

IN THE SUPREME COURT OF THE STATE OF MONTANA

OP 09-0105

FILED

APR 01 2009

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

ORDER

MARLON CAMARILLO,

Petitioner,

v.

MIKE MAHONEY, Warden,

Respondent.

Marlon Camarillo (Camarillo) has filed a petition for writ of habeas corpus and has moved for leave to proceed without paying the filing fee. Camarillo also has requested that we appoint counsel to represent him. We grant Camarillo's motion to proceed without paying the filing fee.

Camarillo pled guilty and was sentenced in the Thirteenth Judicial District, Yellowstone County, for: 1) deliberate homicide (70 years); 2) robbery (40 years, concurrent); and 3) aggravated burglary (40 years, concurrent). Camarillo was 16 years old at the time that he committed these offenses on October 31, 1998.

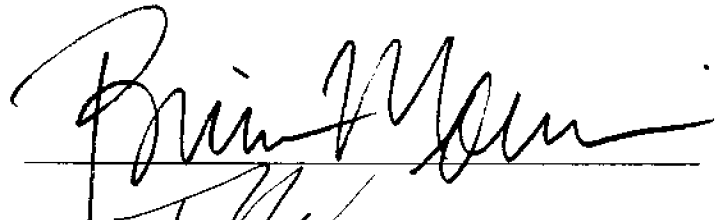
Camarillo contends that § 41-5-206(6), MCA, required the District Court to commit him to the Department of Corrections (DOC). Camarillo observes, in turn, that § 46-18-201, MCA (1999), provided that commitments to the DOC could not exceed 5 years. Based upon *Lott v. State*, 2006 MT 279, 334 Mont. 270, 150 P.3d 337, Camarillo argues that his sentence exceeded the 5-year limitation for DOC commitments. As a result, Camarillo contends that his sentence is facially invalid and that he is illegally incarcerated. Camarillo requests that we vacate his sentence and order the District Court to resentence him.

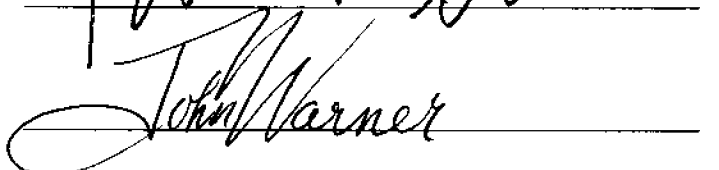
Respondent Mike Mahoney (Mahoney) has not yet had a chance to respond to Camarillo's petition for writ of habeas corpus. Accordingly,

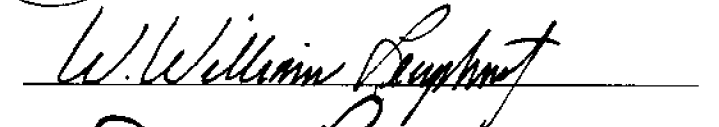
IT IS HEREBY ORDERED:

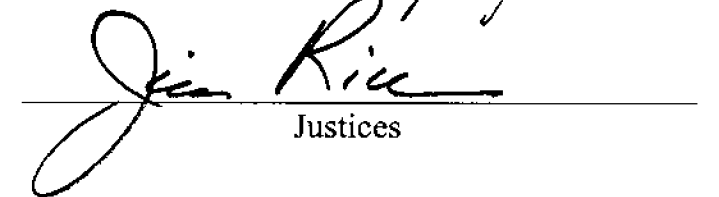
1. The Attorney General shall file a response on behalf of Mahoney within 20 days of the date of this order.
2. We take under advisement Camarillo's request for appointment of counsel.
3. The Clerk is directed to mail a true copy of this Order to counsel of record, and to Camarillo, personally, at his last known address.

DATED this 1st day of April 2009.









Justices