining process.

Counsel's failure to pursue the possibility of establishing the Petitioner's mental impairment and/or defect constituted ineffective assistance. See Evans v. Lewis, 855 F2d 631, 636-39 (9th Cir. 1988).

In Petitioner's Acknowledgement of Waiver Of Rights By Plea Of Guilty, Petitioner agreed to lesser charges than what he was actually sentenced to. See Appendix "J", attached hereto.

Clearly, on page 1, paragraph 2, Petitioner acknowledges that he will be charged with "Kidnapping" instead of "Aggravated Kidnapping" and "Sexual Assault" instead of "Sexual Intercourse Without Consent".

Petitioner was in fact deceived by the State in these agreed upon plea negotiations. By definition alone, this was a breach of contract by the State and the 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.

A defendant who alleges that the government breached a plea agreement may be entitled to an evidentiary hearing or, at the Court's discretion, discovery or expansion of the record. See Blackledge v. Allison, 431 US 63, 76, 80-82 (1977).

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

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 the newly discovered 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 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 effective assistance the Constitution requires.

In the instant case, the Petitioner agreed only to the charges reflected in Appendix "J". The State deceived the Petitioner by not adhering to its original plea agreement and subsequently did in fact "enhance" Petitioner's plea agreement by and through vindictive prosecution and breach of contract.

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 Petitioner his constitutional right to an agreed upon plea agreement (Bargain).

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

Petitioner's original plea negotiations regarding 46-12-204 (2) and (3), Montana Code Annotated, (Plea Alternatives), reflects that the plea is voluntary and not the result of force or threats or promises apart from the plea agreement.

Since the recent discovery of Petitioner's newly discovered evidence regarding his previous mental impairments and/or defects, the Court, prosecutor, as well as the Petitioner's counsel at that time, no one is actually capable of determining whether or not the Petitioner made a knowledgeable and voluntary plea during his plea negotiations since no investigation, psychological or otherwise, was ever conducted let alone motioned for by Petitioner's counsel.

46-12-210, Montana Code Annotated, (Advice to defendant), reflects that the defendant shall be determined by the Court whether or not he understands the nature of the charge for which the plea was offered.

All the Petitioner understood was that he was pleading guilty to the charges (on the advice of his counsel) reflected in Appendix "J" which was suppose to include two (2) lesser included charges. i.e., Sexual Intercourse Without Consent reduced to Sexual Assault and, Aggravated Kidnapping reduced to Kidnapping which never even happened because the State deceived the Petitioner and "did not" reduce those two (2) charges as indicated in Appendix "J".

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.

It is a rule of statutory construction that, if reasonably practicable, words used in one place in a statute with a plain meaning

ARE given the same meaning when found in other parts of the same statute to the end that there may be a harmonious and consistent body of law.

When the State failed to abide by their offer of Sexual Assault and Kidnapping as indicated in Petitioner's plea agreement of Appendix "J", they violated the statutory intent of 46-12-211 (1)(b), MCA, thereby denying the Petitioner his Due Process Clause of the United States Constitution. It is paramount that Court give such constuction to a statute as will preserve constitutional parties as to both the United States Constitution and the Montana Constitution.

Under Montana Law, if interpretation of statute can be accomplished from plain meaning of words used, the Court may not apply other means of interpretation.

When a lawyer advises his client to plea bargain to an offense which the attorney has not investigated (as in Petitioner's case), such conduct is always unreasonable. Petitioner's counsel failed in his duties to investigate anything whatsoever. See Woodard v. Collins, 898 F.2d 1027, 1029 (5th Cir. 1990).

A Court cannot accept a guilty plea from an individual that is mentally incompetent to plead guilty. See Bouchillon v. Collins, 907 F2d 589, 592 (5th Cir. 1990).

In Evans v. Lewis, 855 F.2d 631, 636-39 (9th Cir. 1988). The Court stated that counsel's failure to pursue the possibility of establishing the Defendant's mental instability constituted ineffective assistance.

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A prosecutor violates due process when he seeks additional charges solely to punish a defendant for exercising a constitutional or statutory right. The prosecutor not only punished the Petitioner but, deceived him as well when he did not adhere to the original plea agreement. Specifically, the two (2) lesser included charges (Sexual Assault & Kidnapping).

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 a specific performance.

See U.S. v. Goings, 200 F3d 539 (8th Cir. 2000).
Even the Attorney General of the State of Montana stated in his response to 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.

