

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

MARK DUANE SHEEHAN *Pro SE* — PETITIONER
(Your Name)

vs.

STATE OF MONTANA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

ED SMITH THE SUPREME COURT STATE OF MONTANA HELENA MT.
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

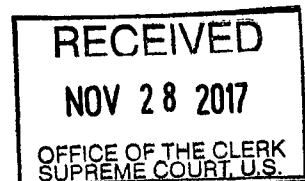
PETITION FOR WRIT OF CERTIORARI

MARK DUANE SHEEHAN *Pro SE*
(Your Name)

45005 box 5521
(Address)

Bismarck, ND 58506
(City, State, Zip Code)

Message Phone 406-241-5271
(Phone Number)



THE QUESTIONS PRESENTED FOR REVIEW

1.) Mr. Sheehan respectfully asks the Court to grant this Petition in RE: To Sheehan's Constitutional Rights of the Right to fair warning under the Due Process Clause of the Fourteenth Amendment of the United States Constitution.

2.) Mr. Sheehan's Right to fair trial was violated under the sixth Amendment.

3.) Mr. Sheehan Was Authorized by Law to Receive Temporary Total Disability Benefits From October 1,2009 Through July 8, 2010.

4.) By rejecting Mr. Sheehan's proposed jury instruction on MONT. CODE ANN.§39-71-609, governing termination of worker's compensation benefits, the district court Abused its discretion by failing to instruct the jury.

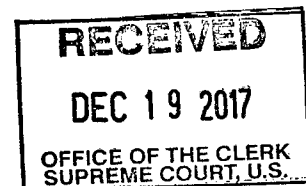
5.) Noting Mr. Sheehan's Documented Developmental Disability the District Court Abused its discretion by failing to instruct the jury on the Applicable Law, and Prejudiced Mr. Sheehan's Substantial Rights. Without a jury instruction, the jury could not ascertain whether Mr. Sheehan's Rights.

6.) Sheehan's Rights to a fair trial by jury as guaranteed by Art. II,§26 of the Montana Constitution.

7.) State Fund engaged in "deliberate delay" WHEN TERMINATING Mr. Sheehan's TTD benefits. because he suffered an uncontested compensable workplace injury. Mr. Sheehan had no notice prior to allegedly embellishing his pain symptoms and understating his physical capabilities. These uncontested facts prevented Mr. Sheehan from being released to work on May 3,

8.) In upholding Mr. Sheehan's conviction. the Court overlooks that Mr. Sheehan would have received TTD benefits beyond May 14, even if he had verbally understated his pain symptoms and overstated his physical capabilities.

9.) This is precisely the type of Due Process Violation that the United States Supreme Court corrected in Bouie, and discussed in Rogers and Lanier. See Bouie,



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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IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 15-0298

STATE OF MONTANA,

Plaintiff and Appellee,

v.

MARK DUANE SHEEHAN,

Defendant and Appellant.

BRIEF OF APPELLEE

On Appeal from the Montana First Judicial District Court,
Lewis and Clark County, The Honorable Jeffrey M. Sherlock, Presiding

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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 N/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 N/A 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 _____ to the petition and is

- ☒ reported at MONTANA SUPREME COURT, DA 15-0298; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

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

- ☒ reported at montana supreme court; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☐ For cases from federal courts:

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

☐ No petition for rehearing was timely filed in my case.

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

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

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

☒ For cases from state courts:

The date on which the highest state court decided my case was 8/29/2017.
A copy of that decision appears at Appendix _____.

☒ A timely petition for rehearing was thereafter denied on the following date: 9/30/2017, 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).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

RE: STATE V. SHEEHAN, DA 15-0298

THE BASIS FOR THE REHEARING REQUEST IS THAT THE COURTS
INTERPRETATION OF THE THEFT STATUTE OF WHICH YOU WERE CONVICTED
DENIES YOU FAIR WARNING THAT YOUR ALLEGED EXAGGERATIONS
OF YOUR PAIN SYMPTOMS TO YOUR DOCTORS CONSTITUTE A CRIME.
WE CONTEND THAT THE COURTS NEW INTERPRETATION OF THE STATUTE
AND RETROACTIVE APPLICATION OF IT TO YOU IS A VIOLATION OF
THE DUE PROCESS CLAUSE OF THE 14TH AMENDMENT OF THE UNITED
STATES CONSTITUTION.

