

IN THE SUPREME COURT OF THE STATE OF MONTANA

OP 22-0610

DOUGLAS RAY BOYD,

Petitioner,

v.

JIM SALMONSEN, Warden,
Montana State Prison,Respondent.

FILED

NOV 15 2022

Bowen Greenwood
Clerk of Supreme Court
State of Montana

ORDER

Douglas Ray Boyd petitions this Court for habeas corpus relief, indicating that the Board of Pardons and Parole (Board) should have granted him parole and that the Board violated his right to due process. We observe that Boyd includes no case disposition from the Board or supporting documentation for this claim.

Boyd raises other arguments in his instant Petition. He states that he was not read his *Miranda*¹ rights upon arrest, and that he only was read his rights several days after his arraignment. He further states that “[his] lawyer directed [him] to take a[n] Alford Plea for [his] charges for sexual [assault] and abuse to a minor.” Boyd concludes that the Department of Corrections should recalculate his sentence because “[s]ince [he’s] been in Prison [he] found out that it’s against Montana Law to take a[n] Alford Plea for any kind of sex crime.”

Available electronic documents indicate that on December 16, 2015, the State of Montana charged Boyd with six felonies, including sexual intercourse without consent, sexual assault, and sexual abuse of children for offenses committed between October 1, 2014, and June 1, 2015. The Ravalli County District Court accepted Boyd’s *Alford* pleas²

¹ *Miranda v. Ariz.*, 384 U.S. 436, 86 S. Ct., 1602 (1966).

² *N.C. v. Alford*, 400 U.S. 25, 91 S. Ct. 160 (1970).

to two counts—sexual assault and sexual abuse of children—pursuant to a plea agreement. The District Court committed Boyd to a prison designated by the Department of Corrections for two, concurrent terms of twenty years. The court awarded 326 days of credit for time served. Boyd did not appeal.

Boyd's claims concerning his arrest, criminal prosecution, and plea agreement come too late and through the wrong remedy of habeas corpus. Those claims are better brought in a direct appeal of a conviction and sentence. By not appealing his conviction and sentence, Boyd has exhausted the remedy of an appeal, some six years later. Section 46-22-101(2), MCA. Boyd is both time-barred and procedurally barred to challenge his convictions through his raised claims now.

Boyd is not entitled to a sentence recalculation. Boyd confuses *Alford* plea with a nolo contendere plea. In 2019, this Court clarified that an *Alford* plea is not the same as nolo contendere or, no contest, and that an offender, such as Boyd, may enter an *Alford* plea to a sexual offense. We explained this distinction when addressing Petitioner Joseph Lawrence's claims in his Petition for Writ of Habeas Corpus:

In this case, Lawrence entered a plea of "guilty by *Alford*" to the sexual offenses pursuant to § 46-12-212(2), MCA; he did not enter a plea of nolo contendere. Because an "*Alford* plea" is a guilty plea, courts are not statutorily prohibited from accepting *Alford* pleas in sexual offenses. Accordingly, we conclude Lawrence's *Alford* pleas were guilty pleas, not nolo contendere pleas, and that § 46-12-204(4), MCA, did not prohibit the District Court from accepting the *Alford* pleas to the sexual offenses.

Lawrence v. Guyer, 2019 MT 74, ¶ 10, 395 Mont. 222, 440 P.3d 1. Like Petitioner Lawrence, Boyd's *Alford* pleas are guilty pleas to the sexual offenses. His convictions are valid. More importantly, his sentences are facially valid, thereby precluding any relief under a writ of habeas corpus. Section 46-22-101(1), MCA. Boyd has not demonstrated illegal incarceration. Boyd is not entitled to habeas corpus relief. Therefore,

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

The Clerk of the Supreme Court is directed to provide a copy of this Order to counsel of record and to Douglas Ray Boyd personally.

The Clerk is further directed to close this case of this Order's date.

DATED this 15th day of November, 2022.











Justices