

ORIGINAL

FILED

04/22/2021

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: OP 21-0188

Ryan Lee Brown

3017569

Dawson County Correctional Facility

440 Colorado Blvd.

Glendive, MT 59330

FILED

APR 22 2021

Bowen Greenwood
Clerk of Supreme Court
State of Montana

IN THE SUPREME COURT OF THE STATE OF MONTANA

NO.

OP 21-0188

Ryan Lee Brown,

Petitioner,

v.

Tom Green,

Respondent,

Petition for Writ of
Habeas Corpus

I, Ryan Lee Brown, respectfully request that a Writ of Habeas Corpus be issued and to be relieved from the illegal incarceration which I am now under from an illegal conviction and sentence from the District Court in Yellowstone County in Cause number DC-17-0376.

I was sentenced on August 17, 2017 to five years to the Department of Corrections on a plea agreement.

I have been incarcerated in various forms since April 1, 2017. First in Yellowstone County Detention Facility, START, CCP (Butte), Inmate worker at Butte Pre-release Center and later Resident, Transitional Living Program, Anaconda - Deer Lodge County Jail, Start, MSP and Here at the Regional at Dawson County Correctional Facility.

My illegal incarceration has resulted from the following reasons.

1. The District Court Lacked Personal Jurisdiction.
2. The District Court Lacked Subject Matter Jurisdiction.
3. The Sentence was based on Misinformation.
4. Actual Innocence.
5. Illegal Sentence.
6. Unknowing and Involuntary Plea.
7. Ineffective Counsel.

1. The District Court lacked Personal Jurisdiction.

On April 12, 2017 I was charged with Partner or Family Member Assault (Felony) on a person identified by the initials D.A. I am making the assumption that ~~that~~ the initials represent the name Dawn Archer, whom was the alleged victim in a prior Montana conviction. However, prior to the court accepting the plea, the court was made aware that there was no Dawn Archer, since a Dawn Comeau arrived and spoke in open court. The plea agreement illegal had Comeau's initials added by AKA after the initials D.A. in the Sentencing conditions and to a release order. This prior is DC-15-0400 (included as evidence; Affidavit/Information, Plea agreement, release order and Presentence report.) Also included as supporting evidence is documents in a prior MT conviction DC-16-0172 (Affidavit/Information, plea agreement), a MN Conviction CR-14-4381 (Complaint, plea petition), A MT Dissolution Petition. The documents support the fact that I was never in a relationship with a person by the name of Dawn Archer or D.A., but my "Partner" during that period was Dawn Marie Comeau, D.M.C, D.C. (DOB 1-25-68). These documents show the District Court was aware of this Prior to the Charge and prior to the plea and sentencing in this case.

For the offense of Partner or Family Member Assault to have been committed the alleged victim must be a "Partner" 45-5-206 (2) (b), MCA. The documents included show that my partner going back to 2014 was Dawn Marie Comeau.

We concluded that in failing to allege a critical fact -- the identity of the intended victim, Hernandez - the affidavit was legally insufficient to support the crime charged.

State v. Holt, 2006 MT 151, 332 Mont. 426, 139 P.3d 819 (citing State v. Smith, 2004 MT 191, PP30-31, 322 Mont. 206, 95 P.3d 137).

In the case of State v. Lee, 33 Mont. 203, 205, 83 P. 225 (1905), which cites the earlier decision of State v. Sullivan, 9 Mont. 440, 24 P.23 (1890), this Court makes it clear that since "the offense was not described with sufficient certainty in other respects to identify the act, the variance was material." In that case the appeal was from a conviction of robbery, with the information stating the name of the prosecuting witness as being Frank Rex, while testimony showed the name to be Frank Rock. State v. Heiser, 146 Mont. 413, 407 P.2d 370 (1965).

