

IN THE SUPREME COURT OF THE STATE OF MONTANA
OP 22-0350

HELIO LEAL DE LA HOZ,

Petitioner,

v.

JASON KOWALSKI, Administrator of
the Missoula County Detention Center,

Respondent.

**DISTRICT COURT'S RESPONSE TO
PETITION FOR WRIT OF HABEAS CORPUS**

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INTRODUCTION

Comes now, the Honorable John W. Larson, District Judge, (Respondent District Court), presiding over District Court Cause Nos. DC-22-312 and DC-22-313, State of Montana v. HELIO J. LEAL DE LA HOZ, together with the Honorable Eli Parker, Missoula County Municipal Court Judge, by Affidavit, and respond to Petitioner's Petition for Writ of Habeas Corpus.

BACKGROUND

I. District Court Cause Nos. DC-22-28 and DV-32-2022-765

Respondent District Court finds the underlying Municipal Court procedural facts relevant to Missoula County Cause No. DC-22-28 and DV-32-2022-765 as the following.

Petitioner was accused of assault with a bodily fluid in Municipal Court TK-620-2021-1034, a bench trial was held on December 6, 2021, and sentencing occurred on December 21, 2021.

In a separate Municipal Court matter, TK-620-2021-4479, and on September 17, 2021, Petitioner was charged with two counts of violating Mont. Code Ann. § 45-5-214, assault with a bodily fluid, for spitting on two officers while being arrested for two warrants. The December 10, 2021, trial was held at the Municipal Court before sub-judge pro tempore Will Ferguson. After hearing testimony and reviewing video, the Municipal Court found Petitioner guilty of two counts of

Assault with Bodily Fluid. The Court immediately proceeded to sentencing. Per § 45-5-214 M.C.A., the Court sentenced the Petitioner to twelve (12) months, all but 3 months suspended, and granted 28 days credit for time served.

The window to appeal the December 10, 2021, judgment and sentence closed on December 24, 2021, per § 46-17-311 M.C.A.

On January 3, 2022, Petitioner filed a “Motion to Reconsider Sentence.” On January 7, 2022, the time scheduled for a bench trial on an unrelated Assault with Bodily Fluid charge before Municipal Court Judge Eli Parker, Petitioner argued for release based on the January 3 “Motion to Reconsider Sentence.” After taking argument from both parties, Municipal Court Judge Parker granted the motion to release and resentenced Petitioner and added a condition Petitioner engage in community-based mental health treatment. On January 7, 2022, the Municipal Court entered the Bench Order for Release from Missoula County Detention Facility. The City appealed the January 7, 2022, Municipal Court Bench Order.

On June 22, 2022, after receiving briefs from both parties on the City’s appeal, the Honorable Shane Vannatta issued an order in District Court Cause DC-22-28, reversing the Municipal Court’s January 7, 2022, Bench Order, and ordered the case remanded to Municipal Court.

On July 5, 2022, the Petitioner filed a Writ of Habeas Corpus and Request

for Emergency Stay of Municipal Court TK-620-2021-4479 before Respondent District Court. In his petition, District Court Cause No DV-22-765, Petitioner argues the December 10, 2021, conviction and sentence is illegal because the Petitioner was not fit at the time of the trial and the pronouncement of sentence. On July 12, 2022, Respondent filed a motion to substitute, and on July 14, 2022, Respondent District Court granted Petitioner's Motion to Substitute and Request to Assume Jurisdiction.

II. District Court Cause Nos. DC-22-212 and 213

Respondent District Court finds the underlying Municipal Court procedural facts relevant to District Court Cause Nos. DC-22-212 and 213 as the following.

On July 21, 2021, Petitioner was initially charged with count of Assault with Bodily Fluid and one count of Disorderly Conduct in Missoula Municipal Court. The case was given Cause No. TK-620-2021-3437.

On March 28, 2022, before trial was held in this matter, the Hon. Eli Parker issued an order finding that Helio was "unfit to proceed."

The Court set the matter for a status hearing on April 18, 2022. The City briefly attempted to appeal the finding of unfitness but withdrew the appeal. A status hearing was held on June 1, 2022. Arraignment was not held due to Petitioner's fitness.

On May 26, 2022, a new case was filed against Petitioner, Municipal Court

Cause No. TK-620-2022-2057. In that case, Petitioner was charged with one count of Criminal Trespass pursuant to Section 45-6-203, MCA, one count of Disorderly Conduct pursuant to Section 45-8-101(1), MCA, one count of Obstructing a Peace Officer pursuant to Section 45-7-302, MCA, and one count of Resisting Arrest pursuant to Section 45-7-301, MCA.

