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IN THE SUPREME COURT OF THE STATE OF MONTANA

No. OP 20-0250

PATRICK JOSEPH ADAMS,

Petitioner,

v.

PETER BLUDWORTH, Warden,
Crossroads Correctional Center,

Respondent.

**MONTANA DEPARTMENT OF CORRECTIONS' RESPONSE TO
PETITION FOR WRIT OF HABEAS CORPUS**

In compliance with this Court's Orders of May 8 and May 29, 2020, the Respondent, Peter Bludworth, through his attorneys, responds to the Petition for Writ of Habeas Corpus, filed by Petitioner Patrick Joseph Adams ("Adams").

Respondent submits copies of district court documents from Mineral County and Cascade County, and records of the official acts of the Department of

Corrections and the Montana Board of Pardons and Parole, of which this Court may take judicial notice, pursuant to *Mont. R. Evid.* 202(b)(4), (6). “A court shall take judicial notice if requested by a party and supplied with the necessary information.” *Mont. R. Evid.* 201(b)(2), (d). These documents are attached hereto in the Appendix filed herewith.

BACKGROUND FACTS

Mr. Adams is currently incarcerated at the Crossroads Correctional Center in Shelby, Montana, where he was transferred on January 7, 2020. (Exhibit A). Peter Bludworth is the warden at Crossroads Correctional Center.

On November 26, 2018, the Eighth Judicial District Court, Cascade County, convicted Adams of felony Burglary and sentenced him to a three-year prison term with no time suspended. (Exhibit B). On December 19, 2018, the Fourth Judicial District, Mineral County, convicted Adams upon his guilty pleas to felony Criminal Possession of Dangerous Drugs with Intent to Distribute and felony Forgery. (Exhibit C). On each of the two counts, the court sentenced Adams to the custody of the DOC for five years with all five years suspended, to be served concurrently to one another and concurrently to Adam’s sentence in Cascade County Cause No. ADC-17-584. (*Id.*)

Adams made his initial Appearance before the Montana Board of Pardons and Parole (“BOPP” or “Board”) on June 25, 2019, and the Board approved him

for parole on several conditions, including obtaining a parole plan approved by the Department of Corrections (“DOC”) and getting chemical dependency counseling in the community. (Exhibit D.) On September 12, 2019, the DOC approved a parole plan that required Adams to successfully complete a 180-day Intensive Supervision Program (“ISP”) and reside at the Blue Thunder Lodge, a sober living residence in Great Falls, Montana. (Exhibit E.)

On September 17, 2019, Adams signed the conditions of his parole supervision. (Exhibit F.) Adams signed a Travel Permit with the following instructions for reporting to his supervising officer upon release:

Mr. Patrick Adams will Parole from MSP on Monday September 23, 2019. He is to follow all the conditions of his release. Mr. Adams will be transported from MSP to the Butte bus depot where a pre-purchased ticket will be waiting for him. He is to take the first available bus to Great Falls MT. Upon arrival in Great Falls he is to immediately report to the Blue Thunder Lodge for intake, he is to report there no later than 5:00 p.m. On Tuesday September 24, 2019 he is to report in PERSON to Officer Mike Stimac at the Great Falls P&P office.

(Exhibit G.) Adams was fitted with a GPS monitor prior to release, pursuant to the conditions of the ISP. (Exhibit H.) Adams was released from the Montana State Prison on September 23, 2019 and transported to the bus station in Butte.

