

No. 17-7633

IN THE
SUPREME COURT OF THE UNITED STATES

Chuck Devlin — PETITIONER
(Your Name)

vs.

State of Montana — RESPONDENT(S)

ON PETITION FOR REHEARING

This case has never been allowed a ruling on Merit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR REHEARING

Chuck Devlin - Pro-Se Petitioner
(Your Name)

Montana State Prison
(Address)

Deerlodge, Mt. 59722
(City, State, Zip Code)

(Phone Number)

IN THE SUPREME COURT OF THE UNITED STATES

PETITION FOR REHEARING

This petition is submitted pursuant to USC Rule 44.

This petition is submitted in good faith and not for delay.

The grounds for this petition are limited to intervening circumstances of a substantial or controlling effect, or to substantiate grounds previously raised.

This petition is prepared under a severe disadvantage by a pro-se prisoner without skills, assistance, advice, or Constitutionally adequate prison legal resources or access.

As that Pro-Se Prisoner, I invoke my rights as a citizen and Disabled, Decorated Vietnam Combat Veteran who put his life and limb on the line to defend and uphold the Bill of Rights that is now being denied me.

I invoke my 1st Amdnt. right to redress my grievances per the 7th Amdnt's right to a jury trial in a civil case per the 5th and 14th amdnt's equal protection, equal treatment, and fundamental fairness in the only Court left me to finally get Constitutional relief and a full and fair review on the merits.

My case requires the full impact of the Lenity Doctorine because my case examples a malignant use of Police and Judicial Powers initiated during the Vietnam Era and left unaddressed by the highest Court and has been allowed to spread and infect even the top of the DOJ and now exhibited daily in the news by the FBI's unlawful abuse of power for agenda's other than the interest of justice or the American people.

The Systemic stripping of Core American Values must be addressed.

PURPOSE FOR REHEARING

1. The 14th Amendment cannot tolerate a State conviction obtained by the "knowing use of false evidence"; *Donnelly v DeChristoforo*, (1974) 416 US 637, Citing Fundamental Fairness.

Reconsideration is appropriate where ... it is necessary to correct a clear error to prevent a manifest injustice; *Cachil Dehe Band of Wintum Indians Cmty. v California*, 649 F. Supp. 2d 1063, 1069 (e.d. Cal. 2009)(citing *School Dist. No. 15 Multnomah Cnty, Oregon v AC & S Inc.* 5 F3d 1255, 1263(9th Cir. 1993).

2. I have been and am being treated differently than others similarly situated who can afford counsel to protect their basic rights and navigate the ever increasingly complicated legal process with Constitutionally adequate resources and access.
3. The purpose of this petition for rehearing is USC Rule 10(c); " ... a state court [and] a United States Court of Appeals has decided an important question of Federal Law that has not been but should be, settled by this Court."

That these courts have decided an important federal Question in a way that conflicts with relevant decisions of this Court and a Fundamental Miscarriage of Justice has occurred.

My claim is denial of Fundamental Fairness, *Ake v Oklahoma*, 470 US 68, 76 (1985), " ... through vindictive prosecution for doing what the law requires", *U.S. v Bullis*, 77 F3d 1553(7th Cir.).

I have been denied a meaningful opportunity to develop the facts and present my claim w/supporting evidence.
see Reiman v Gilbert, 2016 US Dist. LEXIS 120141.

4. The purpose of this petition for rehearing is not only to convince the Court that I have been mistreated, or that the lower courts are wrong, but that my case exhibits a much larger attack on America's Core Values:

That current Constitutional safeguards are being breached by corrupt, professionally 'savvy' individuals within the DOJ and the government for agenda's other than the interests of justice, that it is malignant and spreading.

That these individuals take advantage of duplicitous, antiquated laws to manipulate facts and evidence at the pre-investigation, investigation and charging stages to fraudulently gain warrants and indictments.

That an inferior, antiquated, underfunded, overworked public defender system incapable of handling the large influx of these frivolous, fabricated cases along with the 'real' ones, provides ineffective assistance to the poor and underprivileged while those similarly situated who can afford counsel are treated differently and exonerated.

That the courts and appellate filters currently in place to catch and correct this fraudulent use of the justice system appear to be antiquated and completely useless to the poor and underprivileged, where similarly situated persons who can afford quality counsel are treated differently, are able to clear the deference rules and succeed on merit.

5. The purpose of this petition for rehearing is not only to show this Court that I have been mistreated, or that the lower courts are wrong, but that my case clearly and convincingly exhibits the misuse and abuse of Police and Judicial Powers and that the abusers have become so comfortable that it is now commonplace.

