

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. OP 20-_____

WARDEN LYNN GUYER, WARDEN JENNIE HANSEN, AND MONTANA
DEPARTMENT OF CORRECTIONS,

Petitioners,

v.

MONTANA EIGHTH JUDICIAL DISTRICT COURT, CASCADE COUNTY,
THE HONORABLE ELIZABETH A. BEST, DISTRICT JUDGE,

Respondents.

**PETITION FOR WRIT OF SUPERVISORY CONTROL, OR IN THE
ALTERNATIVE, FOR REVIEW AND REQUEST FOR EMERGENCY
STAY PENDING RESOLUTION**

On Petition from the Eighth Judicial District Court in
Cause Nos. BDC-17-295; BDC-16-417; BDC-14-393; BDC-13-334; BDC-19-703;
BDC-17-568; DDC-15-332(B); BDC-15-107; BDC-18-327
The Honorable Elizabeth A. Best, Presiding Judge

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49 Op. Att’y Gen. 13, 2001 Mont. AG LEXIS 1711, 12, 13, 14, 15

This Court has long held that “[w]hen a district court commits a criminal defendant to DOC for placement pursuant to § 46-18-201(3)(a)(iv)(A), MCA, the sentencing court has *no authority* to direct or control *where* or in what program DOC ultimately places the defendant for the term of sentence.” *VanSkyock v. Manley*, 2017 MT 99, ¶ 12, 387 Mont. 307, 393 P.3d 1068 (citing *State v. Bekemans*, 2013 MT 11, ¶ 49, 368 Mont. 235, 293 P.3d 843) (emphasis added). In a series of orders issued April 2, 2020, however, the Eighth Judicial District Court, Honorable Elizabeth Best presiding, directed that eight offenders previously committed to Department of Corrections (“DOC”) custody be immediately transported from the Cascade County Detention Center (CCDC) to the prison or another DOC facility. The district court did this even though DOC, in response to the ongoing COVID-19 pandemic, has determined it necessary to suspend all unnecessary transfers between facilities to control the spread of disease. The district court has now directed that those offenders be transported by April 26. **DOC is informed that the first inmates will be transported the early morning of April 27, 2020.**

As outlined below, the district court’s actions exceed its jurisdiction, clearly violate this Court’s holdings, undermine DOC’s authority to determine placement of offenders and limit offender movement in this time of crisis, and will, if not corrected, cause a gross injustice on an issue of statewide importance.

Accordingly, this Court should issue a writ of supervisory control, review, or prohibition vacating the district court's transfer orders. Because the district court has directed the transport of these offenders to occur before the Court will have an opportunity to fully consider this petition or permit a response by the district court or its designee, the Court should issue an **emergency stay** of transfers of these offenders while the Court considers this petition.

ISSUE PRESENTED

Did the district court exceed its jurisdiction and commit a mistake of law causing gross injustice on an issue of statewide importance by directing DOC to transport inmates notwithstanding this Court's prior holdings that district courts lack authority to direct DOC regarding the placement of offenders committed to its custody?

STATEMENT OF THE FACTS

The COVID-19 pandemic threatens the well-being of all Montanans and poses particular concerns for correctional officers and inmates in custody. For this reason, DOC has taken numerous measures to comply with CDC guidance on limiting the potential for spread of COVID-19 in the facilities it administers. *See Disability Rights Mont. v. Mont. Jud. Dists. 1-22*, OP 20-0188, at 1 (Apr. 14, 2020) (observing that the "Executive and Judicial Branches have implemented appropriate and detailed measures for correctional facilities and jails to address the

current state of emergency surrounding the critical health and safety issues that must be addressed in light of the emergence of the COVID-19 virus in this State.”)

One such measure is suspension of transportation of inmates. (Exhibit A, pp. 2-3.) DOC suspended transfers following several reports of COVID-19 infections in county and contracted facilities, including the Yellowstone County Detention Center, the Gallatin County Re-entry Center, and the START facility in Anaconda. (Exhibit B, ¶¶ 16-17, 20.) DOC suspended transfers because each transfer puts correctional and detention officers in close contact with inmates, consumes both personal protective equipment and finite space set aside for quarantine of new arrivals, and creates a new opportunity for COVID-19 to transfer from facility to facility. This is also necessary because of evidence that COVID-19 has a lengthy incubation period and can be transmitted by asymptomatic individuals. (Ex. B, ¶8.)

