

ORIGINAL

FILED

02/16/2021

Bowen Greenwood  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

Case Number: OP 21-0058

IN THE SUPREME COURT OF THE STATE OF MONTANA

OP 21-0058

FILED

FEB 16 2021

Bowen Greenwood  
Clerk of Supreme Court  
State of Montana

JOHN ALBERT MULLIGAN, JR.,

Petitioner,

v.

ORDER

JIM SALMONSEN, Warden,  
Montana State Prison,

Respondent.

We amend the caption to indicate the current warden of Montana State Prison. Section 46-22-201(1)(c), MCA. Representing himself, John Albert Mulligan petitions this Court for habeas corpus relief because he received a written copy of his sentencing judgment ten months after his sentencing in court. Mulligan requests the withdrawal of his entire sentence, including the violent offender registration.

This Court is familiar with Mulligan's sentencing history because we denied his petition for an out-of-time appeal last month. The Fourth Judicial District Court, Missoula County, found that Mulligan had violated his probation and revoked his original sentence for felony assault with a weapon. On August 16, 2018, the District Court sentenced Mulligan to the Department of Corrections (DOC) for seven years with two years suspended. The court also awarded Mulligan credit for time served of 584 days and street time credit of sixty days. Mulligan petitioned the District Court for postconviction relief, and the court denied his petition. We denied his out-of-time appeal because he did not demonstrate extraordinary circumstances. *Mulligan v. State*, No. DA 10-0617, Order (Mont. Jan. 12, 2021).

Mulligan contends that his sentence is illegal because of this delay. He puts forth that because of a ten-month delay between his oral pronouncement of sentence on revocation on August 16, 2018, and obtaining a written judgment, filed on June 24, 2019, his sentence violated § 46-18-116, MCA. He states that his due process rights have been violated.

Mulligan further contends that he cannot be incarcerated in the Montana State Prison (MSP) without a written judgment. Mulligan provides no legal argument for his claims.

Mulligan has not demonstrated an illegal sentence or illegal incarceration. Section 46-22-101(1), MCA. As a petitioner, Mulligan carries this “burden of proof or the burden of persuasion.” *In re Hart*, 178 Mont. 235, 249, 583 P.2d 411, 419 (1978). He must prove “the violation, deprivation, infringement, or denial of his constitutional, statutory, or legal rights generally, or denial of due process of law[.]” *In re Hart*, 178 Mont. at 250, 583 P.2d at 419.

Mulligan has not shown a statutory violation or how his due process rights were violated. He appeared at his sentence upon revocation with counsel in open court on August 16, 2018. Neither he nor his counsel objected to the sentence. While a ten-month delay occurred before Mulligan received his written copy of the judgment, his claims lack merit because he was still sentenced. The August 16, 2018 date is the sentence commencement date minus the 644 days of credit for time served. Mulligan has since obtained a copy of the written judgment as demonstrated in his attachments. Mulligan has not demonstrated any harm or prejudice with the late filing or service. Pursuant to § 46-18-116, MCA, “[a]t the time that the judgment is filed, the prosecutor of the county in which the sentence was imposed shall serve a copy of the judgment on the defendant.” The problem is that no written judgment was filed until the next year, on June 24, 2019. Once the judgment was filed, the county prosecutor served Mulligan a copy of this judgment. Mulligan received it shortly thereafter as well as MSP. He is not entitled to the withdrawal of his sentence. Therefore,

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

The Clerk of the Supreme Court is directed to provide a copy of this Order to counsel of record and to John Albert Mulligan personally.

DATED this 16<sup>th</sup> day of February, 2021.

  
Chief Justice

Lance K...

Beth...

Dr. M. Salih

Jim Rice

Justices