

FILED

04/12/2022

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: OP 22-0179



ORIGINAL

Frank P Hiltz
Inmate Name

3019990
Inmate ID or AO#

Montana State Prison
Facility of Incarceration

700 Conley Lake RD
Address of Facility

Deer Lodge MT 59722
City State Zip

FILED

APR 12 2022

Bowen Greenwood
Clerk of Supreme Court
State of Montana

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. _____
[The Clerk of Court will assign a number]

Frank Phillip Hiltz,
NAME

PETITIONER,

v.

Petition for Writ of
Habeas Corpus

Jim Salmonsen,
NAME OF WARDEN/FACILITY ADMINISTRATOR,

RESPONDENT.

I, Frank P Hiltz, am representing myself, and I
[Name of Inmate]
believe that I am entitled to a Writ of Habeas Corpus under § 46-22-101, MCA, for one
or more of the following reasons:

[Check the applicable box]:

The Department of Corrections has incorrectly calculated my sentence which
illegally extends my parole eligibility or discharge date.

The Parole Board should have granted me a parole AND the Board violated my
Due Process rights in denying me a parole.

I am entitled to more credit for jail time served than I received.

My sentence is illegal because:

I was sentenced after April 28, 1999, and I received a sentence of more than 5 years to the Department of Corrections, none of which was suspended.

My sentence violates my right to be free from double jeopardy.

The length of my sentence is longer than the law allows.

I am entitled to good time that is not credited against my sentence.

I am being held in jail and I believe my bail is excessive.

Other reason incarceration is illegal.

Describe in detail why you are entitled to habeas corpus relief. Be specific. If possible, provide citations to legal authority. Attach any documents that help you explain why the Court should grant your petition. A copy of any judgments, orders or other documents that support your argument must be provided.

Petitioner, Frank Phillip Hiltz, is currently
incarcerated at Montana State Prison serving a
sentence imposed by the Montana Third Judicial
District Court. Petitioner brings this petition in
accordance with 46-22-202 (1), MCA, and
Article II, Section 19, Montana Constitution. Hiltz
also alleges that he is serving a facially
invalid sentence warranting habeas relief, thereby
invoking the provisions of Lett v. State, 2006
MT 279, 334 Mont. 270, 150 P. 3d 337. Hiltz's
fundamental constitutional rights under the 5th

6th, and 14th Amendments of the United States Constitution and under Article II, Section 4, 17, and 24 of the Montana Constitution have been violated by an illegal sentence. Petitioner brings forth the following claim in his petition: A. The sentencing court failed to specify the total amount of restitution Hiltz must pay, in violation of 46-18-244 (1). The history of these proceedings is extensive and all parties involved are familiar with them. Only facts relevant to this instant proceeding will be recited. To aid the court, the transcript of the sentencing hearing held on May 9, 2017 is attached as Exhibit A. In the Third Judicial District Court, Hiltz was charged by information with two counts of sexual intercourse without consent, in violation of 45-5-503, MCA (cause nos. DC-16-25 & DC-14-62). Pursuant to a plea agreement, these charges were dismissed and Hiltz pleaded guilty to sexual assault, in violation of 45-5-203 (3), MCA. At ^{the} sentencing hearing held May 9, 2017, the state requested the court impose

[Use extra pages if necessary]

p. 3 of 5

Cont. From Pg. 3

restitution (Exh. A, P. 33, L. 1-11) for counseling bills that are submitted by the victim." The state offered no evidence or testimony of the victim's need for counseling. The court echoed, "that there might be counseling required in the future," Exh. A, P. 39, L. 22-23, and ordered Hiltz to pay "up to \$25,000.00 of a restitution obligation." Exh. A, P. 40, L. 2-3. It should be noted this was done without evidence ("... typically before I can impose any kind of restitution requirement for counseling I have to [have] evidence." Exh. A, P. 39, L. 23-25). As part of the written sentence (DC Doc. 57), the Third Judicial District court imposed conditions on the Hiltz's sentence. One of those conditions is a provision requiring Hiltz to pay restitution. The judgment reflects the court's oral pronouncement concerning restitution. No other petition for writ of habeas corpus based on the claims presented in the current ~~petition~~ petition has been filed.

Article II, Section 19, of the Montana Constitution states, "The privilege of the writ of habeas corpus shall never be suspended."