Petitioner did not request to withdraw his guilty pleas because he still suffers from the same mental deficiencies he has had his entire life without even knowing or being aware of these deficiencies until recently as indicated in the attached **Appendixs**. See Appendix "K" attached hereto.

In addition, in Order from the Montana Supreme Court dated August 17, 2004, the Court stated the Petitioner could have brought up the plea agreement regarding the two (2) lesser included charges of Sexual Assault & Kidnapping on appeal. Again, Petitioner did not receive effective assistance from his counsel regarding any kind of appellate issues. See Appendix "L" attached herto.

ISSUE THREE:

WHETHER OR NOT THE PETITIONER IS ENTITLED TO HAVE ALL SENTENCES ORDERED TO RUN "CONCURRENT" SINCE NO MENTION OF "CONCURRENT" OR "CONSECUTIVE" SENTENCES WERE EVER EVEN MENTIONED IN HIS PLEA AGREEMENT OFFER. IN ADDITION THERE ARE MITIGATING CIRCUMSTANCES.

If a plea bargain has been offered, a defendant has the right to effective assistance of counsel in considering whether to accept it. 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 Petitioner in his plea bargaining process by and through his counsel and the State prosecutor. As Appendix "J" clearly reflects, the Petitioner agreed to plead guilty to "Kidnapping" instead of "Aggravated Kidnapping" and "Sexual Assault" instead of "Sexual Intercourse Without Consent".

Instead, Petitioner's counsel and the State prosecutor completely disregarded Petitioner's agreed upon plea bargain and deceived the Petitioner by moving forward with the original charges in the indictment. Appendix "F" (Petitioner's Judgement and Order Of Commitment) clearly reflects what the Petitioner was subsequently sentenced to as well as the charges he was sentenced to "contrary" to Petitioner's agreed upon plea agreement.

In Strickland v. Washington, a two (2) part test of effective assistance of defense counsel held (1) reasonably effective ass-

istance and (2) reasonable probability of a different result with effective assistance would have occurred. Had Petitioner's counsel been effective during plea negotiations, he would have intervened and demanded that the State prosecutor adhere to the original plea bargain and let the Court decide whether or not to accept the plea offer by the State.

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 (Cir. 2001).

In addition, there was no mention made whatsoever in Petitioner's plea bargain regarding whether or not all of the sentences would run concurrent or consecutive. Petitioner ask this Honorable Court to consider Petitioner's Mental Deficiencies for Mitigating Circumstances (Factors).

ISSUE FOUR:

WHETHER OR NOT PETITIONER IS ENTITLED TO HAVE HIS "NO PAROLE" STIPULATION REMOVED AFTER 35 YEARS OF INCARCERATION SINCE THE MONTANA SUPREME COURT JUST RECENTLY REMANDED HIS CASE BACK TO THE DISTRICT COURT TO REMOVE THE 100 YEAR CONSECUTIVE SENTENCE FOR PERSISTENT FELONY OFFENDER.

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 the Petitioner's sentences were to run "concurrent" or "consecutive". The Petitioner is now 64 years of age with **physical and Mental impair-**

ments who has already served over 35 years in the Montana State Prison. Petitioner had and has a liberty interest in parole because his offenses were committed before 1989. His offenses were committed in 1982.

On page 2 of Appendix "M" regarding Overview, Constitutional Law- Substantive Due Process- Scope of Protection. The United States Supreme Court has held that the mandatory language of Mont. Code Ann 46-23-201 has created a Liberty Interest in parole that is protected by the due process clause of the federal constitution.

Although the Montana Legislature removed the mandatory language in 1989, the Montana Supreme Court has determined that inmates who committed offenses prior to the Amendment continue to enjoy a federally-protected liberty interest in parole. See Appendix "M" attached hereto. Pages 1 and 2.

His request for relief and/or alternatives will be mentioned *infra* in his Conclusion.

CONCLUSION

Pursuant to all of the evidence presented *supra* in Petitioner's Petition For Writ Of Certiorari, including the admission of the Montana Attorney General's response 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*:

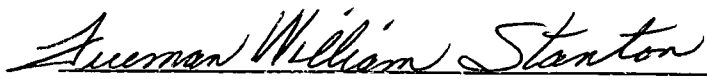
1. To have this case remanded back to the Sentencing Court, Second Judicial District Court, Butte, Montana to have all sentences **"Ordered"** to run concurrent since no mention of "concurrent" or "Consecutive" were ever mentioned in the plea agreement.