On June 1, 2022, a status in Municipal Court TK-620-2021-3437 and an arraignment hearing in Municipal Court TK-620-2022-2057 was held. Honorable Eli Parker announced his intention to transfer these cases to District Court.

On June 1, 2022, a Request for District Court to Assume Jurisdiction was filed by Judge Parker in each matter, which request was granted by the Hon. John Larson. The Request states that “[t]he District Court assumes jurisdiction over the above matters. The Missoula Clerk of Court shall transfer the files to District Court and file the matter in Dept. 3.”

Municipal Court Cause No. TK 620-2022-2057 became District Court Cause DC-22-312 and TK-620-2021-3437 became District Court Cause DC-22-313.

On June 15, 2022, Respondent District Court issued an Order to Seal File, Order Vacating Hearings and Order for Evaluation from Montana State Hospital. The Order stayed proceedings pending the completion of an examination at the Montana State Hospital. On June 16, 2022, a status hearing was set in Missoula County District Court. The status hearing was reset for June 23, 2022.

On June 28, 2022, Petitioner filed a Motion to Substitute Judge, and on June 29, 2022, the District Court denied the motion as untimely.

On June 30, 2022, Petitioner filed a Petition for Writ of Habeas Corpus in these matters, asserting Petitioner is currently unlawfully imprisoned. Petitioner contends the District Court lacks both subject matter jurisdiction and personal jurisdiction. Petitioner also asserts his cases were improperly transferred to Respondent District Court without any authority to transfer. Petitioner further contends that there is no prosecutor assigned to the cases, and the cases must be dismissed for lack of prosecution.

On July 8, 2022, upon the District Court's own motion and with the input and agreement of the Honorable Eli Parker of the Missoula Municipal Court, the Court withdrew the earlier June 15, 2022, Order for Evaluation in District Court Cause No. DC-22-312 and DC-22-313 and determined Petitioner be committed under Mont. Code Ann. § 46-14-221(2) to develop an individualized treatment plan to assist Petitioner to gain fitness to proceed.

STANDARD

Mont. Code Ann. § 46-22-101 M.C.A. provides:

(1) [e]xcept as provided in subsection (2), every person imprisoned or otherwise restrained of liberty within this state may prosecute a writ of habeas corpus to inquire into the cause of imprisonment or restraint and, if illegal, to be delivered from the imprisonment or restraint. (2) The writ of habeas corpus is not available to attack the validity of the conviction or

sentence of a person who has been adjudged guilty of an offense in a court of record and has exhausted the remedy of appeal.

An application for a writ of habeas corpus must specify: (a) that the petitioner unlawfully imprisoned or restrained of liberty, (b) why the imprisonment or restraint is unlawful, and (c) where and by whom the petitioner is confined or restrained. Mont. Code Ann. § 46-22-201(1).

ARGUMENT

I. Respondent District Court's Concurrent Jurisdiction

Respondent District Court has concurrent jurisdiction with the Municipal Court in District Court Causes No. DC-22-312 and DC-22-313.

Section 3-10-303(2) provides that

[i]n any county that has established a drug treatment court or mental health treatment court, the district court, with the consent of all judges of the courts of limited jurisdiction in the county, has concurrent jurisdiction of all misdemeanors punishable by a fine not exceeding \$500 or imprisonment not exceeding 6 months, or both.

At present, the Municipal Court judges have not reached a consensus as to concurrent jurisdiction between courts of limited jurisdiction and the district court on a case-by-case basis and only where treatment is at issue. Historically, however, Respondent District Court and courts of limited jurisdiction have worked together with concurrent jurisdiction in appropriate cases where drug or mental health treatment are at issue, which practice predates Mont. Code Ann. § 3-10-

303(2).

Mont. Code Ann. § 3-5-302(1)(e) further provides that the district court has original jurisdiction in “all special actions and proceedings that are not otherwise provided for.” Respondent District Court respectfully submits that Petitioner’s three bench trials in Municipal Court and ongoing other cases which are presently stayed while a treatment plan is developed are the type of other proceeding(s) where jurisdiction may be shared to facilitate the completion of a treatment plan based on available resources. Of note, the Office of the Public Defender has a social worker position best suited to bridge the treatment gap in these kinds of cases, which position is not yet filled.

