IN THE SUPREME COURT OF THE STATE OF MONTANA
No. DA 18-0661

AGUSTIN RAMON

Plaintiff and Appellant,

v.

DARREN SHORT

Defendant and Appellee.

DEFENDANT and APPELLEE'S ANSWER BRIEF

On Appeal from the Nineteenth Judicial District Court, Cause No. DV 18-218, the Honorable Matthew Cuffe presiding.

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STATEMENT OF THE ISSUE

1. Whether the appeal of Judge Matthew Cuffe's Order denying Agustin Ramon's (Ramon) Petition for Injunctive Relief is moot.

STATEMENT OF THE CASE / STATEMENT OF THE FACTS

Plaintiff was arrested by Eureka City Police Officer Greg Neils on August 3, 2018 for burglarizing a neighbor's home. The neighbor woke up to find Ramon stealing prescription medication from his bathroom medicine chest. Ramon fled (with the medication) and the neighbor called 911. Ramon was arrested a short time later and transported to the Lincoln County Detention Center (LCDC). (Aff. Roby Bowe, Nov. 6, 2018, (App. 1).) His bond subsequently was set at $25,000.^{OO}.

On August 17, 2018, bond agent Earl Rowe contacted LCDC to advise he intended to post bond for Ramon. Rowe was notified that, although he was free to post bond, Ramon would be taken into custody by the border patrol upon his release. Rowe did not post bond. No other individual attempted to post bond for Ramon.

On February 14, 2019, Judge Matthew Cuffe issued a Judgment and Sentence in *State of Montana, Plaintiff vs. Agustin Ramon,* Defendant, DC-18-101. (Aff. Jeff Zwang (Apr. 30, 2019) (App. 2) ¶ 2.) Ramon was sentenced to the Montana Department of Corrections for six years with six years suspended and given credit for the 203 days he was incarcerated prior to the sentence. (App. 2 ¶

2.) Ramon was ordered released from confinement on February 11, 2019. (App. 2 ¶ 3.)

STANDARD OF REVIEW

Whether this appeal is moot is an issue of law and subject to de novo review.

SUMMARY OF THE ARGUMENT

The issues on appeal are moot. Ramon left LCDC on February 11, 2019 making injunctive relief impossible. The exceptions to the mootness doctrine do not apply because this is not a case of public interest and because Ramon is not reasonably likely to find himself in the same predicament at any time in the future. Finally, Judge Cuffe correctly held that the Lincoln County Sheriff's policy of complying with the federal government's immigration detainer request is lawful under Montana law.

ARGUMENT

I. Ramon's Appeal is Moot.

Judicial authority is limited to justiciable controversies. *Plan Helena, Inc. v. Helena Regl. Airport Auth. Bd.*, 2010 MT 26, ¶ 6, 355 Mont. 142, 226 P.3d 567; *Gateway Opencut Mining Action Group v. Bd. of County Commrs.*, 2011 MT 198, ¶ 16, 361 Mont. 398, 260 P.3d 133; *State v. Benn*, 2012 MT 33, ¶ 9, 364 Mont. 153, 274 P.3d 47. A justiciable controversy is not political; it is not philosophical; it is not advisory; it is not academic. *Plan Helena*, ¶ 8. It is a living controversy

upon which the court's judgement will operate. *Id.* Absent a justiciable controversy, the court is without authority to pass judgment.

The issue on appeal is whether to grant the injunctive relief requested by Ramon. Specifically, whether to enjoin the Lincoln County Sheriff from detaining him for up to 48 hours pursuant to an immigration detainer request from federal officials. Ramon is no longer in the custody of Lincoln County. Hence, his request for injunctive relief is moot in that he no longer presents a justiciable controversy for purposes of this appeal. (Ramon's underlying action for damages related to the alleged unlawful detention remains with the District Court.)

Mootness frequently is described by this Court as "the doctrine of standing set in a time frame;" the requisite personal interest that must exist at the commencement of the litigation and must continue throughout the litigation. *Greater Missoula Area Federation of Early Childhood Educators v. Child Start, Inc.*, 2009 MT 362, ¶ 23, 353 Mont. 201, 219 P.3d 881.Thus, if the issue presented at the outset of the action has ceased to exist or if the court is unable due to a change in circumstances to grant effective relief or to restore the parties to their original positions, then the issue before the court is moot. *Id.*; *Gateway Opencut,* ¶ 16; *Benn,* ¶ 9.

Ramon's case is moot due to "a change of circumstances prior to the appellate decision." His sentencing on the burglary charge for which he was

incarcerated and subsequent release from the LCDC renders injunctive relief impossible. *See Serena Vista L.L.C. v. State of Montana Dep't of Nat. Res. & Conservation,* 2008 MT 65, ¶13, 324 Mont. 73, 179 P.3d 510. Nevertheless, Ramon asks this Court to find an exception to the mootness doctrine for the sole purpose of obtaining a decision on whether it is lawful for local law enforcement agencies to cooperate with federal immigration authorities by detaining an inmate for a maximum of 48 hours after he or she is eligible to be released from custody. This issue has nothing to do with Ramon's request for injunctive relief.

