

ORIGINAL

FILED

11/10/2020

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: OP 20-0506

IN THE SUPREME COURT OF THE STATE OF MONTANA

OP 20-0506

FILED

NOV 10 2020

Bowen Greenwood
Clerk of Supreme Court
State of Montana

ORDER

KEITH FORTUNE,

Petitioner,

v.

CAPTAIN JAMES ANDERSON,

Respondent.

Representing himself, Keith Fortune has filed a Petition for a Writ of Habeas Corpus, indicating that his sentence is illegal because it is longer than the law allows. Fortune explains that he was originally charged for felony assault with a weapon and “sentenced as a youth at the age of sixteen” pursuant to § 41-5-208, MCA, transferring him from juvenile to adult supervision until the age of twenty-five years. He states that his original sentence has been revoked. His main argument is that according to his recent sentence upon revocation of two years, six months, and twenty-nine days, his sentence would run three to four months past his birthday of twenty-five. He requests that the Department of Corrections (DOC) recalculate his sentence and release him from its custody. Fortune is currently detained in the Gallatin County Detention Center.

Available electronic records indicate that on September 26, 2012, the First Judicial District Court, Lewis and Clark County, decreed that Fortune was transferred to adult supervision under the DOC “until he reaches the age of 25, March 11, 2021, unless sooner discharged, subject to the following conditions[.]” These records indicate that Fortune’s original sentence was revoked in 2015 and 2018. On December 20, 2018, the District Court revoked Fortune’s suspended sentence and sentenced Fortune to the DOC “until he attains the age of twenty-five (25) (March 11, 2021).” The District Court awarded Fortune credit for time served: July 15, 2015 - August 27, 2015; July 10, 2018 - August 12, 2018; and September 19, 2018 - December 20, 2018.

Pertinent here, which Fortune fails to account, is the credit for time served. Section 46-18-203(7)(b), MCA. The District Court awarded almost six months of credit—171 days—to Fortune’s sentence upon revocation in 2018. With this credit, Fortune will meet his release date of March 11, 2021, for this sentence. We acknowledge his current detention may be for pending criminal matters where a sentence has not yet been imposed. The DOC included this credit in its calculation, and Fortune has not provided any sentence calculation to the contrary. His copy of DOC’s Notification and Placement Warrant does not include credit for time served before imposition of sentence and is not a sentence calculation.

We conclude that Fortune is not unlawfully restrained. He does not need to be released yet from DOC custody, and his sentence does not need to be recalculated. Moreover, Fortune is procedurally barred from seeking habeas corpus relief from his 2018 sentence upon revocation because habeas corpus “is not available to attack the legality of an order revoking a suspended or deferred sentence.” Section 46-22-101(2), MCA.

We observe that Fortune has filed a “Motion to Enlarge the Record” in this case since his filed Petition. We decline to consider this motion because it does not comport with the Montana Rules of Appellate Procedure. M. R. App. P. 14(5). Therefore,

IT IS ORDERED that Fortune’s Petition for a Writ of Habeas Corpus is DENIED and DISMISSED.

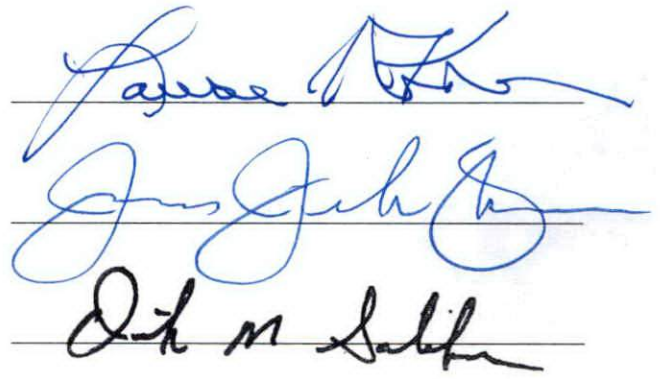
IT IS FURTHER ORDERED that Fortune’s Motion to Enlarge the Record is DENIED, as moot.

The Clerk of the Supreme Court is directed to provide a copy of this Order to Captain James Anderson, to counsel of record, and to Keith Fortune personally.

DATED this 10th day of November, 2020.



Chief Justice

Three handwritten signatures in blue ink on lined paper. The first signature is 'James H. H.', the second is 'James H. H.', and the third is 'D. H. H.'.

Justices