

No. _____

25-6194

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

FILED

SEP 19 2025

OFFICE OF THE CLERK
SUPREME COURT, U.S.

DOUGLAS P. PASQUINZO — PETITIONER
(Your Name)

vs.

STATE OF MONTANA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

SUPREME COURT FOR THE STATE OF MONTANA

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

PETITION FOR WRIT OF CERTIORARI

DOUGLAS P. PASQUINZO
(Your Name)

% GOD'S LOVE MISSION

(Address)
533 N. LAST CHANCE GULCH

HELENA, MONTANA 59601

(City, State, Zip Code)

406-442-7000

(Phone Number)

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QUESTION(S) PRESENTED

- 1) Where the State Courts continue to disobey the Laws and Rules of Procedure, and allow County Prosecutors to Amend complaints, ~~without~~ without leave from the State court and its jurists, as a violation of Procedural Due Process Rights, guaranteed by the State and Federal Constitutions, and where then the required subject-matter jurisdiction to proceed is then lacking, causing a unlawful conviction.
- 2) This issue has been brought before the United States Supreme Court repeatedly by others, and overlooked, as the record shows, and in the Ninth Circuit only to be ignored, allowing the State to convict others in violation of Constitutional and Statutory Rights, will the Court's Clerks allow a Justice to review this continuing assault of Rights in Montana?

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:

RELATED CASES

- 1) DC-22-2015-42, State of Montana v. Douglas P. Pasquinzo, in the Montana Fifth Judicial District Court.
- 2) DA-24-0676, State of Montana v. Douglas P. Pasquinzo, Appeal in the Montana Supreme Court.

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Note: Page 2 Document 18, Amended Information. [without
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APPENDIX C --Brief of Appellee, DA-24-0676, State v. Montana

APPENDIX D --Appellants Reply Brief, DA-24-0676, State v Pasquinzo

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TABLE OF AUTHORITIES CITED

CASES

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Montana Codes Annotated: §46-11-205. Amending Information.

- §2-3-201. Legislative intent...~~§2-3-201. Legislative intent...~~ pg 5
- §46-11-111. Amending Complaint.
- §46-11-201. Leave to File Information.
- §46-11-205. Amending Information as to Substance and form.

Montana Rules of Civil Procedure: Rule 12(b) and 12(h).

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OTHER

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 _____ 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 _____ 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 E to the petition and is

reported at State v Pasquinzo, 2025 MT 153N; 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 _____.

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 7/8/2025 . A copy of that decision appears at Appendix E .

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).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Violations:

Montana State Constitution:

Article II: Declaration of Rights.

§17 Due Process of Law

§20 Initiation of Proceedings

§24 Rights of the Accused

United States Constitution:

Amendments.

Fifth Amendment- Due Process of Law.

Sixth Amendment- Rights of the Accused.

Fourteenth Amendment--Section 1. Citizens of the United States.

Article III. The Case and Controversy Clause.

Article VI, ¶2. The Supremacy Clause.

Montana Codes Annotated: see Table of Authorities.

§ 12-3-201-Legislative Intent

§ 46-11-111. Amending Complaint.

§ 46-11-201. Leave to File Information.

§ 46-11-205. Amending Information as to Substance and Form.

STATEMENT OF THE CASE

Comes now Douglas P. Pasquinzo to request the United States Supreme Court Grant Certiorari, in this matter to resolve a continued denial of Constitutional and Statutory Rights by the State of Montana. There have been many cases that have been presented to this Court, with the same Constitutional and Statutory Violations by Montana.

Pasquinzo asks that the Court finally resolve this matter, and set precedent, for Montana and other States to follow, were Leave to Amend, was not granted and a State court allowed proceedings to then continue without the proper Subject Matter Jurisdiction.

The Petitioner had presented a Motion to Dismiss Judgment, due to the lack of subject matter jurisdiction, and thus Void Judgment, in the District Court proceedings.

The State of Montana filed and Amended Information on June 15, 2016, without having moved the State District Court for Leave to file the Amended Information. See Appendix B, page 2, document 18.

The record is clear that the State violated the Rules of Criminal Procedure, per Montana Codes Annotated [MCA hereafter]; §46-11-205, Amending Information, which states:

- "(1) The Court may allow an information to be amended in matters of substance at any time, but not less than 5 days before trial, provided that a motion is filed in a timely manner, states the nature of the proposed amendment, and is accompanied by an affidavit stating facts that show the existence of probable cause to support the charge amended. A copy of the proposed amended information must be included with the motion to amend information.
- (2) If the court grants leave to amend information, the defendant must be arraigned on the amended information without unreasonable delay and must be given a resonable time to prepare for trial on the amended information."