On April 1, 2020, the Cascade County Attorney moved the district court to order “immediate[] transport” of several Defendants “to the Montana State Prison/Montana Women’s Prison or other facility as designated by the Department of Corrections...” (Exhibit C, p. 2.) In each case, the County Attorney argued, the Defendant had been committed to DOC custody, but remained in the county jail, “unable to start any [DOC] program or otherwise receive rehabilitative services while at the [CCDC].” (*Id.*, p. 1.)

On April 2, 2020, the district court granted these motions, ordering that within seven days, each Defendant:

shall be transported to the Montana State Prison/Montana Women’s prison or other facility as designated by the Department of Corrections. If the Department of Corrections fails to designate an alternate facility the Cascade County Sheriff shall transport the Defendant to the Montana State Prison/Montana Women’s Prison on the eighth day following this order. The Department of Corrections shall take custody of the Defendant at that time.

(Exhibit D.)

The following criminal cases are subject to this Petition:

Defendant	Cause No.	Summary
Michael Alexander	BDC-17-295	Sentenced January 27, 2020 to a 5-year DOC commitment with 2 years suspended. DOC evaluated Alexander for chemical dependency treatment and approved placement at Missoula Assessment and Sanction Center (MASC) for further assessment. DOC could not transport him immediately because he had another pending felony case in Cascade County. (Exhibit E.)
Katelyn Craft	BDC-16-417	Sentenced on February 28, 2020, to a 20-year term at Montana Women’s Prison (MWP). DOC approved a placement warrant on March 2 and added Craft to a list of female offenders scheduled to be transferred to MWP ahead of her. (Exhibit F.)

Taylor Kaul	BDC-14-393 BDC-13-334	Serving two concurrent five-year DOC commitments. Placed at CCDC after being terminated for disciplinary reasons from the Great Falls Prerelease Center. On March 26, 2020 the Board of Pardons and Parole approved a Secure Placement Request to return Kaul to MSP. (Exhibit G.) However, there were already 47 other male offenders in county detention centers around the state awaiting DOC transfers to MSP. (Exhibit H, ¶ 13.)
Cody LaFountain	BDC-19-703	Sentenced April 1, 2020, to a 3-year DOC commitment, all suspended. DOC had already approved transfer to MSP for a parole revocation in another case. LaFountain joined the list of inmates DOC would transport to MSP when space became available. (Exhibit I.)
Nathan Morsette	BDC-17-568	Sentenced January 13, 2020 to a 3-year DOC commitment with a recommendation for “chemical dependency treatment followed by a prerelease program.” DOC evaluated Morsette’s need for treatment and obtained approval for placement in the Nexus program. (Exhibit J.) However, each prerelease center that screened Morsette denied admission to him, most recently on March 26, 2020. (Exhibit K.)

Mitchell Strippedsquirrel	DDC-15-332(B)	Sentenced January 27, 2020, to a 2-year DOC commitment with recommended “placement in an appropriate inpatient treatment program followed by Pre-Release.” DOC obtained a chemical dependency evaluation on February 4. On February 18, the prerelease center accepted Strippedsquirrel and on February 20, 2020, Connections Corrections (CCP) accepted him. (Exhibit L.) He was scheduled for transport to CCP April 13. (Ex. H, ¶ 10.)
Amellda Thibert	BDC-15-107	Serving a 3-year DOC commitment at the Great Falls Prerelease Center. Terminated for disciplinary reasons on March 10, 2020. DOC has scheduled Thibert for placement at the Passages Assessment, Sanction and Revocation Center in Billings, behind five other female offenders on the waiting list for admission. (Exhibit M; Ex. H, ¶ 12.)
Nicole Thibert	BDC-18-327	Sentenced March 30, 2020, to a 3-year DOC commitment, 2 years suspended, concurrently with other DOC commitments previously imposed. DOC had obtained approval for her admission to Passages ADT followed by Great Falls Prerelease Center. (Exhibit N.) She was eighth in line for admission to Passages. (Ex. H, ¶ 11.)