On September 24, 2020, Adams met with Officer Stimac to review his parole conditions, receive an ISP Offender Handbook, and complete supplemental forms for ISP. (Exhibit I.) Adams questioned Stimac about the parole conditions

prohibiting him from associating with probationers, parolees, prison inmates or persons in the custody of law enforcement agencies without prior approval from his parole officer. (*Id.*) Adams questioned Stimac about the condition prohibiting entry into bars. Adams and Stimac discussed Adams' wife Chantelle Beal ("Beal"), who was on probation until October 3, 2019, and was being supervised by another P&P officer. (*Id.*) Adams requested permission to take Ms. Beal to a bar for dancing. Stimac denied the request. (*Id.*) Stimac advised Adams that Stimac would consult with Beal's P&P officer and the staff at the Blue Thunder Lodge to determine what contact would be appropriate while Beal was on supervision. (*Id.*) Stimac advised Adams that the "no association" condition was a condition of Adams' parole and would not be changed. (*Id.*)

Adams was further advised that he was subject to a 5:00 p.m. curfew at the Blue Thunder Lodge, with the exception of AA/self-help meetings approved by the facility's staff, until he had found employment. (*Id.*) Finally, Adams and Stimac worked out a practical goal for Adams, which was to get his suspended driver's license reinstated. (Exhibit J.)

Three days later, on September 27, 2019, Stimac reviewed the GPS data from Adams' ankle bracelet and saw that Adams had left the sober living residence for about two hours the night of September 26. (Exhibit K.) Stimac contacted staff member Cody Purdeau at the residence and learned that Adams' evening absence

was unauthorized (“off-agenda”). (*Id.*) Purdeau advised Stimac that Adams had created other issues by his conduct at the sober living facility, including unauthorized contact with Beal. (*Id.*)

Stimac determined from GPS data and Purdeau’s information that Adams was at a local motel on September 27 instead of job-searching as he was supposed to be. (Exh. K.) Stimac and three assisting P&P officers began searching for Adams in Great Falls using contemporaneous GPS data. (*Id.*)

The P&P officers found Adams driving a white Dodge Caravan with Beal in the passenger seat. (Exh. K.) The Great Falls Police Department (“GFPD”) reported that the license plate on the white van was reported stolen from a different vehicle. (*Id.*) When Adams stopped for gas, the officers detained him and searched the vehicle with assistance from GFPD officers. (*Id.*) In a backpack that was in the van, officers found used hypodermic syringes and two syringes filled with a clear liquid that field-tested as methamphetamine. (*Id.* at 2.) Officers also found two 9 mm. cartridges of ammunition, one in the backpack and one on the floor of the van. (*Id.* at 2.) Stimac arrested Adams on a parole hold and believed that the GFPD would cite Adams for driving without a license and without insurance. (*Id.*) Beal’s PO placed a 72-hour hold on her. Stimac believed that the GFPD would charge Beal for possession of dangerous drugs, drug paraphernalia, and stolen property. (*Id.* at 3.)

Later that day, Stimac interviewed staff at the Blue Thunder Lodge about Adams' conduct there. (Exh. K.) From staff member Chris Vermilion, Stimac learned for the first time that Adams had not complied with his instructions on release. On September 23 Adams had not used the bus ticket purchased for him but had instead been picked up in Butte and transported to Great Falls by Beal. (*Id.*) Adams had arrived at the sober living facility too late to check in that evening and had spent the night with Beal. (*Id.*) Adams had been off agenda at least twice that week and had inexplicably set off the sober living facility's security alarm one night. (*Id.*) The Blue Thunder Lodge staff advised Stimac that, as a result of the several incidents, the facility was terminating Adams' residence in their program. (*Id.*)

On October 2, 2019, Stimac submitted an Affidavit of Probable Cause detailing the alleged violations of Adams' parole. (Exhibit L.) Adams received a Notice of On-Site Hearing, with the Affidavit attached, setting a hearing that day. (Exhibit M.) Adams waived his right to a 24-hour notice of the hearing. (*Id.*)

On October 2, 2019, Hearing Officer Sonya Mahlum conducted the on-site hearing with Adams present at the Cascade County Detention Center. Adams plead guilty to six counts of rules violations. (Exhibit N.) Adams plead guilty to violating a "laws and conduct" condition by driving the Dodge Caravan on a suspended license, with fictitious license plates and without insurance. (*Id.*) Adams plead

guilty to violating a firearms condition by operating a vehicle in which ammunition was found. (*Id.*) Adams plead guilty to other violations involving his residence, programming, and unauthorized association with Beal. (*Id.*)