Ramon argues this case remains ripe for decision based on two "related" exceptions to the mootness doctrine: the public interest exception and the exception for cases of short duration capable of repetition. (Appellant's Opening Br. 8.) These exceptions, while sometimes conflated, are neither related nor are they applicable to Ramon's appeal.

A. Ramon's Case Does Not Fall Within the Public Interest Exception.

The public interest exception to the mootness doctrine is a tool used by some courts under limited circumstances to resurrect issues not otherwise justiciable. When applied, the exception has been strictly limited to issues which are 1) capable of repetition; 2) circumvented by the mootness doctrine; and 3) *so important to the public interest as to justify overriding the mootness doctrine*. 5 Am. Jur. 2d Appellate Review § 560 (emphasis added).

Ramon argues that 135 immigration detainer requests were dispatched by the Department of Homeland Security (DHS) to Montana counties in 2017 and 2018. He cites only two other inmates who have filed suit as a result. As will be argued below, Ramon was not detained pursuant to the detainer request because his bond was never posted and he was never eligible to leave. Regardless, even if Ramon is included in this survey, these statistics do not represent repetition so significant or public interest so strong that the exception should become the rule.

B. Ramon Mistakenly Seeks Shelter Under the "capable of repetition yet evading review" Exception to the Mootness Doctrine.

The "capable of repetition yet evading review" exception only applies "where the challenged conduct *invariably* ceases before courts fully can adjudicate the matter." The party invoking the exception also must establish that "there is a reasonable expectation that the same complaining party will be subject to the same action again." *Zunski v. Frenchtown Rural Fire Dep't Bd. of Trustees,* 2013 MT 258, ¶ 22, 371 Mont. 552, 557, 309 P.3d 21, 25–26 (quoting *Havre Daily News, LLC v. City of Havre,* 2006 MT 215, ¶¶ 33–34, 333 Mont. 331, 142 P.3d 864). *Grabow v. Montana High School Ass'n,* 2000 MT 159, ¶ 15, 300 Mont. 227, ¶ 15, 3 P.3d 650, ¶ 15 (citing *Common Cause,* 263 Mont. at 328, 868 P.2d at 606–07) (A party seeking to invoke the "capable of repetition, yet evading review" exception to the mootness doctrine bears the burden of establishing both that the challenged action is too short in duration to be litigated fully before its cessation and that there

is a reasonable expectation that the same complaining party would be subject to the same action again.) *See also Petition of Billings High Sch. Dist. No. 2 v. Billings Gazette*, 2006 MT 329, ¶ 14, 335 Mont. 94, 98, 149 P.3d 565, 570; *Serena Vista L.L.C.*, 2008 MT 65, ¶910; *Skinner v. Lewis and Clark*, 1999 MT 106, ¶ 18, 294 Mont. 310, ¶ 18, 980 P.2d 1049, ¶ 18.

Ramon does not argue that there is the slightest chance, let alone a reasonable expectation, that he will be subject to the same action again. Instead, he cites *Gateway Opencut* for the proposition that the "same complaining party" is not a requirement. (Appellant's Opening Br. 12-13.) *Gateway Opencut* does not stand for that proposition nor did it apply the exception. *Gateway Opencut* ¶ 25.

To further support this argument, Ramon relies on a handful of cases tailored to very specific issues not present here. For example, in *In re D.K.D.* this Court held:

> As a preliminary matter, we briefly address whether this case is moot in light of the fact that the court's commitment order, by its terms, expired on March 16, 2011. While not an issue raised by either party, "courts have an independent obligation to determine whether jurisdiction exists and, thus, whether constitutional justiciability requirements ... have been met." *Plan Helena, Inc. v. Helena Reg'l Airport Auth. Bd.*, 2010 MT 26, ¶ 11, 355 Mont. 142, 226 P.3d 567 (internal citations omitted). In line with our precedent in involuntary commitment cases, the duration of which is often too short to allow issues to be fully litigated prior to respondent's release from the institution, we conclude that this issue is not mooted by the fact that the District Court's order expired on March 16, 2011, because it falls under the "capable of repetition, yet evading review" exception to the mootness doctrine. *See e.g. In re D.M.S.*, 2009 MT 41, ¶ 10, 349 Mont.

> 257, 203 P.3d 776; *In re Mental Health of D.V.*, 2007 MT 351, ¶¶ 30–32, 340 Mont. 319, 174 P.3d 503 (internal citations omitted); *In re N.B.*, 190 Mont. 319, 322–23, 620 P.2d 1228, 1231 (1980).

In re D.K.D., 2011 MT 74, ¶ 14, 360 Mont. 76, 80, 250 P.3d 856, 859. With few exceptions, to pass muster under the "capable of repetition yet evading review" exception, the same complaining party must be at risk.