No trial has been held in these matters. Judge Parker may still conduct any hearing or set trial, and Respondent District Court’s role is to assist Judge Parker in Petitioner’s treatment without taking control of the case. Respondent District Court’s July 8, 2022, Commitment Order for Development of Treatment Plan specifically states, “[t]he District Court will defer to Judge Parker on any future matters of setting hearing or other developments in the case.” (*See* Exh. 1; District Court Cause No. DC-22-312 and DC-22-313, ROA 11). The District Court is attempting to offer treatment to Petitioner while the cases are still at the misdemeanor level. Respondent District Court notes the high-risk nature of Petitioner’s developing cases in Municipal Court, including the involvement of

weapons.

II. Respondent District Court's Treatment Decision Supported by Statutory Authority and the Record.

Respondent District Court's determination that Petitioner submit to an evaluation is supported by applicable statutes. Mont. Code Ann. § 46-14-221 sets forth clear requirements regarding determination of fitness to proceed. Under M.C.A. § 46-14-221(1),

The issue of the defendant's fitness to proceed may be raised by the court, by the defendant or the defendant's counsel, or by the prosecutor. When the issue is raised, it may be determined by the court. If neither the prosecutor nor the defendant's counsel contests the finding of the report filed under 6-14-206, the court may make the determination on the basis of the report. If the finding is contested, the court shall hold a hearing on the issue. If the report is received in evidence upon the hearing, the parties have the right to subpoena and cross-examine the psychiatrists or licensed psychiatrists or licensed clinical psychologists who joined in the report and to offer evidence upon the issue.

As detailed by the relevant statutory guidelines, the issue of a defendant's fitness to proceed may be raised by the court, by the defendant or the defendant's counsel, or by the prosecutor. The test for determining if a criminal defendant is fit to stand trial is "whether he has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding – and whether he has a rational as well as factual understanding of the proceedings against him." *Dusky v. United States*, 362 U.S. 402, 402 (1960). A trial court has an obligation to suspend the

proceedings and make a further inquiry about the Petitioner's fitness. In *Griffin v. Lockhart*, 935 F.2d 926, 929 (1991), the Eighth Circuit Court of Appeals explained

due process requires that a hearing be held whenever evidence raises a sufficient doubt about the mental competency of an accused to stand trial...If there is sufficient doubt about the mental competency of an accused, a trial court has a responsibility to order a hearing sua sponte. Failure to provide an adequate hearing on competency...deprives a defendant of his due process right to a fair trial.

Factors to consider include: “(1) evidence of irrational behavior by the accused, (2) the demeanor of the accused at trial, and (3) any prior medical opinion on the mental competency of the accused to stand trial. Any one of these factors alone can, ‘in some circumstances, be sufficient.’” *Id.* at 930.

The submission by Municipal Court Judge Parker in this Writ of Habeas Corpus Response thoroughly outlines the serious mental health condition and treatment needs required in Petitioner's various cases. The record is replete with support for Respondent District's decision to order Petitioner for treatment evaluation. Defense Counsel stated he was concerned regarding Petitioner's fitness approximately two months before the Municipal Court's December 10, 2021, trial (Cause No. TK-620-2021-4479). In an email to defense counsel which did not involve a written report, Dr. Scolatti determined Petitioner was “probably fit.” Specifically, defense counsel asserts he received the following emails from Dr. Scolatti on October 12, 2021: 11:24 a.m.

I saw Helio last week. He is very paranoid and somewhat delusional, but he is fit to proceed. He understands the courtroom, what's at stake and can discuss his offense. He understands what is going on, but he will definitely be a difficult client. 11:34 a.m. I need to elaborate a little more. While he is probably fit to proceed with the case, he does have a significant mental illness, probably schizophrenia. I would recommend contacting Terry Reed or Susan Day to do a more comprehensive evaluation on him, looking at his mental state at the time of the offense. I think his "mutism" is by choice as when I asked him how long he had been mute, he wrote, "I'm not mute."

(See Exh. 2, District Court Cause No DV-22-765, ROA 3, p.5; City Response to Petition for Writ of Habeas Corpus). Defense Counsel did not have the Petitioner re-evaluated prior to the December 10, 2021 trial.