On April 9, 2020, DOC moved to vacate the district court’s transport orders or to stay the proceedings pending hearing. On April 10, the district court temporarily stayed the orders and ordered additional briefing. (Exhibit O, p. 3.)

Following that briefing, on April 21, the district court lifted the stays and ordered that DOC transfer all of the defendants **within five days**. (Exhibit P, p. 9.) Although the district court gave a nod to DOC’s “discretion to place defendants in appropriate programs to affect the Court’s sentencing orders,” the court, without citing authority, determined that DOC’s failure to transport the defendants in the manner the court believed appropriate violated “the Legislature’s statements of [sentencing] policy” and was an “abuse” of DOC’s discretion. *Id.*

SUMMARY OF THE ARGUMENT

Extraordinary relief is warranted here because the district court has exceeded its statutory authority and contravened this Court’s precedents by directing DOC where to place inmates committed to its custody. The district court does so because, in its judgment, DOC has “abuse[d]” its discretion. The legislature, however, has not given the district court the authority to make that determination. Emergency or no, district courts are not empowered to act as courts of review by issuing orders that reorder DOC placements or otherwise manage the placement process.

This is an appropriate case for an extraordinary writ. The district court’s authority under title 46, chapter 18, presents a purely legal question and does not require any factual determination. The offenders’ statuses are not disputed. Because these orders are not final judgments and will be executed before this Court

could consider an appeal in the normal course, urgent or emergency factors make appeal an inadequate remedy.

The district court is both proceeding under a mistake of law causing a gross injustice that implicates a constitutional question of separation of powers of statewide importance and exceeding its jurisdiction.

In addition, the Court should issue an emergency order to stay the orders issued by the district court, pursuant to Mont. R. App. P. 14(7)(c).

ARGUMENT

I. THE ISSUE HERE IS PURELY LEGAL AND URGENT OR EMERGENT FACTORS MAKE THE NORMAL APPEAL PROCESS INADEQUATE.

This Court may supervise a district court by way of a writ of supervisory control. Mont. Const. art. VII, § 2(2); Mont. R. App. P. 14(3). Supervisory control is an extraordinary remedy that is justified when: (1) urgency or emergency factors make the normal appeal process inadequate; (2) the case involves purely legal questions; and (3) the other court is “proceeding under a mistake of law and is causing gross injustice” or “[c]onstitutional issues of state-wide concern are involved.” Mont. R. App. P. 14(3) (a)-(b).

A writ of review is appropriate when a district court has exceeded its jurisdiction “and there is no appeal or, in the judgment of the court, any plain speedy, and adequate remedy.” Mont. Code Ann. § 27-25-102(2). A writ of

prohibition “arrests the proceedings of any tribunal...or person exercising judicial functions when such proceedings are without or in excess of the jurisdiction of such tribunal...or person.” Mont. Code Ann. § 27-27-101.

The question of the district court’s authority under title 46, chapter 18, Mont. Code Ann., to direct DOC to transport offenders to or from a particular facility is a purely legal question. Appeal is an inadequate remedy because these are criminal cases to which DOC is not a party, and because the transport orders are not appealable final judgments. *See Id.* § 46-20-104. Moreover, these orders will be executed before the Court could hear an appeal. It will then be too late to afford meaningful relief to DOC and the increased risk of COVID-19 transmission from these transfers will already have occurred.

II. THE DISTRICT COURT’S TRANSPORT ORDERS VIOLATE THIS COURT’S HOLDINGS AND CONSTITUTIONAL SEPARATION OF POWERS PRINCIPLES.

A. Placement of offenders committed to DOC custody in an appropriate correctional facility or program is a function delegated to DOC, not the courts.

The district court, by exercising authority it does not have over decisions the legislature has committed to the executive branch, through the Department of Corrections, is committing a mistake of law and implicating a constitutional question of statewide importance.