Here there is no identified victim, nor any identifiable "Partner." The Hon. Judge Mary Jane Kniesly presided in 15-0400, 16-0172 and in this case. The County Attorney Julie Mees represented the state in 16-0172 (she falsely claimed in that information that DC. was the victim in DC-15-1086 I think she meant 15-0400) and this cause. The Judge and County Attorney would have known that there is no Dawn Archer. Procedures for filing the charge were not followed 46-11-201 (2), MCA, 46-11-401 (1), MCA.

That the information failed to charge an offense and the court should have been aware of this, the court did not have personal jurisdiction over me since no Section of 46-2-101, MCA was met, and the court had a responsibility to act 46-13-101 (3), MCA. It should have dismissed since my substantial rights were violated 46-11-401 (6), MCA.

2. The Court lacked Subject Matter Jurisdiction.

Since no offense was charged as shown in 1, The district court did not have Original Jurisdiction Over The Subject Matter being no Criminal Matter was in the Information 3-5-302 (1) (a) or (d),

(2), MCA or 3-10-303 (1)(c), MCA. This should have been noticed by the court pursuant to 46-13-101 (3), MCA and dismissed.

3. Sentencing was based on Misinformation.

A prior Minnesota Domestic Assault "commits act with intent to cause fear of immediate bodily harm or death," (see MN Complaint CR-11-1783) was misrepresented as a physical assault (see PSI). During sentencing on August 17, 2017 the state alleged two MN domestic assault which were both physical assaults (one was see CR-14-4381), I said something along the way like "one is an intent to cause fear," My public defender David Sibley merely pointed at a paper and the court proceeded. Included also is a MN order of commitment stating the conviction to be for "intent to cause fear." This was provided for evidence in a PFO notice in 15-0400. The PSI used in 15-0400 was also used in this cause and also misrepresented the "intent to cause" as physical assault. The author made the false claims that I assaulted a previous spouse physically, had a permanent restraining order and had assaulted multiple members of law enforcement before arrest based on no evidence what so ever, I did not have a previous spouse, it was my daughters mother, the order was probationary granted for 20 years, and only one member of law enforcement was injured (see MN order of commitment).

The Montana Prior 15-0400 is also based on the assault of D.A. or Dawn Archer. The above misinformation led to a false felony enhancement and a false notice of Persistent Felony offender. This prior is infirm for lack of Personal Jurisdiction and Subject Matter Jurisdiction, Actual Innocence, Unknowing and Involuntary plea and ineffective counsel. My public defender James Seigman proceeded with the case as is not moving to dismiss although I told him personally my partner was Dawn Marie Comeau. I gave him permission to speak with her so he knew she was not Dawn Archer, Mr. Seigman wrote the plea agreement adding Comeau's initials after D.A. by AKA. Essentially he had me knowingly plead to a case I was innocent of. He joined the prosecutions case. The Court accepted this plea in violations of 46-13-101 (3), 46-1-401 (2)(a), 46-12-210 (1)(a)(i)-(ii), 46-12-212 (2), 46-16-105 (1)(b), MCA. Comeau appeared at the hearing.

The Montana prior in 16-0172 was charged as a felony based the two prior convictions and the MN conviction in CR-14-4381. Without the two priors this would not have been a felony nor would it have been a conviction for a PFO designation. The information falsely alleged that all priors were PFMA's. State atty. Mees wrongly stated the alleged victim in this cause, D.C., was also the victim in DC-1086. I was never charged or tried in DC-1086. It's conjecture on my part, but it is possible Mees meant DC-15-0400 and D.C. is still not the victim in that case. Mr. Seigman, the public defender, represented me in this cause as well and should have known that at least the previous MT prior was infirm and that the felony and PFO enhancements had no basis, but the facts presented in the above show ineffective counsel and also here and the plea was unknowingly made.