Adams plead not guilty to possessing or using illegal drugs. (Exh. N.) Hearing Officer Mahlum found Adams guilty of possessing illegal drugs based on evidence that Adams was in control of the vehicle in which syringes and methamphetamine were found. (*Id.*)

Mahlum found probable cause that Adams had violated the conditions of his parole and requested that Adams be returned to the Board for a formal revocation hearing. (*Id.*)

On October 7, 2019, Stimac submitted a Report of Violations to the Board, alleging six parole violations. (Exhibit O.) Stimac reported that the violations included both compliance and non-compliance violations. (*Id.*) Stimac reported that the case management responses attempted had included:

- Verbal reprimand
- Increased reporting/contacts
- Restricted association
- Intensive Supervision Program
- Electronic Monitoring
- Chemical Dependency Treatment
- Urinalysis Drug Testing
- Curfew

(*Id.* 3)

On November 19, 2019, at the Montana State Prison, the Board conducted a

revocation hearing with Adams present. (Exhibit P.) Adams plead guilty to violating the “no association” condition by his unauthorized association with Beal. (*Id.* 11:3.) The Board found Adams guilty of that violation. (*Id.* 11:4-7.) Adams plead not guilty to the other five alleged violations. The Board found Adams guilty of four of those, including violations regarding his residence, the ISP program, the ammunition, and the syringes and methamphetamine. (Exhibit Q.) The Board entered no finding for the alleged violation related to laws and conduct based on Adams’ assertion that he was not actually cited by the GFPD with the driving offenses. (Exh. Q; Exh. P 8:5-9:5.)

The Board revoked Adams parole and scheduled him for reappearance in November 2020. (Exh. Q.) The Board stated that its action was taken after careful evaluation of all relevant facts known to the Board. (*Id.*) The Board stated that its conclusions were based on the nature of Adams’ parole violations, the nature or severity of his offenses, his previous criminal history, and his poor history under supervision. (*Id.*) The Board commented that, “multiple parole violations immediately upon parole release indicate continued criminal thinking, obtain available cognitive-based program.” (*Id.*)

STANDARD FOR WRIT

The purpose of the writ of habeas corpus is “to inquire into the cause of imprisonment or restraint and, if illegal, to be delivered from the imprisonment or

restraint.” 46-22-101(1), MCA. “The purpose of a writ of habeas corpus is to determine the legality or illegality of the restraint alleged to be exercised. It is available only to those persons, or on behalf of those persons, unlawfully imprisoned or restrained of their liberty, . . .” *Lott v. State*, 2006 MT 279, ¶9, 334 Mont. 270, 275, 150 P.3d 337, 340 (quoting *August v. Burns*, 79 Mont. 198, 213, 255 P. 737, 741 (1927)).

Generally, “habeas corpus relief is not available to determine whether other constitutional rights have been violated.” *Sage v. Gamble*, 279 Mont. 459, 463, 929 P.2d 822, 824 (1996) (citing *Gates v. Missoula Cty. Comm’rs*, 235 Mont. 261, 262, 766 P.2d 884, 885 (1988)). However, this Court has held that parolees may assert in habeas corpus claims that their due process rights were violated in parole proceedings. *Id.*; see also *Morrissey v. Brewer*, 408 U.S. 471 (1972).

Adams, as the petitioner, has the burden to present a prima facie case that he suffers an illegal incarceration and, therefore, is entitled to habeas corpus relief. *Miller v. Eleventh Judicial Dist. Ct.*, 2007 MT 58, ¶ 14, 336 Mont. 207, 154 P.3d 1186.

LAW AND ARGUMENT

Adams alleges that the Board denied him the minimum requirements of due process for the revocation of parole. Adams also alleges that he was denied due process at the on-site hearing at the CCDC. Adams alleges further violations of other constitutional rights irrelevant to the legality of his incarceration.

