



ORIGINAL

FILED

07/26/2022

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: OP 22-0361

IN THE SUPREME COURT OF THE STATE OF MONTANA

OP 22-0361

FILED

JUL 26 2022

Bowen Greenwood
Clerk of Supreme Court
State of Montana

BOE ALAN MILLER,

Petitioner,

v.

ORDER

T.J. McDERMOTT,

Respondent.

Boe Alan Miller has filed a Petition for Writ of Habeas Corpus, requesting his immediate release from the Missoula County Detention Facility where he is currently held. He states that on May 28, 2022, he was arrested on a warrant for failure to appear without having received notice or service. He further states that he was held in the Lake County Jail before being transferred to Missoula. Miller provides that he appeared before a Missoula County District Court Judge, who released him on his own recognizance. Miller explains, however, that he was not released because Probation and Parole placed a hold on him and kept him in jail.

In March 2014, the State of Montana charged Miller with felony theft and felony criminal endangerment. The District Court sentenced Miller in September 2015 to a ten-year Department of Corrections (DOC) sentence with five suspended for theft, and a concurrent ten-year DOC sentence, with five suspended for criminal endangerment. *See Miller v. State and Rummel*, No. OP 15-0708, Order at 1-2 (Mont. Feb. 9, 2016).

On March 24, 2022, Miller was serving his probationary term when the State filed an Information charging Miller with felony partner or family member assault, 3rd or subsequent offense, committed on February 1, 2022. The District Court issued an arrest warrant and on June 23, 2022, Miller had an initial appearance in the Lake County Justice Court and an arraignment in the Missoula County District Court. The minute entry reflects that Miller is being held on a \$50,000 bond in Lake County and on a \$10,000 bond in

Missoula County. The District Court discussed bond and release on his own recognizance with counsel and considered counsel's claim that Miller was not served with the Summons prior to the issuance of the arrest warrant. However, Miller has had bail set in all proceedings for which he is charged and his incarceration is due to pending charges. Further, Miller 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).

Miller has not demonstrated that he is illegally incarcerated. Section 46-22-101(1), MCA. He is not entitled to release or to habeas corpus relief. The cause of his incarceration is due to his pending charges in a District Court and a Justice Court. Miller may seek an appeal of the court's final judgment. Section 46-20-104(1), MCA.

Therefore,

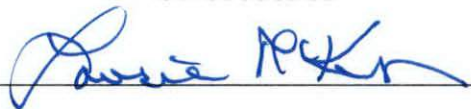
IT IS ORDERED that Miller's Petition for Writ of Habeas Corpus is DENIED and DISMISSED.

The Clerk is directed to provide a copy of this Order to the Honorable Shane Vannatta, Missoula County District Court; to Shirley Faust, Clerk of District Court, Missoula County, under Cause No. DC-22-168; to Ryan Mickelson, Missoula County Deputy Attorney; to Lisa B. Kauffman, Defense Counsel; to counsel of record, and to Boe Alan Miller personally.

DATED this 26th day of July, 2022.



Chief Justice



Justices