4. Actual Innocence.

With the charge being a PFMA on a person identified as D.A. there could absolutely be no evidence of an PFMA on this person. As shown my "Partner" is Dawn Marie Comeau. Even if they could show evidence and give testimony it could possibly only show an assault on Comeau. Why the court if it believed it had witness and evidence did not dismiss the original charge and file another charge is not known. Ms. Comeau ~~gave a deposition to~~ answered question before Sibley and the state, I do not know how she identified herself. She also gave a witness impact statement and I cannot remember how she signed it. I have tried to obtain these document from the state and the Public defender's office but neither have been forth coming on discovery. My originals were lost after I was rolled up from prerelease. But if taken to trial no one could ever prove that a D.A. was ever my partner or ever assaulted.

Actual Innocence "does not merely require a showing that a reasonable doubt exists in the light of new evidence, but rather that no reasonable juror would have found the defendant guilty".

State v. Rederow, 1999 MT 95, 294 Mont. 252, 980 P.2d 622 Citing Schlup v. Delo,

513 U.S. 298, 327, 115 S.Ct. 851, 867, 130 L. Ed. 2d 808, 836.

There is also evidence of Actual Innocence in at least two of the priors.

5. Illegal Sentence.

Besides serving a facially invalid sentence on a facially invalid conviction based on a facially void charging document, the felony offense was based on infirm convictions and one that is not a conviction at all (the first MN physical Assault, which is an "intent to cause fear") and other false info used in the PSI, I was sentenced to a D.O.C commitment sentence which I could not serve since there was an outstanding Warrant out of Minnesota which the District Court was aware of. See PSI, copy of Warrant filed with PFO notice in 15-0400. At time I was revoked I had completed CCP (Butte), Inmate worker, Pre-release resident and was on Transitional Living when revocation occurred. Also paying for room and board for programs I completed and was not eligible for. The act on which the revocation was based occurred and was known prior to sentencing and is not about the revocation.

6. Unknowing and Involuntary Plea.

With an information charging an offense not committed with no identified victim or "Partner" being a necessary element of PFMA, this plea was not knowingly made.

"... Clearly the plea could not be voluntary in the sense that it constituted an intelligent admission that he committed the offense unless the defendant received "real notice of the true nature of the charges against him, the first and most universally recognized requirement of due process." *Henderson v. Morgan*, 426 U.S. 637, 96 S.Ct. 2235, 49 L.Ed. 2d 103 (quoting *Smith v. O'Grady*, 312 U.S. 329, 334.

Priors used to enhance to a felony offense where infirm and one didn't exist as represented. I was under the false belief I was facing a felony sentence and PFO designation. In this instance the court had proof of infirmity within its own documents and were easily accessible. So no excuse of a silent record is available.

It is well established that the state may not use a constitutionally infirm prior conviction to enhance a subsequent offense to a felony. *State v. Smerker*, 2006 MT 117, 332 Mont. 221, 136 P.3d 543 (citing *State v. Snell*, 2004 MT 334, P. 25, 324 Mont. 173, at P. 25, 103 P.3d 503.

Guilty pleas are invalid if not entered into "by one fully aware of the direct consequences," including the

actual value of any commitments made to him by the court, prosecutor, or by his own counsel ...” Brady v. United States, 397 U.S. 742, 90 S.Ct. 1463, 25 L. Ed 747 (1970).

The Court and Defense Counsel denied me the opportunity to rebut sentencing information.

Under the due process clause guarantee, every person must be given an opportunity to explain, argue, and rebut any information -- including presentencing information -- that may lead to a deprivation of life, liberty, or property. Redding (1984), 208 Mont. at 28, 675 P.2d at 976. Bauer v. State, 1999 MT 185, 295 ~~306~~ Mont. 306, 983 P.2d 955.

The state accepted a plea colloquy even though through the use of priors which showed no such person as D.A. being involved. The acts could not have constituted the offense charged and the admission is knowingly false by all parties involved. There is no basis for the acceptance of the plea.

