

IN THE SUPREME COURT OF THE STATE OF MONTANA
No. DA 21-0409

STATE OF MONTANA,

Plaintiff and Appellee,

v.

STEVEN WAYNE KEEFE,

Defendant and Appellant.

APPELLANT'S OPPOSED MOTION FOR JUDICIAL NOTICE

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Comes now, STEVEN WAYNE KEEFE, Defendant and Appellant, through undersigned counsel, and hereby requests that this Court take judicial notice of the Montana Department of Corrections' Parole Calculation Form, attached hereto as Exhibit A to the Declaration of Genevie Gold. Counsel for the State has been contacted and objects to this request. In further support of this Request, Mr. Keefe states:

FACTUAL AND PROCEDURAL BACKGROUND

After being transferred from juvenile court, Mr. Keefe was convicted in 1987 to three counts of deliberate homicide and one count of burglary related to the October 15, 1985 murder of David J. McKay, Constance McKay, and Marian McKay Qamar. *State v. Keefe*, No. ADC-86-059 (Cascade County, Mont.). Originally sentenced to life without the possibility of parole (LWOP), Mr. Keefe's original conviction and sentence was affirmed. *State v. Keefe*, No. 87-92 (Mont.). Mr. Keefe obtained sentencing relief after *Miller v. Alabama*, 567 U.S. 460 (2012), which restricted the application of LWOP among juvenile defendants and *Steilman v. Michael*, 2017 MT 310, 389 Mont. 512, 407 P.3d 313, which held that the limitations imposed in *Miller* "apply to discretionary sentences in Montana." *Steilman*, ¶ 20; *Keefe v. Kirkegard*, No. ADV-17-0076 (Cascade County, Mont.).

At re-sentencing, the District Court re-imposed LWOP. *Keefe v. Kirkegard*, No. ADV-17-0076 (Cascade County, Mont.). Mr. Keefe appealed, and his sentence was vacated. *State v. Keefe*, 2021 MT 8, ¶ 20, 403 Mont. 1, ¶ 20, 478 P.3d 830, ¶ 20.

On remand, the District Court held a “sentencing hearing” on July 15, 2021. *State v. Keefe*, No.’s ADV-17-0076 & ADC-86-059 (Cascade County, Mont.). However, during the hearing the Court stated that “I am not going to reopen the sentence other than as to the parole restriction.” The Court then struck the parole restriction and resentedenced Mr. Keefe to his original sentence. The Court did take testimony from parole officer Tim Hides for purposes of determining parole eligibility. Prior to Mr. Hides’ testimony, the Court stated, “In my understanding, he’s [Mr. Keefe] parole eligible right now, is he not, after serving 35 years?” July 16, 2021 Sentencing Tr. at #. The following colloquy then ensued:

MR. HIDES: But, he is eligible. He will become eligible to see the parole board.

THE COURT: In approximately two years?

MR. HIDES: Approximately, because I think they said yes.

Approximately one month after the “resentencing hearing”, the Montana Department of Corrections provided Mr. Keefe with a parole calculation. Declaration of Genevie Gold at ¶¶1–2. That calculation

demonstrates that Mr. Keefe will not be parole eligible for underlying conviction until 2038. In 2038, Mr. Keefe will be 70 years old. Motion for Judicial Notice, Ex. A.

MOTION FOR JUDICIAL NOTICE

The Court may take judicial notice of facts that are “not subject to reasonable dispute in that [they are]... capable of accurate and ready determination by resort to sources whose accuracy cannot be reasonably questioned.” M.R.Evid. 201. The Court may properly take judicial notice of information obtained from the Montana Department of Corrections, which are capable of accurate and ready verification. *See, Brunsvold v. State*, 250 Mont. 500, 820 P.2d 732 (1991) (J. Weber dissenting: “From information obtained from the Montana Department of Corrections and Human Services, of which the Court could properly take judicial notice, there currently are approximately 3,436 individual active probation supervision cases and 592 parole cases in the State of Montana.”)

Here, Mr. Keefe requests judicial notice of the Montana Department of Corrections’ parole eligibility calculation. That calculation is attached hereto as Exhibit A to the Declaration of Genevie Gold.

CONCLUSION

Mr. Keefe respectfully requests that this Court take judicial notice of the Montana Department of Corrections' parole eligibility calculation. A proposed order is attached.

RESPECTFULLY SUBMITTED,

Dated: 10/15/2021

/s/ Alex Rate
Alex Rate

CERTIFICATE OF SERVICE

I, Alex Rate, hereby certify that I have served true and accurate copies of Appellant's Request for Judicial Notice on October 15, 2021:

Austin Knudsen (Prosecutor)
Montana Attorney General
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Helena, MT 59620
Representing: Leroy Kirkegard
Service Method: eService

Joshua A. Racki (Prosecutor)
121 4th Street North
Suite 2A
Great Falls, MT 59401
Representing: Leroy Kirkegard
Service Method: eService

Electronically signed by /s/Krystel Pickens on behalf of Alex Rate
Dated: 10-15-2021

CERTIFICATE OF SERVICE

I, Alexander H. Rate, hereby certify that I have served true and accurate copies of the foregoing Motion - Opposed to the following on 10-15-2021:

Joshua A. Racki (Govt Attorney)
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Dated: 10-15-2021