Pasquinzo's Right to Due Process have thus been violated at that point, and the State then lost the subject matter jurisdiction to proceed any further. Thus the 'Fruit of the Poisionous Tree' doctrine controls.

The Fifth Judicial District for Montana has abused it's discretion by ignoring legal procedure concerning an amended complaint, where the courts hold that a party MUST move for leave to file an Amended Complaint or Information, and only then file the Amended Complaint or Information. Thus because subject matter was lost and the State of Montana refused to adjudicate the lack of subject matter jurisdiction, that claim is thus waived, per the MT.R.Civ.P. Rule 12(b) and 12(h), that the State is satisfied that subject matter jurisdiction was lost.

The law is explicit as written and interpreted by the Montana Supreme Court previously and in the Federal Courts, concerning lack of Subject Matter Jurisdiction and the other issues as follows:

CONTROLLING STANDARDS

"Subject matter jurisdiction is subject to challenge or review at any time on motion, or sua sponte by the court, and can not be established or maintained by consent or waiver of the parties."

Gottlob v DeRosier, 2020 MT 210, P7; Stanley v Lemire; 2006 MT 304, ¶31-32.

"Similarly, the United States Supreme Court, recently observed that subject matter jurisdiction, because it involves the court's power to hear the case, can never be forfeited or waived. Moreover, the courts, including this Court, have an independent obligation to determine whether subject matter exists, even in the absence of challenge."

Stanley at P32; citing Arbaugh v Y & H Corp., 546 U.S. 514, 126 S.Ct 1235(2006).

"The law provides that once State and Federal jurisdiction has been challenged, it must be proven."

Me v. Thibutot, 448 U.S. 1, 100 S.Ct 2502(1980).

Neither the Fifth Judicial District Court of Montana, nor the State has proven that subject matter jurisdiction could be maintained after the State violated the Due Process of Law.

"The Judgment of conviction pronounced by a court without jurisdiction is void..."
Johnson v Zerbst, 304 U.S. 458, 468, 58 S.Ct 1019(1938)

"A court's jurisdiction at the beginning of trial may be lost "in the course of the proceedings" due to failure to complete the Court—as the Sixth Amendment requires— by providing [Competent] counsel..." Zerbst at 468.

The Petitioner was denied competent counsel who should have known that the State must be given leave to amend a complaint or Information. This failure by counsel prejudiced the Petitioner. See Strickland v Washington, 466 U.S. 668, 104 S.Ct 2052(1984).

At the Montana Fifth Judicial District Level, the State refused to brief or argue that the State had lost subject matter jurisdiction, and the Montana Courts have violated Due Process for not recognizing nor apply the Supreme Court's 'Waiver' Law. "A court is not at liberty, we have cautioned, to bypass, override, or excuse a state's deliberate waiver..."

Wood v Milyard, 566 US 463, 466, 132 S.Ct 1826(2012)

Day v McDonough, 547 US 198, 202,210, n. 11, 126 S.Ct 1675(2006).

Based upon the 5th, 6th and 14th Amendments of the United States Constitution, the Petitioner/ Defendant should never have been convicted, without the required subject matter jurisdiction, after the State violated the Due Process of Law.

Thus there is no actual case or controversy, per Article III of the Constitution, Section 2: "The judicial power shall extend to all cases, in law and equity, arising under the Constitution, the laws of the United States, and treaties made, or shall be made, under that authority;...to controversies to which the United States shall be party..."

Pursuant to Article VI, Paragraph 2 of the Constitution, known as the Supremacy Clause: "This constitution, and the laws of the United States shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the Judges in every state shall be bound thereby, anything in the Constitution or laws of any state to the contrary notwithstanding."

When any State judge violates the Supremacy Clause, it is an usurpation of power and authority which no lower court or jurist possesses. Such Judicial Misconduct undermines the 'Rule of Law', and the Integrity of the Court, as a whole; and the public confidence in a just judicial system, paid for by the public taxpayer.

"this Court adopted the general rule that a constitutional error does not automatically require reversal on a conviction. Arizona v Fulminate, 499 US 279, 306, 111 S.Ct 1246,113 L.Ed. 2d 302(1991)." Weaver v Massachusetts, 582 US 286, 137 S.Ct 1899(2017).

" The Court recognized, however that some errors should not be deemed harmless beyond a reasonable doubt." Weaver at 294.

"These errors came to be known as structural errors." Weaver at 294.

"The purpose of the structural error doctrine is to ensure insistence on certain basic, constitutional guarantees that should define the framework of a criminal trial. Thus, the defining feature of a structural error is that it "affects the framework within the trial proceed." Fulminate at 310, Weaver at 295.

Without the demanded subject matter jurisdiction in a court proceeding, it is self evident error, and "affects the framework" to proceed.