Article III, Section 1 of the Montana Constitution provides that

The power of the government of this state is divided into three distinct branches-legislative, executive, and judicial. No person or persons charged with the exercise of power properly belonging to one branch shall exercise any power properly belonging to either of the others, except as in this constitution expressly directed or permitted.

Mont. Const. art. III, § 1. Although this provision does not require “absolute independence,” it does require “that the powers properly belonging to one department shall not be exercised by either of the others.” *Coate v. Omholt*, 203 Mont. 488, 492, 662 P.2d 591, 594 (1983).

“The executive branch of government is charged with the duty of ensuring that the laws of the state are faithfully executed. *Art. VI, §4, Mont. Const.*” *State v. Bedwell*, 1999 MT 206, ¶ 10, 295 Mont. 476, 985 P.2d 150. The Department of Corrections is among the 20 principal departments allocated by law to the executive branch, Mont. Code Ann. § 2-15-104(1)(i), and is charged with the operation of correctional services and programs, including the custody, assessment, care, supervision, treatment, education, rehabilitation and work and skill development of sentenced offenders. Mont. Code Ann. § 53-1-201, et seq.

DOC’s resources for “adult correctional services” includes the state’s prisons as well as “appropriate community-based programs for the placement, supervision, and rehabilitation of adult felons who meet the criteria developed by the department for placement” in prerelease centers, intensive supervision, on probation or parole and “other appropriate programs.” *Id.* § 53-1-202(2). DOC

coordinates the movement of offenders into approved programming in seven treatment programs, seven prerelease facilities, three sanction, assessment and revocation centers around the state and Pine Hills Correctional Facility.

The district court, of course, is part of the judicial branch. Mont. Const. art. VII, § 1. A court may not usurp the legislatively designated placement authority of an executive agency to whom the defendant has been committed. *See, e.g., In re A.Z.G.*, 273 Mont. 525, 905 P.2d 1098; *In re J.A.*, 1999 MT 148, 295 Mont. 46, 983 P.2d 327; *In re Peterson*, 235 Mont. 313, 767 P.3d 319.

Courts do not have inherent authority to sentence in the absence of specific statutory authority. *State v. Holt*, 2011 MT 42, ¶ 41, 359 Mont. 308, 249 P.3d 470. The legislature established the sentencing authority of the courts in title 46, chapter 18, Mont. Code Ann. Sentencing of convicted offenders may include a commitment of an offender “to the department of corrections with a recommendation for placement in an appropriate correctional facility or program.” Mont. Code Ann. § 46-18-201(3)(a)(iv)(A).

In 2001, the Attorney General, interpreting these statutes, determined that “[p]lacement of inmates to the Montana State Prison or another Corrections facility after being sentenced is primarily the function of Corrections.” 49 Op. Att’y Gen. 13, 2001 Mont. AG LEXIS 17, at *3, *49. “The wide variety of potential placements ranges from the Prison to a pre-release center, to a treatment center, or

to community supervision.” *Id.* at *4 (citing Mont. Code Ann. § 53-1-202).

Following suit, this Court has held that when the court commits a defendant to DOC custody, “the sentencing court has no authority to direct or control where or in what program DOC ultimately places the defendant for the term of sentence.”

VanSkyock, supra, at ¶ 12. The sentencing court may recommend a particular placement for DOC consideration, but the recommendation is not binding on DOC. *Id.*

A sentence of commitment “to the department of corrections with a recommendation of placement in an appropriate facility or program,” does, by legislative design, grant a wide degree of discretion to the DOC. Mont. Code Ann. § 46-18-201(3)(a)(iv)(A). The legislature created the progressive sentencing structure of the DOC commitment with the understanding that, in many circumstances, DOC is best situated to determine the most appropriate placement for an offender based upon a comprehensive assessment of an offender’s often extensive needs. Importantly, the legislature did not create any procedure for administrative or judicial review over DOC’s use of this authority, nor has it created a cause of action to challenge such determinations.

B. DOC’s authority regarding placement of offenders includes deciding when to transfer offenders from detention centers to correctional facilities and programs.