MY 6TH AMENDMENT RIGHT TO FAIR TRIAL WAS VIOLATED
MY 14TH AMENDMENT RIGHT TO DUE PROCESS WAS VIOLATED
DENIES ME THE RIGHT TO FAIR WARNING

STATEMENT OF THE CASE

Defendant and Appellant Mark Duane Sheehan was charged by Information with one count of Theft, by common scheme, a felony, as specified in Mont. Code Ann. 45-6-301 (5)(b) and 301(8)(b)(i): 45-2-101(8). (D.C. Doc. 3 (Information).) The state contended that on or about and between May 23 through July 8, 2010, Mr. Sheehan obtained or exerted unauthorized control over \$5,991.44 in a continuing series of workers' compensation benefits that he was not entitled to receive from the MONTANA STATE Compensation Insurance Fund ("State Fund") by means of deception or other fraudulent action by misrepresenting his physical capabilities to medical providers so that he could qualify for and collect those benefits. (D.C. Doc. 3 at 1.) Following a 4-day jury trial in February 2013, Mr. Sheehan was convicted of the charged offense. During the oral pronouncement of judgment, and in the written Sentencing Order and Judgment, the District Court granted Mr. Sheehan a deferred imposition of sentence for six (6) years, subject to payment of a fine and restitution, and imposed probationary conditions. (Sentencing Hearing Tr. at 26-27 (05/02/2013), attached hereto as App. A; D.C. Doc. 115 at 2-4 (Sentencing ORDER and Judgment) (05/06/2013), attached hereto as App. B).

Subsequently, the state petitioned to revoke Mr. Sheehan's deferred sentence due to violations of two (2) conditions of his probation. (D.C. Doc. 130 (States Petition to Revoke Defendant's Deferred Sentence with Attached Affidavit) (11/21/2013).) Mr. Sheehan admitted the two violations, and the District Court revoked the deferred sentence. (Revocation Hearing Tr. at 9-10 (04/03/2014)) At the revocation sentencing hearing, the District Court sentenced Mr. Sheehan to a 6-year commitment with the Department of Corrections ("DOC"), with three years suspended; the original fine, restitution, and conditions were re-imposed. (Revocation Sentencing Hearing Tr. at 53-54 (06/26/2014); D.C. Doc. 161 at 2-4 (07/07/2014) (Order on Revocation, Sentence, Judgment, and Commitment).) On October 30, 2014, the District Court issued an amended Order of Revocation, Sentence, Judgment, and Commitment, which is identical to the July 7, 2014, Order of Revocation. (D.C. Doc. 163.)

Mr. Sheehan filed a pro se Petition for an out of time appeal with this Court on May 12, 2015, seeking review of his 2013 conviction. Noting his documented developmental disability, the court granted Mr. Sheehan's petition on June 2, 2015, and appointed the office of Appellate Defender as counsel. In accord with Mr. Sheehan's petition and this Court's order, the instant appeal challenges Mr. Sheehan's conviction for felony theft.

REASONS FOR GRANTING THE PETITION

Because Mr. Sheehan was Authorized by law to Receive Temporary Total Disability Benefits From October 1, 2009, Through July 8, 2010, He Cannot be guilty of theft by Common Scheme Under Mont. Code Ann. 45-6-301(5)(b) And-301(8)(b)(i).....

BY REJECTING DEFENDANTS PROPOSED JURY INSTRUCTION ON MONT. CODE ANN. 39-71-609, GOVERNING TERMINATION OF WORKERS compensation benefits, the district court abused its Discretion by failing to instruct the jury on the applicable law and prejudiced Mr. Sheehans Substantial Rights and Mr. Sheehans constitutional Rights of Due process and 6th Amendment to Fair Trial and the right to fair warning

Therefore, Sheehan respectfully prays that this court grant this petition to file an WRITS OF CERTIORARI.

For the foregoing reasons, Defendant and Appellant Mark Duane Sheehan requests the Court to vacate his conviction for felony theft by common scheme, or in the alternative to reverse and remand his case for a new trial at which the jury is fully and fairly instructed on the law governing termination of workers compensation benefits.

MR. Sheehan respectfully asks the court to grant this petition for WRITS OF CERTIORARI
To withdraw its published Opinion, and issue a revised decision, The present Opinion fails to consider that Mr. Sheehans TTD benefits were not extended beyond May 3, 2010, on account of his exaggerated reports of pain, but rather on objective medical findings establishing a compensable. permanent injury that the state does not dispute. The decision violates Mr. Sheehans Right to fair warning of the criminal consequences of his statements to his physicians.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Mark D. Sheehan Pro Se

Date: November 20, 2017