The Petition should be denied for the reasons set forth below.

A. Petitioner Received All the Process Due at the On-Site Hearing

Adams alleges that he was denied several elements of due process required for a preliminary hearing in parole revocation proceedings, as held by the United States Supreme Court in *Morrissey*, 408 U.S. 471. In *Morrissey*, the Court held that due process required, initially, “an informal hearing structured to assure that the finding of a parole violation will be based on verified facts and that the exercise of discretion will be informed by an accurate knowledge of the parolee’s behavior.” *Id.* at 484. At a preliminary hearing such as Adams’ on-site hearing, the parolee should be given notice of the hearing and its purpose to determine whether there is probable cause to believe he has committed a parole violation. *Id.* at 486-87. The notice should state the alleged parole violations. *Id.* The parolee may appear and speak in his own behalf; he may bring documents or individuals who can give relevant information. *Id.* On request of the parolee, a person who has given adverse information on which parole revocation is to be based is to be made

available for questioning in his presence. *Id.* at 487. The hearing officer shall make a summary of the hearing, including the parolee's responses and the evidence given in support of revocation. *Id.* This process has been codified in Montana statutes, sections 46-23-1001 through 46-23-1032, MCA (2019).

Adams acknowledged receipt of the Notice of On-Site Hearing that expressly stated the purpose of the hearing was "to determine whether there is probable cause to believe these violation(s) occurred." (Exh. M.) The alleged parole violations were stated in the On-Site Affidavit of Probable Cause attached to the Notice. (*Id.*) Thus, Adams had notice of the hearing and notice of the allegations against him in accord with Mont. Code Ann. ¶ 46-23-1024(2) and Admin. R. Mont. 20.25.801.

Adams alleges that he was "not allowed to defend [him]self." (Pet. 6, ¶ 2 under Ground Two.) But Mahlum's Summary of On-Site Hearing notes that Adams defended himself by pleading not guilty to possessing or using illegal drugs. (Exh. N.) Adams concedes that Mahlum "asked questions based on what the PO said in the Report of Violation," but complains that "nothing [he] said mattered as it was contradictory to what the PO said" and that Mahlum accepted Stimac's statements "over everything [he] said." (Pet. 6, ¶ 2 under Ground Two.) Adams appeared at the hearing and spoke on his own behalf. The hearing officer's conclusion that Stimac was more credible than Adams is not a due process

violation.

Adams alleges that he was “not allowed to cross-examine the witness.” (Pet. 6, ¶ 2 under Ground Two.) But he admits challenging Stimac’s testimony and statements when Mahlum “asked questions based on what the PO said in the Report of Violation.” (*Id.*) Neither Mont. Code Ann. § 46-23-1024 nor Admin. R. Mont 20.25.801 require cross-examination of an adverse witness by a parolee at the on-site hearing. *Morrissey* requires exactly what happened here, that “a person who has given adverse information on which parole revocation is to be based is to be made available for questioning in [the parolee’s] presence.” *Morrissey v. Brewer*, 480 U.S 471, 487. Stimac was present and questioned about the information Stimac included in the Affidavit of Probable Cause and Adams was able to challenge Stimac’s statements.

Adams alleges that he was “not given a fair hearing by an impartial officer.” (Pet. 6.) However, according to *Morrissey*, the due process requirement of an independent officer to preside over the initial hearing is satisfied “if the evaluation of whether reasonable cause exists to believe that conditions of parole have been violated is made by someone such as a parole officer other than the one who has made the report or parole violations or has recommended revocation.” *Morrissey*, 408 U.S. at 486. Mahlum was just such an “other” parole officer. Adams was provided a hearing presided over by an “independent officer” as required by Mont.

Code Ann. ¶ 46-23-1024(2).

Adams alleges that the hearing officer “did not find probable cause to hold [him] for the final decision of the board.” (Pet. 7.) However, the summary states this disposition:

Adams plead guilty to a majority of the violations and was found guilty of the remaining violations. It was determined by the Hearings Officer Adams had violated the terms and conditions of his Parole and it is requested he be returned to the BOPP for a formal hearing.