A. The sentencing court failed to specify the total amount of restitution Hiltz must pay, in violation of 40-18-244(1). In pronouncing sentence, the Third Judicial District Court included a provision that Hiltz must pay restitution. It stated, "So I'll include that in the judgment that there will be up to \$25,000.00 of a restitution obligation."

That the victim in this case, DC-14-86 might incur at any point in time." Exh. A, p. 40, L. 1-4.

This provision is reflected in the conditions of the written judgment of Hiltz's sentence. DC Doc. 57, Mont. Code Ann. 46-18-244 (1) states, "The court shall specify the total amount of restitution that the offender shall pay." The open ended restitution of the judgment conflicts with the mandatory language of 46-18-244 (1), MCA, language present in the statute at the time of Hiltz's offense and sentencing. The sentencing court failed to comply with its obligation to set a specific amount of restitution based on evidence presented to the court. The Montana Supreme Court has been presented with this question on numerous occasions and in each case decided in favor of the offender. See State v. Hanna, 2014 MT 346, P. 36, 377 Mont. 418, 341 P. 3d 629; State v. Ring, 2014 MT ~~24~~ 49, P. 37, 374 Mont. 109, 321 P. 3d 800; ~~the~~; State v. Dietrich, 2013 MT 245, P. 23-24, 371 Mont. 466, 308 P. 3d 111; State v. Jay, 2013 MT 79, P. 49, 369 Mont. 332, 298 P. 3d ~~816~~, 394; State v. Guill, 2011 MT 32, P. 53, 359 Mont. 225, 248 P. 3d 824. When presented with the question, the state often conceded the issue because it represents an obvious miscarriage of justice. See State v. Hoggren, 2014 MT 277 N, P. 7, 377 Mont. 433, 348 P. 3d 169; State v. Peterson, 2013 MT 329, P. 41, 372 Mont. 382, 314 P. 3d 227;

472, 265 P.3d 638; State v. Williams, 2010 MT 58, P42, 355 Mont. 354, 228 P.3d 1127; and State v. Bullman, 2009 MT 37, P52, 349 Mont. 228, 203 P.3d 768. Following this pattern, the Powell County Attorney concealed this issue in another Prisoner's case in the District Court. See Cause No. DV-18-32.

The citations above represent only a sampling of cases over the past decade. The Montana Supreme Court has a long standing position concerning the specificity of restitution. These decisions go back decades, prior to Hiltz's sentencing, and remain consistent with those presented above. "[U]p to \$25,000" court mean \$10,9150, or any other amount between zero and \$25,000. The lack of specificity at sentencing and in the judgment is not supported by statute. The court also failed to correct its error when it reversed Hiltz's deferred sentence in this matter. "[T]he amount of restitution must be stated as a specified amount of money." State v. Hearner, 2010 MT 87, P7, 356 Mont. 128, 231 P.3d 1087; see 46-18-244(1), MCA. The sentencing court's enumeration of "up to \$25,000," Exh. A, P. 40, L. 2, lacks statutory basis. With the help of a presentence investigation and report, a court must determine a definitive amount of restitution while permitting Hiltz to "assert any defense" that he could in a civil action, sections 46-18-242(1),

Grant Hiltz's petition for writ of habeas corpus and remand this case to the Third Judicial District Court to specify the amount of restitution Hiltz owes. [W]hen a portion of a sentence is illegal, the better result is to remand to the district court to correct the illegal provision."

Hedfner, supra at p11. Based on the foregoing, petitioner has invariably demonstrated he is serving a facially invalid sentence. The open-ended restitution violates the requirement that the sentencing court had to specify the amount of restitution to be paid, pursuant to 46-18-244(1), MCA.

CERTIFICATE OF MAILING (SERVICE)

I hereby certify that on April 6, 2022, I have mailed the Petition for a Writ of Habeas Corpus, as noted by a check mark (✓), to the following attorney by placing a copy in the United States Mail, postage prepaid:

State of Montana

(see INSTRUCTIONS #9)

Office of the Attorney General

P. O. Box 201401

Helena, MT 59620-1401

or

_____ County Attorney (see INSTRUCTIONS #9)
[Write name of County]


[Signature]

Frank Hiltz
[Print name]