Petitioner's fitness is first questioned in Petitioner's January 3, 2022 "Motion to Reconsider Sentence" in Municipal Court Cause No TK-620-2021-4479. (See Exh. 3; District Court Cause No. DC-22-28, ROA 1). In that motion, defense counsel acknowledges he was "shocked" when Dr. Scolatti deemed the Petitioner competent to stand trial. (See Exh. 3; District Court Cause No. DC-22-28, ROA 1). Judge Parker's January 7, 2022, Bench Order, releasing Petitioner conditioned on Petitioner engaging in community based mental health treatment and discusses Petitioner's "ongoing need for mental health treatment and apparent decompensation." (See Exh. 3; District Court Cause No. DC-22-28, ROA 1; Municipal Court Jan 7, 2022, Bench Order for Release). In the appeal of Municipal Court Cause TK-620-2021-4479, District Court Cause No. DC-22-28 (Dept. 5), defense counsel asserts that Petitioner was completely unable to offer

any assistance in his own defense. (See Exh. 4; District Court Cause DC-22-28, ROA 6, Def. Response to Opening Brief, p.3). Defense counsel also referred to documents filed in Municipal Court TK-620-2021-1034, which Petitioner accuses the Missoula Police Department of conspiring with the mafia and international organized crime “to [d]ebilitate and murder the Defendant by various means.” (See Exh. 4; District Court Cause DC-22-28, ROA 6; Def. Response to Opening Brief, p.3).

In Petitioner’s Writ for Habeas Corpus in District Court Cause No. DV-2022-765, Petitioner contends the Municipal Court erred for not immediately suspending the proceedings, *sua sponte*, and making an inquiry on alleged fitness issues. (See Exh. 5; District Court Cause No DV-22-765, ROA 1; Petition for Writ of Habeas Corpus;). This argument is, in fact, consistent with the present posture of District Court Cause Nos. DC-22-313 and 312, wherein Respondent District Court is attempting to have Petitioner evaluated for treatment options while the case is at the misdemeanor level of offense.

In another case set for bench trial, Municipal Court Cause No. TK-620-2021-3437, Petitioner refused transport to Municipal Court and refused to see counsel, which raised Petitioner’s fitness issue again. The bench trial in Municipal Court Cause No. TK-620-2021-3437 was continued to allow a new fitness evaluation to be performed, and the new evaluator, Dr. Susan Day, found that

Petitioner was not fit and unable to assist in his own defense. (*See* Exh. 5; District Court DV-22-765, ROA 1, Exh. E (Feb. 9, 2022 Day Fitness to Proceed Evaluation)).

On April 7, 2022, the City briefly attempted to appeal the Municipal Court's March 28, 2022, finding of Petitioner's unfitness entered in Municipal Cause No. TK-620-2021-3437, but withdrew the appeal. The City's Motion to Withdraw Appeal specifically states, "the City no longer wishes to appeal the Court's finding the Defendant unfit to proceed on March 28, 2022." (*See* Exh. 6; District Court Cause No. DC-22-200, ROA 3).

In summary, Petitioner has been involved in three different bench trials, there has been a finding based on a second evaluation that Petitioner is unfit, and Petitioner is in need of treatment. Municipal Court Judge Parker's submission in this Response details Petitioner's serious mental health needs and the community safety risk at issue. There is sufficient evidence in the record to support that comprehensive treatment presently ordered in this case. Petitioner cannot show he is illegally incarcerated, and there is no just cause for immediate relief under Mont. Code Ann. § 46-22-101. The District Court exercised its discretion to ensure Petitioner does not endanger himself or the community. (*See Grafft v. Mont. Fourth Judicial Dist.*, 2021 MT 201). In these cases, Respondent District Court respectfully submits that Respondent District Court's determination that Petitioner

commit to an appropriate mental health facility under Mont. Code Ann. § 46-14-221(2) is supported both by the record and applicable statutory authority.

CONCLUSION

Deferential standards of review are reserved for matters such as determinations of fact. *State v. Davis*, 2016 MT 102, 383 Mont. 281, 371 P.3d 979. Respondent District Court respectfully submits it exercised sound discretion in the above order for treatment and fact determinations are still underway in this case. (See e.g. Feb. 22, 2022, *Barth v. Mont. Fourth Judicial Dist.* (OP 22-0072)).

RESPECTFULLY SUBMITTED this 21st day of July 2022.



JOHN W. LARSON, Respondent

CERTIFICATE OF COMPLIANCE

Pursuant to Rules 11(4)(c) and 14, M.R.App.P., the Respondent Montana Fourth Judicial District Court, Missoula County, the Honorable John W. Larson, Presiding Judge, hereby provides a Certificate of Compliance. This response brief to Petitioner's Petition for Writ of Supervisory Control was created as follows:

- x Double-spaced
- x Proportionally Spaced Times New Roman test typeface of 14 point typeface
- x Does not exceed 4,000 words (Word Count: , excluding tables and certificates)

CERTIFICATE OF SERVICE

I hereby certify that I mailed a true and correct copy of the foregoing document, postage prepaid, to the following:

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