With the Montana District Court for the Fifth Judicial District, and the Montana Supreme Court both abusing the discretion of the court, and disregarding 'Clearly Established' Supreme Court precedent, by continuing this matter without the required subject-matter jurisdiction, as waived by law, bias is definitely shown as a violation of Constitutional Right to due process.

"If a waiver is found, that is the end of the case."

Goodyear Tire and Rubber Co., v. Haeger, 581 US 101, 115, 137 S.Ct 1178(2017).

This matter should have ended when the State waived that subject matter jurisdiction was lacking.

The State jurists have shown their bias, and themselves violated the Right to Due Process for refusing to acknowledge the State's waiver that the court lost the required subject-matter jurisdiction.

"Due Process guarantees an absence of actual bias on the part of the judge."

In re Murchinson, 349 US 133, 136, 75 S.Ct 633(1955).

The Montana Supreme Court disregarded it's own precedent when the lack of subject matter is shown, and is just cause to dismiss the underlying charges, as should now be done here.

"Lack of subject matter jurisdiction can be raised at any time. Rule 12(h)(3), M.R.Civ.P.;"

State v Abe, 2001 MT 260, P16.

"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 court's action must be invoked by proper pleadings and the judgment within the issues raised."

Lee v Lee, 2000 MT 67, P20, HN2

The State's pleadings were NOT proper, were the State filed an amendend information, without first requesting leave to do so. Due Process under the 14th Amendment has been violated at this point, and the matter should have been vacated by Montana Courts, but was not. This is a common unlawful practice in Montana, contrary to existing Supreme Court decisions and jurisprudence...the 'Rule of Law' forbids this.

"A court lacks or exceeds such jurisdiction by "any acts which exceed the defined power of the court in any instance, whether the power be defined by constitutional provision, express statutory declaration, or rules developed by the courts and followed under the doctrine of stare decisis..." Lee at P20.

Stare Decis forbids this matter from proceeding without the waived suject matter jurisdiction.

"The Appellant courts may make accommodations for pro se parties by relaxing technical requirements which do not impact on fundamental bases for appeal."
Crawford v State, 2004 MT 309N.

But technical requirements and deficiencies can NOT be overlooked by the State.

"Any statute which allows for amendments without leave of the court conflicts with this constitutional provision."

State v Cardwell, 187 Mont. 370,375, 609 P.2d 1230(1980 MT.S.Ct.)

"On amendment of an information, however, certain procedural safeguards must be imposed. The above discussion indicates amendments of substance can only be filed with leave of the court."

Cardwell at 375-376.

So based on Montana clearly established jurisprudence, the State violated the procedural safeguards as statutorily imposed by amending information without leave.

This is then just cause for the Supreme Court to recognize these continued violations to Montana citizens rights, which these cases never were presented to the Court recently passed the conference level.

"Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action." Kontrick v Ryan, 540 US 443,455, 124 S.Ct 906(2004)

State v Abe, 2001 MT 260, P16.

See Rule 12(h)(3), MT.R.Civ.P., "whenever it appears by suggestion of the parties or otherwise, that the court lacks the subject matter, the court shall dismiss the action."

Petitioner Pasquinzo, prays that this court will take up this action, and follow it's own precedent, and order the State to do the same, and put a halt to this same claim and issue presented by many others, but overlooked at the conference level.
Please grant Certiorari. Thank You.

REASONS FOR GRANTING THE PETITION

The reason this Petition for Certiorari should be granted is not just for this present case, but the many cases presented before to this Court, with the exact same claim and issues presented here, but never ruled upon. So in essence the Highest Court in America, has granted leave to the Montana Courts, that the jurisprudence, ~~law~~ and the 'Rule of Law' do not have to be followed, and that Article VI, the Supremacy Clause, can be overlooked when desired by a State Court.

Petitioner Pasquinzo has presented undeniable caselaw and evidence that Montana continues to misuse the courts, and it is this Courts obligation to stop this malfeasance in office and misconduct by the courts, jurists and attorney's in Montana. These issues are not so prevalent in other States, as in Montana.

Pasquinzo is aware that this Court is very busy and only has a limited docket space and time for justice, but asks that the Court take a small amount of time to assist a 84 year old man, just released from prison a couple days ago. That the Court this malfunction in the State courts, as is the Mission of the Federal Courts and Government. Petitioner Pasquinzo spent 10 years in prison wrongfully, and known.

What the Petitioner has presented should surely be just reason to pass the conference level, or past the clerks, to have certiorari granted and then a just decision by this 'Supreme Law of the Land'. Thank You.

CONCLUSION

The petition for a writ of certiorari should be granted.

Based on the Laws of the United States and Montana, with relief to follow.

Respectfully submitted,

Douglas P. Pasquing

Date: August 20, 2025.