As then-Attorney General McGrath concluded, “[o]nce sentenced, the inmate is in the ‘legal custody’ of Corrections.” 2001 Mont. AG LEXIS 17, at *6. “Upon imposition of sentence, the local or regional detention center simply serves as a place of temporary detention until Corrections can place the inmate.” *Id.* “Although supervision is transferred to Corrections, the inmate may remain, *at Corrections’ option*, in a local or regional detention facility until an open bed at a pre-release center or a treatment center is obtained.” 2001 Mont. AG LEXIS, at *4-5 (emphasis added).

Thus, even the county sheriff administering a jail “has *no* discretion as to when the prisoner is transported to a corrections facility.” *Id.* at *5-*6 (emphasis added). DOC exercises sole discretion as to when the prisoner is transported and “only when [DOC] indicates that a placement is available.” *Id.* at *5-6.

The placement of the sentenced offender in a county jail while DOC administers its screenings and assessments or otherwise determines appropriate placements does not alter the sentence. 2001 Mont. AG LEXIS 17, at *4-5. To the contrary, that time in the county jail is almost always necessary to implement the sentencing court’s recommendations. It takes time to evaluate an offender’s needs for any treatment. It takes time to apply to treatment programs. In an overcrowded system, it takes time to wait for open slots in treatment programs or prerelease centers. And, DOC’s contracts with many facilities do not allow it to place

offenders there without approval of a facility's local screening committee. (Exhibit Q, p. 6 of 7.)

Accordingly, these orders to transport sentenced offenders exceed the district court's authority and usurp DOC's executive authority to arrange rehabilitative services for the offender often recommended by the sentencing court and determine the most appropriate placement. Mont. Code Ann. § 46-18-201(3)(a)(iv)(A). These defendants are in DOC's custody, and DOC may determine that inmates serve their sentences in the local detention facility "in the form of pre-sentence jail time served and post-sentencing time served waiting for pre-release placement or a bed date for treatment at a Corrections facility," or "may never be transported to a different place of incarceration within the system." 2001 Mont. AG LEXIS 17, at *5.

III. THE DISTRICT COURT'S MISTAKE OF LAW IS CAUSING A GROSS INJUSTICE WITH A STATEWIDE IMPACT.

A. The district court's orders disrupt DOC's ability to perform its function of managing the many offenders and facilities under its jurisdiction.

When the court orders the transfer of offenders from CCDC before DOC can accomplish its orderly assessment and placement process, it seriously and adversely impacts not only DOC's operations but also the offender, especially if the offender was detained at CCDC pending completion of that placement process. If the district court were correct, and could direct the placement and timing of

DOC transfers, then DOC's classification and placement of offenders would be subject to the independent preferences of 56 counties and 22 judicial districts. This impact on DOC's ability to perform its functions is all the greater during a global crisis. If not corrected, the district court's orders will cause a gross injustice on a statewide basis.

DOC has a well-developed approach for evaluating, classifying, and placing offenders committed to its custody. DOC staff meet regularly to discuss the status of all offenders who have been sentenced throughout the state of Montana and who are still held in custody in local county detention facilities, state correctional facilities or state-contracted facilities. (Exhibit R, ¶ 4.) They discuss the plan for the offender, including all court recommendations, the status of various evaluations scheduled or administered and risk and needs assessments completed, and whether the offender has been approved by the local screening committees from the state-contracted facilities for certain programming. *Id.* at ¶ 5.

After an offender has been approved for placement, the offender may have to wait to be placed, depending on the bed space availability and the number of offenders who have been approved ahead of that offender. Once bed space becomes available, the offender can be scheduled for transport. (Ex. R, at ¶ 8; 2001 Mont. AG LEXIS 17. *4-5.)

This process of monitoring the approval of program placement and movement of offenders into approved programming requires coordination with all of the Department's facilities and state-contracted programs. (Ex. R, ¶ 10.) This closely coordinated schedule determines which offenders are being released, and which offenders are moving in and out of the jails, the treatment programs and prerelease centers. (Ex. R., ¶ 11.) Much of this information is not typically in the sentencing judge's possession at the time of sentencing.

