



ORIGINAL

FILED

06/28/2022

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: OP 22-0329

IN THE SUPREME COURT OF THE STATE OF MONTANA

OP 22-0329

FILED

JUN 28 2022

Bowen Greenwood
Clerk of Supreme Court
State of Montana

BRETT STEELE BERRY,

Petitioner,

v.

ORDER

CAPTAIN MARK JOHNSON, Butte-
Silver Bow County Detention Center,

Respondent.

Self-represented Petitioner Brett Steele Berry has filed a Petition for Writ of Habeas Corpus, indicating that he is being held in jail and that his bail is excessive. Berry states that he is in the Butte-Silver Bow County Detention Center and has “been held without bail/bond for over 100 days.” He claims that he has “been denied all legal due processes guaranteed” to him under the Montana Constitution and statutes. He further states that there has been no attempt to discuss charges, yet he provides a cause number for a criminal case. Berry requests his release on his own recognizance.

Section 46-22-103, MCA, provides:

When a person is imprisoned or detained in custody on any criminal charge for want of bail, the person is entitled to a writ of habeas corpus for the purpose of giving bail upon averring that fact in the person’s petition, without alleging that the person is illegally confined.

We secured a copy of the docket from the Butte-Silver Bow County District Court. Berry’s criminal case for felony burglary commenced in February 2021 in the District Court. The next month, the court issued a bench warrant. In June 2021, the court held an arraignment, took Berry into custody, and set bail at \$20,000. Berry posted bail but, less than six months later, the State moved to revoke bail. On March 15, 2022, Berry was served with a bench warrant on a petition to revoke and had an initial appearance six days

later. Berry's counsel filed an unopposed Motion to Set Bail/Bond Hearing and the court held a hearing on June 23, 2022, denying Berry release on his own recognizance. The court set a jury trial in September 2022.

Berry has not been denied legal due process and is not entitled to release. A district court has the discretion to set conditions of release. *Grafft v. Mont. Fourth Judicial Dist. Court*, 2021 MT 201, ¶ 11, 405 Mont. 192, 197, 492 P.3d 1213. Berry has counsel to represent him during his case and would have received copies of the charging documents and other pleadings. While he has raised the issue of bail in a habeas corpus proceeding, he has not provided any supporting argument or evidence entitling him to relief pursuant to § 46-22-103, MCA.

Berry should refrain from filing pleadings on his own behalf with this Court while he is represented by counsel in the District Court. M. R. App. P. 10(1)(c).

Accordingly,

IT IS ORDERED that Berry's Petition for a Writ of Habeas Corpus is DENIED.

The Clerk is directed to provide a copy of this Order to: the Honorable Kurt Krueger, District Court Judge; Tom Powers, Clerk of Court, Butte-Silver Bow County; Samm T. Cox, Butte-Silver Bow County Attorney's Office; Katherine C. Green, Defense Counsel; counsel of record, and Brett Steele Berry personally.

DATED this 28th day of June, 2022.



Chief Justice



Det. M. Sullivan

Jim Rice

Justices