II. Judge Cuffe Correctly Held that Montana Law Authorizes Civil Detention Pursuant to an Immigration Detainer Request.

Ramon maintains that "[K]eeping a person in jail after he would otherwise be free to leave constitutes a new arrest and therefore requires applicable arrest authority." (Appellant's Opening Br. 15.) The flaw in this argument is that Ramon was in jail on burglary charges and was never "otherwise free to leave." Ramon quotes the jail roster as noting "can bond but do not release." (Appellant's Opening Br. 3.) Clearly, the bond agent was not prevented from posting bond and, when he decided not to do so, Ramon and his representative were free to contact another bond agent. The act necessary to trigger his eligibility to be "otherwise free to leave" did not occur. Ramon remained incarcerated on burglary charges until he was sentenced and released on February 11, 2019.

Ramon argues that holding an individual after the resolution of state charges is a new arrest. He was not held after resolution of state charges. As noted above, Ramon was released in February 2019 after being sentenced on those charges. The cases cited by Ramon, in which the courts held detentions pursuant to immigration

detainers to be new arrests, involve the detention of inmates who had actually been released as Ramon was on February 11, 2019. *See e.g. Lunn v. Commonwealth*, 477 Mass. 517, 78 N.E.3d 1143 (2017) (Lunn was placed in a holding cell at the courthouse after the Judge dismissed all charges against him pursuant to a detainer request); *People ex. rel. Wells v. DeMarco*, 168 A.D.3d 318 N.Y.S.3d 518 (2018) (members of sheriff's office placed the defendant in a cell rented by ICE after all charges against him were dismissed by the court). That was not the case with Ramon, who relies on what would have happened had his bond been posted or the charges dismissed instead of what actually happened.

As to Ramon's argument that Montana sheriffs have no authority to detain an inmate on a civil detainer request, Judge Cuffe disagreed, holding:

> . . . an immigration detainer falls within the authority of MCA §7-32-2201(3) as confinement of persons upon civil process and/or confinement of persons upon civil process and/or confinement of by other authority of law. The court finds the Lincoln County Detention Center does have the authority under Montana law to detain Plaintiff on a civil immigration detainer.

(Order Denying Appl. for TRO and Prelim. Inj. (Nov. 16, 2018) (Appellant's Opening Br. App. 1.)

Judge Cuffe's holding that Montana law does not prohibit local law enforcement from cooperating with federal immigration authorities is sound. Immigration enforcement is a civil process and Montana law authorizes local jails to confine "persons committed for contempt or upon civil process or by other

authority of law." Mont. Code Ann. § 7-32-2203(3) (2017). Ramon was arrested for burglary and confined to LCDC on that charge. Even if he had been otherwise free to leave, the statute does not require immediate release. The statute is not limited to the authority of Montana law or state civil process. Immigration enforcement is a civil process under federal law.

Inmates who post bond or are otherwise released from custody may be detained for a certain period during the release process. Detention facilities are afforded a reasonable amount of time to complete the release process, which varies from facility to facility depending on tasks undertaken and the press of day-to-day operations. Although the detention of an inmate on an immigration detainer is not a routine part of the release process, the expectation that an inmate will be released immediately upon the posting of bond is neither reasonable nor required by law. Courts have held that a reasonable amount of time for completing this process may be up to 48 hours, depending on the circumstances. *Cty. of Riverside v. McLaughlin*, 500 U.S. 44, 56, 111 S.Ct. 1661, 114 L.Ed.2d 49 (1991).

Inmates subject to an immigration detainer are taken into custody by federal agents often immediately, but in no case more than two hours after the jail receives notice that the conditions of release have been met. The time period in which inmates subject to an immigration detainer are held is negligible and well within the "reasonable" time frame Courts have allotted to administrative tasks. The

negligible period is not sufficient to cause injury to the inmate. Of course, since Ramon was not released, he was not subject to the detention.

In summary, Ramon's incarceration was not the result of the detainer request or the conversation between LCDC staff and bond agent Rowe. Rowe decided not to post bond when he learned Ramon would be taken into custody by border patrol upon his release. Ramon decided against posting bond when he learned he would be taken into custody by border patrol upon his release.

CONCLUSION

As detailed herein, the mootness doctrine invalidates Ramon's appeal. Moreover, the District Court properly held that the Lincoln County Sheriff's practice of holding inmates for up to 48 hours at the request of immigration officials is authorized by Montana law. While Ramon was not eligible to leave LCDC until February 11, 2019, had a bond agent actually posted bond for him, the Sheriff would have been within his authority to detain Ramon pursuant to the border patrol's immigration detainer request.

DATED this 26th day of August 2019.

MACo Defense Services

/s/ Maureen H. Lennon
Maureen H. Lennon

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11(4)(e) of the Montana Rules of Appellate Procedure, I certify that this principal brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double-spaced except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word for Windows is not more than 2,500 words excluding certificate of compliance.

/s/ Maureen H. Lennon
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CERTIFICATE OF SERVICE

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