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IN THE SUPREME COURT OF THE STATE OF MONTANA

No. OP 22-0750

BRADLEY K. STEVENS,

Petitioner,

v.

PETE BLUDWORTH, Warden,

Respondent.

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

In compliance with this Court's January 10, 2023 Order, counsel for the Montana Department of Corrections (Department or DOC) and Montana Board of Pardons and Parole (Board) responds to the Petition for a Writ of Habeas Corpus (Petition) filed by Petitioner Bradley K. Stevens (Stevens) on December 29, 2022. This Court should deny and dismiss Stevens' Petition because Stevens is legally incarcerated and is not entitled to immediate release.

The Board properly exercised its authority under its administrative rules to rescind Stevens' parole before he was released from confinement after learning that Stevens was the subject of a new criminal investigation. In rescinding Stevens' parole, the Board afforded Stevens all the process he was due. Stevens was provided with an opportunity to be heard and a written statement explaining why his parole was rescinded. Lastly, the Board's reliance on information from Stevens' IPPO about Stevens' involvement in a new criminal investigation, which Stevens characterizes as hearsay, was not improper. The Board was permitted to consider information from Stevens' IPPO without the IPPO testifying at Stevens' recission hearing because, under Montana law, the Rules of Evidence do not apply in proceedings involving the granting or revoking of probation or parole.

Respondent attaches an Appendix with copies of pertinent district court documents and records of the official acts of the Board which this Court may take judicial notice of pursuant to Mont. R. Evid. 202(b)(4, 6).

Relevant Background Facts

Stevens is an inmate at Crossroads Correctional Center serving three custodial sentences from the Lake County and Butte-Silver Bow County District Courts. (Sentence Calculation Spreadsheet, *attached hereto as Exhibit A*). He became parole eligible in 2017. (*Id.*). On March 10, 2022, the Board conditionally paroled Stevens to a DOC-approved parole plan upon completion of a “cognitive based program.”

(Parole Disposition Form, *attached hereto as Exhibit B*). Stevens signed his parole disposition form on March 23, 2022, acknowledging that “[a]ny misconduct on my part prior to release, substantial changes in parole plan, and/or new information and evidence received that was not available at the time of my parole hearing may result in the rescission of my parole.” (*Id.*).

On April 12, 2022, Stevens successfully completed “Thinking for a Change” (Certificate of Completion, *attached hereto as Exhibit C*). Thinking for a Change (T4C) is an integrated cognitive behavioral change program that is designed to be provided to justice-involved adults and youth.¹ Stevens’ completion of T4C satisfied the Board’s requirement that he complete a “cognitive based program.”

In June 2022, while Stevens was still incarcerated, Stevens’ institutional probation and parole officer (IPPO) learned that Stevens was the subject of a new criminal investigation. Stevens’ IPPO subsequently relayed that information to the Board. On October 26, 2022, the Board issued a parole rescission hearing notice to Stevens. (Notice, *attached hereto as Exhibit D*). On December 8, 2022, the Board conducted Stevens’ rescission hearing. Stevens appeared by video and was given the opportunity to be heard. Based on the information that Stevens was the subject of a new criminal investigation², and because he was still incarcerated, the Board

¹ <https://nicic.gov/projects/thinking-for-a-change>

² At the time of Stevens’ parole rescission hearing, the Board was under the mistaken impression that new criminal charges had been filed against Stevens. As of the date of this response, the investigation of Stevens is ongoing but no charges have been filed against him yet.

exercised its authority under Admin. R. M. 20.25.601 and rescinded Stevens' parole. At the conclusion of his rescission hearing, the Board provided a written statement to Stevens explaining why his parole was rescinded. (Parole Disposition Form, *attached hereto as Exhibit E*). Stevens now challenges the Board's rescission of his parole through this Petition.

Statement of Stevens' Argument

Stevens alleges his due process rights were violated when the Board rescinded his parole. He claims his parole was taken "on heresay [sic] without proof." (Petition at p. 3 of 5).

Habeas Corpus Standard

The purpose of the writ of habeas corpus is "to inquire into the cause of imprisonment or restraint and, if illegal, to be delivered from the imprisonment or restraint." Section 46-22-101(1), MCA. A writ of habeas corpus is designed to address the legality of incarceration. *Keating v. Sherlock*, 278 Mont. 218, 924 P.2d 1297 (1996). "The purpose of a writ of habeas corpus is to determine the legality or illegality of the restraint alleged to be exercised. It is available only to those persons, or on behalf of those persons, unlawfully imprisoned or restrained of their liberty, and is independent of the legal proceeding under which the detention is sought to be justified." *Lott v. State*, 2006 MT 279, ¶ 9, 334 Mont. 270, 275, 150 P.3d 337, 340 (quoting *August v. Burns*, 79 Mont. 198, 213, 255 P. 737, 741 (1927)).

Stevens has the burden of showing he is entitled to habeas corpus relief. *Miller v. Dist. Court*, 2007 MT 58, ¶ 14, 336 Mont. 207, 154 P.3d 1186. Stevens cannot meet this burden and thus his Petition should be denied and dismissed.

