

ORIGINAL

FILED

06/08/2021

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: OP 21-0240

IN THE SUPREME COURT OF THE STATE OF MONTANA

OP 21-0240

FILED

JUN 08 2021

Bowen Greenwood
Clerk of Supreme Court
State of Montana

ARNOLD G. GARAY, IV,

Petitioner,

v.

ORDER

LEO DUTTON, Sheriff,
Lewis & Clark County,

Respondent.

Arnold G. Garay, IV, has filed a Petition for a Writ of Habeas Corpus, indicating that the Department of Corrections (DOC) has incorrectly calculated his sentence, which illegally extends his parole eligibility or discharge date. Garay is currently detained in the Lewis and Clark County Detention Center.¹

We point out that Garay does not provide any copies of his sentencing judgments or a DOC sentence calculation. A petitioner should present “to this Court a record that is sufficient to make a prima facie showing . . .” because of the “burden in a habeas corpus proceeding . . . to convince the Court that a writ should be issued.” *Miller v. Eleventh Judicial Dist. Ct.*, 2007 MT 58, ¶ 14, 336 Mont. 207, 154 P.3d 1186. We point out that the petitioner, such as Garay, carries this “burden of proof or the burden of persuasion.” *In Re Hart*, 178 Mont. 235, 249, 583 P.2d 411, 418 (1978).

Garay provides that he was sentenced on May 21, 2009, to “two years DOC with none suspended and ten years DOC with five suspended.” He states that he completed eight years successfully and that he became extremely ill in February 2018. In March 2018, Garay further states that his Probation and Parole Officer took him into custody for failure

¹ Garay provides a residential address on his Petition, but he is still detained at the Lewis and Clark County Detention Center.

to report. Garay contends that he is entitled to seven years' credit because: (1) he experienced a medical emergency; (2) his family informed his Probation and Parole Officer of Garay's whereabouts; and (3) he suffered a disproportionate punishment of a longer sentence. Garay wants recalculation of his sentence and his revocation overturned.

Garay does not present a full accounting of the last decade. On May 21, 2009, the State of Montana charged Garay with felony sexual intercourse without consent (Count I) and felony assault with a weapon (Count II). The Lewis and Clark County District Court held a change of plea hearing on February 11, 2010, and Garay entered a guilty plea to the amended Count II of felony criminal endangerment in exchange for dismissal of Count I. The District Court imposed a deferred two-year sentence. On March 16, 2010, the State filed a Petition to Revoke Garay's Deferred Sentence because Garay failed to abide by his sentencing conditions. On April 15, 2010, the District Court revoked Garay's deferred imposition of sentence and imposed a ten-year DOC sentence with five years suspended.

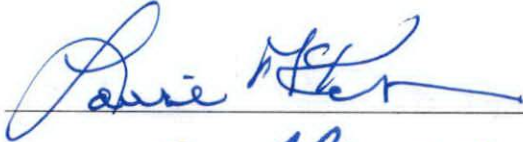
In December 2016, the State charged Garay with felony criminal endangerment, misdemeanor driving without a valid driver's license; and misdemeanor driving a motor vehicle with no insurance in the Broadwater County District Court. In 2017, the State charged Garay with felony criminal possession of dangerous drugs, misdemeanor criminal possession of drug paraphernalia, misdemeanor traffic violations in a construction zone, and misdemeanor driving without a valid driver's license in the Lewis and Clark County District Court. On June 27, 2017, the Lewis and Clark County District Court held a hearing on the State's second petition to revoke, and the District Court found that Garay had violated the terms of his 2010 sentence. The court sentenced Garay to the DOC for five years with two suspended ("sentence upon revocation"). The District Court also sentenced Garay to the DOC for a suspended five-year term for felony criminal possession of dangerous drugs, running consecutively to his sentence upon revocation. The Broadwater County District Court accepted his guilty pleas to the amended misdemeanor charges and imposed suspended jail terms that run concurrently with his sentence upon revocation.

Garay is not entitled to any relief he requests. Garay has not carried his burden. He has not presented a record sufficient to make a prima facie showing about illegal incarceration or sentence calculation. Section 46-22-101(1), MCA. Moreover, Garay is precluded from challenging any sentence upon revocation through the remedy of habeas corpus. Section 46-22-101(2), MCA. Therefore,

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

The clerk is directed to provide a copy of this Order to counsel of record and to Arnold. G. Garay IV personally.


DATED this 8th day of June, 2021.











Justices