Anyone can accuse anyone of a crime. Not everyone has the power and resources to control the investigation and charging instrument to the extent that a cover-up of critical evidence convicts the accused.

A powerless, voiceless person cannot fight this type of power without competent counsel. When counsel fails to properly address the problem it is ineffective assistance. When the appellate filters fail to provide a fact finding process on the constitutional errors it is a fundamental miscarriage of justice.

A powerless, voiceless indigent person cannot fight this type of abuse of power when the Court itself allows it and all appeals filters Rubber stamp the process when it apply's to poor and the indigent's pro-se claims.

There are so many of these types of cases across this nation now that the news reports civil unrest on a daily basis. The frustration has reached levels of police murdering citizens, citizens murdering police, and citizen murdering citizen, children murdering children, & The FBI attacking the sitting president.

How much will it take to get the U.S. Supreme Court to realize that the laws are in need of updating and proper guidance beginning at the State levels.

6. The purpose of this petition for rehearing is not only to convince this Court that I have been mistreated, or that the lower courts are wrong, but to show that the state of Montana is abusing the appeals process when dealing with unskilled, distressed ignorant prisoners and others who can't afford counsel.

That once the mistreatment starts in the lower courts the appellate system in Montana, and I assume other states use:

" ... [anitquated], inadequate state procedures and channel a large portion of state criminal business to the federal courts." See Case v Nebraska, 391 US 336, 85 S. Ct. 1485, 13 L. Ed. 2d 422(1965), "None Can view with satisfaction the channeling of a large part of state criminal business to federal courts. If adequate state procedures, presently all to scarce, were generally adopted, much would be done to remove the irritant of participation by federal district courts in state criminal procedure." 381 U.S. at 345, 346.

See also Townsend v Sain, 372 US at 313 and 319, 83 S.Ct. at 757, 760. (States refusal to hold any kind of evidentiary hearing, passing it along to the federal system without a reporter transcript of any kind.)

and, Slack v McDaniel, 529 US 473, 484(2000), "When the district court denies a habeas petition ... without reaching the prisoners underlying constitutional claim, a COA should issue, and an appeal of the district courts order may be taken) <*pg. 549>.

A STATE CANNOT FORCE A CITIZEN TO BREAK THE LAW

I found in *Lockyer v Andrade*, 538 US 63, 71-72(2003), where looking at the supreme courts holdings at the time of the state court decision, a state courts decision may be found to be contrary to clearly established supreme court precedent: (1) "If the state court apply's a rule that contradicts the governing law set forth in the [Courts] cases" or (2) if the state court confronts a set of facts "materially indistinguishable" from a decision of the Court but arrives at a different result. *Williams v TAYlor*, 529 US 362, 405-06, 120 S. Ct. 1495, 144 L.Ed. 2d 389(2000); *Lockyer*, 538 US at 72-75, A state court decision involves an "unreasonable application" of clearly established federal law, " ... if a state court incorrectly extends the established rule to a new context, or refuses to extend it to a new context where it should apply. *Williams*, 529 US at 407; *Lokyer*, 538 US at 76, to be an unreasonable application of federal law, the state court decision must be more than incorrect or erroneous; it must be objectively unreasonable. 2 *id*, at 75. A Constitutional Due Process challenge to the sufficiency of evidence to support a conviction is evaluated under the clearly established law from *Jackson v Virginia*, 443 US 307, 318-19, 99 S.Ct. 2781, 61 L.Ed. 2d 560(1979).

In deciding whether relief from an unconstitutional trial error is warranted, federal courts apply the standard from *Brecht v Abrahamson*, 507 US 619, 113 S.Ct. 1710, 123 L.Ed. 3d 353(1993), "uniformly in all federal habeas corpus cases under '2254," that is, the error must have had a substantial and injurious effect or influence in determining the jury's verdict." *Bains v Cambra*, 113 F.3d 1131, 1135 (9th Cir. 1997); see *Reed v Ross*, 468 U.S. 1001, 1017-18 (1984).

204 F3d 964, 977(9th Cir. 2000); see Fry v Pliler, 551 US 112, 121-22, 127 S.Ct. 2321, 168 L.Ed. 2d 16(2007)(holding, "that in '2254 proceedings a court must assess the prejudicial impact of constitutional error in state-court criminal trial under the 'substantial and injurious effect' standard set forth in Brecht, (supra) whether or not the state appellate court recognizes the error and reviews it for harmlessness under the 'harmless beyond a reasonable doubt' standard set forth in Chapman, 386 US 18, 87 S. Ct. 2590, 115 L.Ed. 2d 706(1991); see also Campbell, 408 F3d at 1170. Cited in Vasquez v Cate, 2013 US Dist. LEXIS 22404.

