



ORIGINAL

FILED

03/29/2022

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: OP 22-0141

IN THE SUPREME COURT OF THE STATE OF MONTANA

OP 22-0141

BRIAN RAND,

Petitioner,

v.

CAPTAIN MATT BOXMEYER,

Respondent.

ORDER

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MAR 29 2022

Bowen Greenwood
Clerk of Supreme Court
State of Montana

Brian Rand has filed a Petition for Writ of Habeas Corpus and includes attachments. He contends that his incarceration is illegal and that his bail is excessive. Rand is being held in the Gallatin County Detention Facility.

Toward the end of his attachments, Rand provides that he was on parole and that he was arrested on March 16, 2021, for a felony and two misdemeanor offenses. He further provides that he signed an admittance form about using drugs and that any urine analysis sample would be “dirty” when tested by his Parole Officer. Rand puts forth that he has a liberty interest and that his due process and other constitutional rights have been violated. Rand states that, since his arrest, he has been “‘held in detention’ without bail.” Rand cites § 46-23-1012, MCA, as well as Admin. R. M. 20.25.801 (2012). He requests release on his own recognizance and to continue as a parolee in the community.

We requested and reviewed the registers of actions from the Fifth Judicial District Court, Beaverhead County. Rand has two pending criminal cases. Rand has counsel to represent him, and the court has re-set the jury trials for May 2022.

Rand’s arguments are without merit. He cites to the wrong portion of the Montana Code Annotated applicable to a parolee who violated his parole. See §§ 46-23-1021 through 46-23-1025, MCA.

Montana's statutory scheme for supervision of parolees provides the process that a parolee like Rand is due. Rand is not entitled to an initial hearing concerning his parole after arrest for a new offense for which charges have been filed against him in District Court. "After the arrest of the parolee, an initial hearing must be held unless[,] . . . the parolee has been charged in any court with a violation of the law[.]" Section 46-23-1024(1)(b), MCA. Rand may be held without bail by the Department of Corrections because of his felony offense. "The provisions of Title 46, chapter 9, regarding release on bail of a person charged with a crime are not applicable to a parolee ordered to be held in a county detention center or other facility under this section." Section 46-23-1024(6), MCA. Rand is being held in a detention facility and is not entitled to release on bail.

"Parole . . . is a discretionary grant of freedom from incarceration." *McDermott v. McDonald*, 2001 MT 89, ¶ 24, 305 Mont. 166, 24 P.3d 200. Rand does not have a liberty interest in parole. *McDermott*, ¶ 8. We point out that the revocation of parole is not a part of the criminal prosecution. *Morrissey v. Brewer*, 408 U.S. 471, 480, 92 S. Ct. 2593, 2599-600 (1972). "At any time during release on parole or conditional release, the department may issue a warrant for the arrest of the parolee for violation of any of the conditions of release" Section 46-23-1023(1), MCA. Rand violated his parole with the non-compliance violation of a new felony offense as well as compliance violations of using illegal drugs. The Board of Pardons and Parole will issue a decision concerning his parole revocation, which may be after his proceeding in the District Court has concluded.

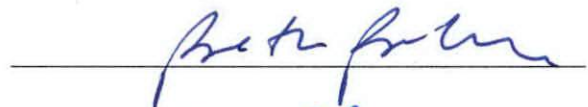
Rand has not demonstrated illegal incarceration. Section 46-22-101(1), MCA. Rand is not entitled to habeas corpus relief or to release. He has pending criminal cases that will be completed in District Court, and he will be given the opportunity to appear before the Board concerning a parole revocation. Admin. R. M. 20.25.801(11) (2012).

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

The Clerk is directed to provide a copy of this Order to: the Honorable Deborah Kim Christopher, Lake County District Court, presiding judge; Carly Jay Anderson, Clerk of District Court, Beaverhead County, under Cause Nos. DC-2021-4006 and DC-2021-4007; Jed C. Fitch, Beaverhead County Attorney; Victor Bunitsky, Defense Counsel; counsel of record, and Brian Rand personally.

DATED this 29th day of March, 2022.


Chief Justice








Justices