In each of the Cascade County cases at issue, DOC's authority to determine placement over inmates in its legal custody was clearly exercised. Each defendant's case had been reviewed, and placement determined. In certain instances, placement was delayed because bed dates were unavailable. Other cases involved pending criminal proceedings which were only recently resolved to allow movement. Nevertheless, each defendant had been approved for placement either in prison, treatment or sanction facilities, awaiting only available beds in those facilities.

Moreover, in a system operating above normal capacity, delays in transfers are inevitable to ensure defendants are placed appropriately. Neither the prison nor the offender is well-served when an offender who is best served by placement in an intensive treatment program like Nexus or CCP must instead take up a bed at the prison. DOC and Cascade County are both parts of a corrections system that is

under-resourced and overburdened. When Cascade County seeks to relieve its overcrowding in its own jail through a court order, the overcrowding does not disappear, but is merely shifted into other parts of the corrections system, simultaneously disrupting DOC's operations and adding to the already complex management of offenders throughout the State.

The appropriate placement and classification of offenders is a complex process that requires a considered administrative judgment of not only those factors considered by a court in sentencing, but also the needs and capacity of the system as a whole. That very fact demonstrates the separation of powers problem inherent in these transfer orders, and the injustice they may cause. These burdens would only compound if other judges decided to model the district court's approach. It creates a serious and untenable statewide problem for the justice system if individual judges seek to impose regional preferences by unilaterally—and without legal authority—usurping the coordination authority of DOC.

B. The COVID-19 pandemic further underscores the consequences of the district court's approach.

The COVID-19 pandemic has added yet another layer of complexity to the already delicate balancing task of determining the most appropriate placements for sentenced offenders. At this time, the most effective tool courts, detention centers, and the DOC have to stop the spread of COVID-19 in the criminal justice system is to reduce offender movement. This is consistent with the advice of the CDC for

correctional facilities¹. Inmate transfers among facilities increases the risk of disease transmission to inmates in those facilities. Restricting transfers even from facilities without known positive infections during the execution of a disease suppression strategy by the State of Montana reduces the risk of disease transmission to all incarcerated persons, including the inmates not transferred. For this public health reason alone, and independent of the legal authorities that commit offender movement decisions to the DOC, this Court should vacate the April 21, 2020 transport orders of the Eighth Judicial District Court.

CONCLUSION

Just two weeks ago, this Court declined to interfere with DOC's approach to managing the COVID-19 pandemic, stating: "[W]e believe the Governor's Directive, and its reliance on the CDC interim guidance, best addresses the current crisis. In particular, the CDC's guidance sets forth best practices while recognizing the need for flexibility to accommodate variability in detention centers and correctional facilities." *Disability Rights Mont.*, OP-20-0188, at 10. That this current controversy comes not from an outside advocacy group but instead a district court judge should not change the Court's disposition. The proper response to COVID-19 requires a weighing of policy determinations best addressed to the

¹ Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities. Available at <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html>, last visited 4/8/2020.

functions of the executive branch. The district court's orders intrude upon those prerogatives, prerogatives this Court has previously sanctioned. The Court should issue an emergency stay, accept the Petition, and vacate the district's orders.

Respectfully submitted this 24th day of April, 2020.

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CERTIFICATE OF COMPLIANCE

Pursuant to Mont. R. App. P. 11 and Mont. R. App. P. 14 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 3,998, excluding certificate of service and certificate of compliance.

Roger Renville
ROGER RENVILLE

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and accurate copy of the foregoing Petition for Writ of Supervisory Control to be mailed this 24th day of April 2020, addressed to:

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A handwritten signature in black ink, appearing to read 'Kara Tobol', is written over a horizontal line. The signature is stylized and cursive.

Kara Tobol, Paralegal

CERTIFICATE OF SERVICE

I, Colleen Elizabeth Ambrose, hereby certify that I have served true and accurate copies of the foregoing Petition - Writ - Supervisory Control to the following on 04-24-2020:

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