

ORIGINAL

FILED

01/18/2022

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: OP 21-0662

IN THE SUPREME COURT OF THE STATE OF MONTANA

OP 21-0662

ROBERT JOHN GARDNER,

Petitioner,

v.

MONTANA STATE PRISON,
JAMES SALMONSEN, Warden,

Respondent.

FILED

JAN 18 2022

Bowen Greenwood
Clerk of Supreme Court
State of Montana

ORDER

Robert John Gardner has filed a Petition for Writ of Habeas Corpus, claiming he is illegally imprisoned because of a facially invalid sentence, because it should have been a 100-year sentence with 85 years suspended, and because his plea was involuntarily entered because of his psychological condition and the incompetent advice he received from counsel.

In 2006, the Fourth Judicial District Court, Missoula County, sentenced Gardner to the Montana State Prison (MSP) for a 100-year term with fifty years suspended for deliberate homicide, and to four ten-year terms for four counts of tampering with or fabricating physical evidence. All five sentences were ordered to run concurrently. The Court imposed a fifteen-year parole eligibility restriction. Gardner did not appeal.

Gardner contends his sentence should be a 100-year sentence with 85 years suspended to conform with § 46-18-221(4), MCA. Gardner asserts the District Court did not have the authority to impose the sentence he received. He also requests his sentences for the four tampering counts be removed because it “subjects petitioner to blatant stacking of charges,” and that he should have been sentenced for one only count of tampering and received a single ten-year sentence. Gardner adds that he has had seventeen years of clear conduct and seeks his release from prison.

This Court applauds Gardner’s recent history of clear conduct. This Court, however, cannot consider his early release. The Board of Pardons and Parole is the entity

with the broad discretion to decide whether an inmate is granted parole, pursuant to Montana statutes. *McDermott v. McDonald*, 2001 MT 89, ¶¶ 18-20, 305 Mont. 166, 24 P.3d 200. Gardner committed his offenses over the days of April 8-10, 2005, and the 2003 version of Montana Code Annotated applies. Pursuant to § 45-5-102(2), MCA (2003), a court may sentence an offender for deliberate homicide either for life or up to 100 years in state prison. The court may impose a life sentence without the possibility of release, upon certain criteria, under § 46-18-219, MCA (2003). The exceptions listed, pursuant to § 46-18-222, MCA (2003), do not apply to Gardner, and his other references to sentencing statutes do not apply here.

Regarding the tampering sentences, the State charged Gardner for separate counts to reflect his different actions, such as altering or removing the victim's body, trying to conceal or destroy the gun used in the crime, attempting to clean the residence where the shooting occurred, and attempting to clean the vehicle used to move the victim's body. Thus, the District Court had distinct charges pending before it for different conduct.

Gardner's briefly referenced collateral attacks on his sentence cannot be brought in a habeas proceeding. Section 46-22-101(2), MCA.

Gardner has a valid sentence. He has not demonstrated a facially invalid sentence. Section 46-22-101(1), MCA. Therefore,

IT IS ORDERED that Gardner's Petition for 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 Robert John Gardner personally.

DATED this 18th day of January, 2022.


Chief Justice

Jain Rice

Patricia

James Jeremiah

Augusta
Justices