(Exh. N.)

Petitioner received all the process due to him at the on-site hearing and the Petition should be denied.

B. Petitioner Received All the Process Due at the Parole Revocation Hearing

Adams alleges that having a parole revocation hearing after the on-site hearing violated due process and, implicitly, the Double Jeopardy Clause of the Fifth Amendment of the United States Constitution. (Pet. 7, ¶¶ 6,7, 8.) Adams further alleges that the revocation hearing at MSP was itself lacking in due process. Adams alleges that he was “not allowed to cross-examine witnesses,” was denied a “neutral and detached hearing body,” and that “[a] written statement by ‘fact finders’ as to the evidence relied on and reasons for revocation of the parole was not used.” (Pet. 5, ¶ 1.)

The Double Jeopardy Clause prohibits anyone from being prosecuted twice

for substantially the same crime: “No person shall . . . be subject for the same offense to be twice put in jeopardy of life or limb” U.S. Const. Amend. 5. However, the revocation of parole is not part of a criminal prosecution. *Morrissey*, 408 U.S. at 480. And, Adams misapprehends the different purposes of the on-site hearing and the revocation hearing. The on-site hearing is conducted to determine whether there is probable cause to believe that the arrested parolee has committed acts that would constitute a violation of parole conditions. The revocation hearing is more than a probable cause determination; “it must lead to a final evaluation of any contested relevant facts and consideration of whether the facts as determined warrant revocation.” *Id.* at 488.

The hearing officer presiding over Adams’ on-site hearing did find probable cause that he had violated the conditions of his parole. (Exh. N, 2). Adams’ assertions otherwise are simply wrong. (*See* Pet. 7, ¶¶ 6, 8.) The provision of the revocation hearing following that probable cause determination did not constitute double jeopardy; rather, the revocation hearing is required due process. Mont. Code Ann. § 46-23-1025; Admin. R. Mont. 20.25.801(12).

The due process required of the revocation hearing are: (a) written notice of the claimed violations of parole; (b) disclosure to the parolee of evidence against him; (c) opportunity to be heard in person and to present witnesses and documentary evidence; (d) the right to confront and cross-examine adverse

witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation); (e) a “neutral and detached” hearing body such as a traditional parole board; and (f) a written statement by the factfinders as to the evidence relied on and reasons for revoking parole. *Morrissey*, 408 U.S. at 488-89

On November 5, 2019, two weeks before the revocation hearing, Adams was given written notice of those rights, the hearing, the claimed violations, and the supporting evidence. (Exhibit R.) On that same date, Adams submitted to the Board a Contested Parole Revocation Notice indicating he would present issues of fact, issues of law, and specific objections or denials to each controverted charge. (Exhibit S.) He declined to present a statement of admissions or a list of witnesses and exhibits. (*Id.*)

At the revocation hearing, Adams waived the right to an attorney and advised the Board he understood the charges in the Report of Violation. (Exh. P, 1:18-2:10.) Adams was heard on each of the charged violations. (Exh. P.) Neither the Board nor Adams presented any witnesses, so there were no witnesses to be cross-examined. (*Id.*)

Adams’ conclusory allegation that the Board was not a neutral and detached hearing body is based on no more than Adams’ disagreement with the Board’s decisions. (E.g., Pet. 5, ¶ 1) (“A neutral and detached hearing body would have been willing to listen to what I had to say.”). The Board is the very definition of the

“neutral and detached hearing body” described in *Morrissey*, “a traditional parole board, members of which need not be judicial officers or lawyers.” *Morrissey* at 489.

