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Although I join the Court's opinion, I write to emphasize the fact that I am not content to rest the result, as the Court seems to be, ante at 437 U. S. 36, solely on the defendant's "valued right to have his trial completed by a particular tribunal," a factor mentioned by Mr. Justice Black, speaking for the Court, in *Wade v.*

[437 US 28 Crist v. L R Bretz | OpenJurist](#)

Roger CRIST, as Warden of the Montana State Penitentiary, Deer Lodge, Montana, et al., Appellants, v. L. R. BRETZ et al. No. 76-1200. Argued Nov. 1, 1977. Decided June 14, 1978.

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The Montana Supreme Court, which had previously denied appellees habeas corpus relief, *State ex rel. Bretz v. Sheriff*, 167 Mont. 363, 539 P.2d 1191, affirmed the judgment as to Bretz on the ground that under state law [437 U.S. 28, 31] jeopardy had not attached in the first trial. *State v. Cline*, 170 Mont. 520, 555 P.2d 724.

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The Montana Supreme Court, which had previously denied appellees habeas corpus relief, *State ex rel. Bretz v. Sheri*, 167 Mont. 363, 539 P.2d 1191, affirmed the judgment as to Bretz on the ground that, under state law, [p31] jeopardy had not attached in the first trial.

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437 U.S. 28 (1978) CRIST, WARDEN, ET AL. v. BRETZ ET AL., No. 76-1200. Supreme Court of United States. Argued November 1, 1977. Reargued March 22, 1978. Decided June 14, 1978. APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT. Robert S. Keller, Special Assistant Attorney General of Montana, reargued the cause for appellants.

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