



ORIGINAL

IN THE SUPREME COURT OF THE STATE OF MONTANA

OP 22-0179

FILED

04/26/2022

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: OP 22-0179

FRANK PHILLIP HILTZ,

Petitioner,

v.

JAMES SALMONSEN, Warden,

Respondent.

FILED

APR 26 2022

Bowen Greenwood
Clerk of Supreme Court
State of Montana

ORDER

Frank P. Hiltz petitions this Court for habeas corpus relief, contending that he is serving a facially invalid sentence because of the \$25,000 restitution, imposed in 2017, for the counseling costs of his sexual assault victim. Hiltz requests that this Court grant his Petition and remand the matter to the Third Judicial District Court, Powell County, to determine the specific amount of restitution Hiltz shall pay. Hiltz includes a copy of part of the sentencing transcript.

On May 9, 2017, the Powell County District Court imposed a six-year deferred sentence upon Hiltz after accepting the plea agreement. Hiltz and the State entered into an agreement in exchange for the State's amendment of the sexual intercourse without consent charge to sexual assault as well as dismissal of a second criminal case. Hiltz appealed. In June 2018, we granted his motion to voluntarily dismiss the appeal. *State v. Hiltz*, No. DA 17-0397, Order (Mont. Jun. 5, 2018).

On November 28, 2017, the Powell County District Court held an evidentiary hearing on the State's Petition to Revoke Deferred Sentence. Based on the admitted violations and testimony, the District Court revoked the deferred sentence and sentenced Hiltz to the Montana State Prison for fifteen years with five years suspended. The court also ordered Hiltz to complete both phases of the Sex Offender Treatment Program.

In his instant Petition, Hiltz argues that the District Court did not determine a definitive amount of restitution. Hiltz contends that the "sentencing court's enumeration

of ‘up to \$25,000,’ lacks statutory basis.” Citing to Montana caselaw, he states that “the amount of restitution must be stated as a specified amount of money.” *State v. Heafner*, 2016 MT 87, ¶ 7, 356 Mont. 128, 231 P.3d 1087; *see also* § 46-18-244(1), MCA. Hiltz points out that neither of his judgments provide specificity and that his matter should be remanded for correction because part of his sentence is illegal. *Heafner*, ¶ 11.

Hiltz’s sentence is facially valid. Hiltz agreed to the amount of restitution for the victim in his plea agreement, as reflected in the transcript. Both sentencing judgments provide the amount of restitution that Hiltz must pay. On May 9, 2017, the District Court ordered that “[t]he Defendant by stipulation shall pay restitution to the victim for counselling in this cause up [to] the amount of \$25,000.00 for bills incurred related to this assault.” On November 28, 2017, the court reiterated that “[t]he Defendant shall pay restitution to the victim, K.Z., for future counseling in this cause up [to] the amount of \$25,000.00 for bills incurred related to this assault.” The District Court imposed a total amount of \$25,000.00 for future counseling costs for the victim. Sections 46-18-244(1) and 46-18-243(1)(c), MCA (2017).

Hiltz has not demonstrated illegal incarceration. Section 46-22-101(1), MCA. His matter does not need to be remanded. Hiltz is also precluded from challenging his sentence upon revocation through the remedy of habeas corpus. Section 46-22-101(2), MCA. Accordingly,

IT IS ORDERED that Hiltz’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 Frank P. Hiltz personally.

DATED this 26 day of April, 2022.



Chief Justice

Kevin McK

James J. H. H.

Laura McK

Jim Rice

Justices