The State cannot be allowed to circumvent the strict U.S. Supreme Court requirements of Actus Reus and Mens Rea.

My status as a "geeked out vietnam vet" from my first felony where a strange half-naked man attacked me in my own home at 1:30 A.M. when I flew in from the Salt Lake VA, came home and found the front door open, my two young daughters asleep on the couches with th T.V. on, my wife passed out on the bed fully dressed with a big sack of Easter toys beside her and upon opening the door to the master bathroom was hit with a stool by this strange man and upon winning the fight threw him half naked out into a raging thunder storm to fend for himself in his condition, and my second felony for stopping next to a park where some kids were partying, and as an innocent passerby, offering some assistance for a young woman who had passed out face down in the middle of the park in a rising pool of water during a raging thunderstorm exactly thirty years later all because of my status as a "registered violent offender on parole", not because of any criminal intent. Easy prey for (?) prosecutors.

In Barefoot v Estelle, 463 US 880, 894, 77 L.Ed. 2d 1090, 103 S.Ct. 3383, the U.S. Supreme Court ruled that, "a substantial showing of the denial of a right includes the showing that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were "adequate to deserve encouragement to proceed further", 463 at 893 and n.4, 77 L.Ed. 2d 1090, 103 S.Ct. 3383.

The trial courts refusal to include the facial Ulterior Intent Legal Duty Element is an 8th Amendment Violation in a Clear and Convincing sense of the Rule.

The Eighth Amendment prohibition against cruel and unusual punishment imposes substantive limits on what can be made criminal and punished as such." Ingraham v Wright, 430 US 651, 667-68, 97 S.Ct. 1401, 51 L.Ed. 2d 711(1977). The Supreme Court has interpreted the scope of those limitations in Robinson v California, 370 US 660, 666-67, 82 S.Ct. 1417, 8 L.Ed. 2d 758(1962).

The entire thrust of Robinsons interpretation of the Cruel and unusual punishment clause is that criminal penalties may be inflicted only if the accused has committed, some act, some behavior, which society has an interest in preventing, or has committed some mens rea with actus reus.

CONCLUSION

Cracks in the system appear all of the time. Some are so brazenly facial in their abuse of process that they must be viewed as an intentional attack on protected American Values.

A fact-finding review of my case's will clearly show, beyond any doubt, the abuses I claim in this petition are real and being pejoratively practiced on Montana's poor and defenseless.

A review of my case will expose this pattern of abuse all the way back to the early '70's.

A full and fair review of the facts of my case will show how the states public defender system is kept at minimum levels and how this deprives us poor of fundamental constitutional rights because we cannot afford to buy their protections.

My case and the poor's plight and Mr. Trumps abuses by the FBI are identical in their allowing the use of a legitimate government agency to be manipulated by private interests for agenda's other than the interests of justice or the American people on both extreme levels of the spectrum.

As the most respected, highest, most honorable of protectors of the Constitution, I beseech you to intervene and begin the realignment process and provide rules and guidance that will restore the Bill of Rights to its mandante of equal protection for ALL, not just for those who can pay for its protection.

Allowing these attacks on the Bill of Rights at both extreme ends of the spectrum in this manner contradicts Federal Law thru the Fundamental Fairness Doctorine: "The Rule of Lenity is rooted in fundamental principles of due process which mandates that no individual be forced to speculate at peril of indictment whether their conduct is prohibited." Hayes v Ayers, 623 F3d 500(9th Cir. 2011); U.S. v Maciel-Alcala, 612 F3d 1092(9th Cir. 2010)

RELIEF REQUESTED

I fully realize that my odds of obtaining a full and fair fact finding process in a U.S. Court is zero to none, but as I learned in the military, one has to fight until his/her last breath for his beliefs, and even though the Constitution abandoned me in my time of need, I did not abandon it in its time of need from me and I invoke my right as a 70 year old American citizen who did his duty with the honor and dignity my country expected of me at a time when everyone was abandoning it and running to Canada to avoid the draft, to request a simple fact-finding process from this Court of Last Resort in any manner they see fits the overall agenda of re-aligning the American process so it is fair to All, Equally.

Dated this 20 day of April, 2018



Chuck Devlin - petitioner

CERTIFICATE OF SERVICE

I the petitioner certify that I have mailed a true and accurate copy of this Petition for Rehearing to:

States Atty General
Box 201401
Helena, Mt. 59620-1401

STATE OF MONTANA)
 : ss.
County of Powell)

I the petitioner Chuck Devlin do hereby avow that I am aware of the contests of this petition and it is true to the best of my knowledge.