We therefore interpret § 46-12-212 (1), MCA, as requiring a court to solicit admissions from a defendant regarding what acts the defendant committed that constitute the offense charged. If a defendant is “unwilling to admit to any element of the offense,” the court must reject the guilty plea or treat the plea as an “Alford Plea” and apply the stricter standards of § 46-12-212 (2), MCA, which requires “strong evidence of ~~proof~~ guilt.” See ^{Commission} ~~Comments~~ comments to § 46-12-212 (2), MCA. As the Justice Court here failed to properly interrogate Frazier concerning the elements of PFMA, the plea colloquy did not meet the requirements of § 46-12-212, MCA, and was thus inadequate.

The Court need not be convinced beyond a reasonable doubt that an accused is guilty. It need only be convinced that there is sufficient evidence to justify the reaching of such a conclusion. United States v. Neel, 547 F.2d 95. (1976).

46-12-210, MCA, 46-12-212 (1), MCA, 46-16-105 (1), MCA.

The plea agreement is void for being wholly illegal. There is no factual or legal basis for the charge. There is no legal basis for the sentence. There was not sufficient evidence for acceptance of the plea. See State v Cleveland, 2014 MT 305, P17-P.18.

7. Ineffective Counsel.

Mr. Sibley must not have read the records of the MT or MN priors. Clear from these records are two facts, (1) No D.A. or Dawn Archer and (2) The felony and PFO were without basis as the information used

was not correct; Infirm priors, One nonexistent prior etc..


Not only that, but in one conversation I specifically mentioned the dissolution petition and I did not say it was D.A. or Archer, but Dawn Comeau. I never once referred to D.A. Since I never knew such a person. I knew since 15-0400 that this was an important fact, but the PD in that cause said it did not matter. It was a fundamental basis for violation of my due process rights.

Further, Mr. Sibley allowed the court to continue sentencing even though I did not admit to a prior being misrepresented as a "physical assault". Not to mention Mr. Sibley should have been aware there was no factual basis for the plea or the sentence.

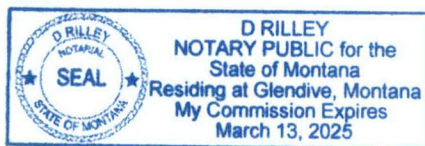
For these reason I respectfully request relief from this illegal incarceration.

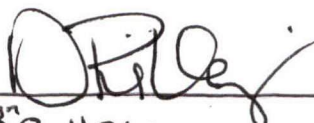
I Swear that everything stated in this Petition for Writ of Habeas Corpus is true and correct to the best of my knowledge.

Dated this 2 day of April, 2021.


Ryan Lee Brown

Signed and Sworn to or affirmed before me on this date by,
Ryan Brown.

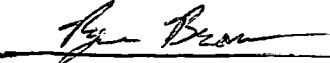



Sign
D Riley
Print
Glendive Mt
Residing at

I certify that I have filed a copy of this Petition for Writ of Habeas Corpus with The Montana Supreme Court and I have mailed a copy to the Respondent as follows:

Tom Green, Warden
Dawson County Correctional Facility
440 Colorado Blvd.
Glendive, MT 59330

Dated this 2 day of April, 2021.


Ryan Lee Brown

CERTIFICATE OF SERVICE

I certify that I filed this

☒ Petition

^{RLB}
₄₋₁₆₋₂₁ ☒ Motion

☐ Other _____

[Name of document]

with the Clerk of the Montana Supreme Court and that I have mailed or hand delivered a copy to each attorney of record and any other party not represented by counsel as follows:

Attorney General State of Montana Office of the Attorney General
[Name of opposing counsel]

P.O. Box 201401

Helena, MT 59620-1401
[Address]


Counsel for State of Montana

Reg. Tom Green - Warden Dawson County Correctional Facility Regional
[Other party representing himself or herself]

440 Colorado Blvd.

Glendive, MT 59330
[Address]

DATED this 16 day of April, 20 21.


[Signature]

Ryan Lee Brown
[Print name]

