

ORIGINAL

FILED

02/12/2021

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: OP 21-0063

IN THE SUPREME COURT OF THE STATE OF MONTANA

OP 21-0063

FILED

FEB 12 2021

Bowen Greenwood
Clerk of Supreme Court
State of Montana

MICHAEL JOHN STALEY,

Petitioner,

v.

ORDER

COMMANDER DAN O'FALLON,
Warden, Cascade County Regional Prison,

Respondent.

Michael J. Staley has filed a Petition for a Writ for a Habeas Corpus. He asserts the Department of Corrections (DOC) has incorrectly calculated his sentence, which illegally extends his parole eligibility and discharge dates. Staley argues he is entitled to additional credit for jail time served.

Staley was sentenced for burglary and witness tampering, pursuant to a plea agreement that provided for dismissal of other charges. He explains he was arrested on December 17, 2018, and never bonded out. He was sentenced on September 24, 2019, as reflected in the minute entry for the oral pronouncement of sentence. He notes that the DOC Records Department uses the written judgment for purposes of calculating sentences. Staley argues that his oral pronouncement does not match his written judgment.

We requested and reviewed the written judgment and other filings from the Lewis and Clark County District Court. The District Court imposed a ten-year prison sentence, followed by a consecutive, suspended ten-year prison sentence. The written judgment does not reflect a credit for time served. The September 24, 2019 minute entry indicates the District Court awarded credit for time served. The oral pronouncement of sentence is the legally effective sentence. *State v. Lane*, 1998 MT 76, ¶ 40, 288 Mont. 286, 957 P.2d 9. However, the sentencing court apparently did not state the specific credit or number of days in the oral pronouncement, at least as reflected in the minute entry.

On January 8, 2020, Staley's counsel moved the District Court to modify its written judgment, and the State responded in opposition:

The Judgment is correct and should not include any credit for time served. At the time Staley was arrested in 2018 he was an absconder from conditional release in cause number ADC 2015-372. His custodial sentence in that case expired October 1, 2019. The entire timeframe requested by Staley is properly credited against that older, custodial sentence. He is not entitled to credit on more than one case.

We find no indication the District Court has yet ruled on Staley's motion, despite the passage of significant time.

It is not clear when and where Staley was incarcerated for the nine months prior to his sentencing. See § 46-18-403(1), MCA; *State v Kime*, 2002 MT 38, ¶ 16, 308 Mont. 341, 43 P.2d 208. Upon review of Staley's Petition, we deem it appropriate to require a response to properly review the claim in the petition. Therefore,

IT IS ORDERED that the Attorney General or counsel for the Department of Correction is GRANTED thirty days from the date of this Order in which to prepare, file, and serve a written response to the petition for writ of habeas corpus together with appropriate documentary exhibits.

The Clerk of the Supreme Court is directed to provide a copy of this Order to the Attorney General; to counsel for the Department of Corrections; and to Petitioner personally.

DATED this 12th day of February, 2021.


Justice