Finally, Adams did get a written statement by the Board as to the evidence relied on and the Board’s reasons for revoking Adams’ parole. The written disposition noted that the Board evaluated “all relevant facts known to the Board,” clearly a reference to the Report of Violations and the Board’s examination of Adams as to the alleged violations. (Exh. P, 2:7-10) (Board member Renee Bauer advising Adams that, “The Board is going to review each one individually, you’ll be able to make comments or present evidence regarding each charge. I’ll state the violations and ask you for a plea, and then the Board will make a finding after each one.”). The Board’s inquiry was narrow but provided sufficient due process. *See Morrissey* at 489 (“It is a narrow inquiry; the process should be flexible enough to consider evidence including letters, affidavits, and other material that would not be admissible in an adversary criminal trial.”).

The Board stated its reasons for revoking Adams’ parole: the nature of Adams’ parole violations, the nature or severity of his offenses, his previous criminal history, his poor history under supervision, and “multiple parole violations immediately upon parole release” indicating “continued criminal thinking.” (Exh. Q.)

Adams got all the process he was due when his parole was revoked. He had an informal intervention hearing, received written notice of his violations, his rights and notice were reviewed by the hearing officer who found probable cause, and the Board held a parole revocation hearing where he was allowed to speak and present evidence. *See Golie v. State*, 398 Mont. 445, 454 P.3d 627, 2019 Mont. LEXIS 642 (2019).

Adams' Petition should be denied and this matter should be dismissed.

C. Petitioner's Other Allegations Are Irrelevant to the Legality of His Incarceration.

Adams alleges other violations that are irrelevant to the legality of his incarceration. (E.g., Pet. 8 (alleging violations of his right to associate and right to marry). Habeas corpus relief is not available to determine whether Adams' other constitutional rights have been violated. *Sage*, 279 Mont. at 463, 929 P.2d at 824 (citing *Gates v. Missoula Cty. Comm'rs*, 235 Mont. 261, 262, 766 P.2d 884, 885 (1988)).

Finally, Adams alleges another double jeopardy violation arising from a Petition to Revoke filed in Mineral County Cause No. DC-17-12 and based on the same violations for which his parole was revoked. (Pet. 13, ¶¶ 1-3.) However, being subject to an on-site hearing and parole revocation does not preclude the revocation of probation for the overlapping failure to comply with the conditions

of a suspended sentence. *See State v. Haagen*, 2010 MT 95, 356 Mont. 177, 232 P.3d 367, 2010 Mont. LEXIS 145 (Mont. 2010).

CONCLUSION

A writ of habeas corpus is available only to those persons unlawfully imprisoned or restrained of their liberty. *Lott*, 2006 MT 279, ¶9, *supra*. Adams has not shown that he is unlawfully imprisoned and has not shown that his procedural due process rights were violated. Adams is not entitled to any habeas corpus relief. Therefore, his Petition should be denied and this matter should be dismissed.

Dated this 7th day of July 2020.

/s/ Roger Renville
Roger Renville
Special Assistant Attorney General
Montana Department of Corrections
Counsel for Respondent

CERTIFICATE OF COMPLIANCE

Pursuant to Rules 11 and 14, Mont. R. App. P., I hereby certify that this Response to Petition for Writ of Habeas Corpus is proportionately spaced, has a typeface of 14 points, is double spaced except for footnotes and for quoted and indented material; and the word count does not exceed 3,867 words, excluding the certificate of compliance and the certificate of compliance.

Dated this 7th day of July 2020.

/s/ Roger Renville
Roger Renville
Special Assistant Attorney General
Montana Department of Corrections
Attorney for Respondent

CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of July 2020, a copy of the foregoing document was served on the following persons by the following means:

1 E-Filing

2 U.S. Mail

1. Clerk, Montana Supreme Court

2. Patrick Joseph Adams

DOC# 2115557

Crossroads Correctional Center

50 Crossroads Dr.

Shelby, MT 59474

/s/ Roger Renville

Roger Renville

Special Assistant Attorney General

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Attorney for Respondent

CERTIFICATE OF SERVICE

I, Roger Joseph Renville, hereby certify that I have served true and accurate copies of the foregoing Response/Objection - Petition for Writ to the following on 07-07-2020:

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