Petitioner also ask this Honorable Court to take into consideration Petitioner has Mental Impairments (Degree of Mental Retardation). Petitioner is willing to agree that he will in fact "discharge all sentences if Ordered to run concurrent which is approximately another 12 to 13 years.

2. To have the "No Parole" stipulation removed since this too was never mentioned in Petitioner's plea agreement. If removed, the Petitioner will have served almost 50 years in prison upon his discharge date.

3. In the final alternative, remand back to allow the Petitioner to withdraw his guilty plea and plead guilty to the agreed upon charges in his plea agreement which he was deprived of. See Appendix "J" regarding the above-mentioned relief requested.

Dated this 17th day of November, 2017.


Freeman William Stanton
Petitioner Pro se

19. PETITION FOR A WRIT OF CERTIORARI.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court will grant relief to which he is entitled to by whatever means this Court deems appropriate.

Dated this 17 day of November, 2017.


Freeman William Stanton
Petitioner Pro Se

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon the person(s) named below by forwarding them a true and correct copy, postage prepaid, of said document:

Tim Fox
Attorney General's Office
215 N. Sanders
P.O. Box 201401
Helena, Montana 59620-1401

Dated this 17th day of November, 2017.


Freeman William Stanton
Petitioner Pro Se

REASONS FOR GRANTING THE PETITION

The United States Court of Appeals for the Ninth Circuit and The United States District Court for the District of Montana has decided important federal questions in a way that conflicts with relevant decisions of this Court and the United States Constitution and its statutes.

There is no more cruel tyranny than that which is exercised under cover of law, and with the colors of justice.

U.S. v. Jannottie, 673 F2d 578, 614 (3rd 1982).

For nothing can destroy a government more quickly than its failure to observe its own laws, or worse, its disregard of the charter of its own existence. GELBARD V. U.S., 408 US 41, 46, 33 LEd 2d 179 92 S.Ct. 235 (1972).

Granting petition would be of importance to petitioner and to the similarly situated. It would restore confidence in our judicial system, as well as the integrity of the Courts.

The record will reflect that the Petitioner meets the standards in Miller-El v. Cockrell, 537 U.S. 322, 123 S. Ct. 1029 (2003). There is a "substantial Showing of the denial of a constitutional right".

CONCLUSION

Petitioner is requesting his sentences be ordered concurrent because of mitigating factors (Mental Impairments) with the No Parole stipulation removed or in the alternative the Specific Performance of the plea bargain agreement that was breached by the State for now over 35 years.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Ammon William Stanton

Date: November 17th, 2017.

APPENDIX "A"

OPINION OF THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT DENIAL OF PETITIONER'S
CERTIFICATE OF APPEALABILITY DATED SEPTEMBER
7th, 2017.

UNITED STATES COURT OF APPEALS

FILED

FOR THE NINTH CIRCUIT

SEP 7 2017

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

FREEMAN WILLIAM STANTON,

No. 17-35378

Petitioner-Appellant,

D.C. No.

v.

2:17-cv-00001-DLC-JCL

MICHAEL FLETCHER; et al.,

District of Montana,

Butte

Respondents-Appellees.

ORDER

Before: CALLAHAN and M. SMITH, Circuit Judges.

The request for a certificate of appealability is denied because appellant has not made a “substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2); *see also Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003).

Any pending motions are denied as moot.

DENIED.

APPENDIX "B"

1. United States District Court (Butte Division) denying relief to Petitioner regarding his Petition for Writ of Habeas Corpus and Certificate of Appealability dated May 5th, 2017.
2. Notice of Appeal from a Judgement or Order of a District Court, Dated April 27th, 2017.
3. Motion for Certificate of Appealability dated April 27th, 2017.
4. Memorandum in Support of Certificate of Appealability dated April 27th, 2017.
5. Dates and all information of filings in Petitioners U.S. District Court Case (Butte Division).

NOVEMBER 2017

Dear Clerk of Court,

Please find enclosed my Writ of Certiorari with Motion to proceed In-Forma Pauperis, Prison six month financial print-out with Appendixs' attached.

Please file at your discretion and please inform me of the filing.

Your time and efforts are most appreciated.

RESPECTFULLY SUBMITTED

Freeman William Stanton

Done and dated this 17th day of November, 2017.

LETTER TO CLERK OF COURT.