Parole and Parole Rescission

Under Montana law, “[p]arole...is a discretionary grant of freedom from incarceration.” *McDermott v. McDonald*, 2001 MT 89, ¶ 24. The Board has broad authority and discretion to decide an inmate’s parole. *McDermott*, ¶ 25.

Montana law authorizes the Board to:

adopt any rules that it considers proper or necessary with respect to the eligibility of prisoners for parole, the conduct of parole and parole revocation hearings, videoconference hearings, telephone conference administrative reviews, progress reviews, clemency proceedings, the conditions to be imposed upon parolees, the training of board members regarding American Indian culture and problems, and other matters pertinent to service on the board.

Section 46-23-218(1), MCA.

Admin. R. M. 20.25.601 provides that:

(1) A hearing panel may conduct a hearing and rescind a previously granted parole if the offender has not left confinement or is on furlough status and the panel finds one of the following has occurred:

- (a) the offender has committed disciplinary violations;
- (b) there is a substantial change in the approved release plan; or
- (c) new evidence or information shows the offender does not deserve a release.

(2) The panel will make its decision regarding rescission after it has considered all relevant information including the offender's own testimony regarding extenuation or mitigation.

(3) The presiding hearing panel member will conduct the rescission hearing informally and will make an audio and video record of it. The offender has the right to be present at the hearing, but may waive that right and admit the allegations are true.

(4) In lieu of scheduling a rescission hearing the board may delay the offender's release from confinement for up to 120 days for the reasons listed in (1).

(5) Unless a hearing panel otherwise orders, before an offender leaves prison confinement on parole, the offender must be clear of major disciplinary misconduct for a minimum of 120 days. If the offender is a resident of a community-based program, the offender must be clear of Class 100 and 200 disciplinary violations for at least 90 days.

Admin. R. M. 20.25.601.

This Court has recognized the Board's authority under Admin. R. M. 20.25.601 to rescind a previously granted parole if the offender is still in custody. *Stevens v. Bludworth*, No. OP 22-0654, 2022 Mont. LEXIS 1112, Order (Mont. Dec. 6, 2022).

Due Process in Parole Hearings and The Montana Rules of Evidence

“There is no absolute standard for what constitutes due process. Rather, the requirements of due process are flexible, so that they may be adapted to meet the procedural protections demanded by a particular situation.” *Greenholtz v. Inmates of the Nebraska Penal and Correction Complex* (1979), 442 U.S. 1, 12, 99 S. Ct. 2100, 2106, 60 L. Ed. 2d 668, 679. “The process due in any given case varies according to the factual circumstances of the case, the nature of the interests at stake, and the risk of making an erroneous decision.” *Sage v. Gamble* (1996), 279 Mont. 459, 465, 929 P.2d 822, 825. In the context of a parole determination hearing, the

United States Supreme Court has held that due process is satisfied when the prisoner seeking parole is, at a minimum, provided with an opportunity to be heard and a written statement explaining why he was denied parole. *Greenholtz*, 442 U.S. at 16, 99 S. Ct. at 2108, 60 L. Ed. 2d at 681; *Sage*, 279 Mont. at 465, 929 P.2d at 825.

The Montana Rules of Evidence, including the hearsay rules, do not apply in hearings involving the granting or revoking of probation or parole. Mont. R. Evid. 101(c)(3); *State v. Macker*, 2014 MT 3, ¶ 15, 373 Mont. 199, 317 P.3d 150 (citing Mont. R. Evid. 101(c)(3), “The Rules of Evidence, including the hearsay rules, do not apply in revocation hearings. . . .”).

Discussion

The Board properly exercised its authority under Admin. R. M. 20.25.601 to rescind Stevens’ parole prior to his release from confinement upon learning that Stevens was the subject of a new criminal investigation. Prior to conducting his recission hearing, the Board provided proper written notice of the hearing to Stevens. At the hearing, Stevens was provided the opportunity to be heard and to comment on the allegations against him. At the conclusion of the hearing, the Board provided Stevens a written decision stating that it had rescinded his parole because of new criminal charges. Though the Board based its decision to rescind Stevens parole on a mistaken belief that new criminal charges had been filed against Stevens, the absence of new criminal charges against Stevens did not render the Board’s decision

improper. The Board has broad discretion to rescind a prior grant of parole upon learning about new evidence or information that shows an offender does not deserve a release. New criminal charges are not a prerequisite for validly rescinding a prior grant of parole. Lastly, the Board's reliance on information from Stevens' IPPO about Stevens' involvement in the new criminal investigation, which Stevens characterizes as hearsay, was not improper. Under Montana law, the Rules of Evidence do not apply in proceedings involving the granting or revoking of probation or parole.

Conclusion

The Board properly rescinded Stevens' parole while he was still in custody upon learning that Stevens was the subject of a new criminal investigation. The Board provided Stevens all the process he was due in rescinding his parole. The Board properly considered information from Stevens' IPPO about Stevens' involvement in a new criminal investigation, even though he did not testify at Stevens' recission hearing, because the Rules of Evidence did not apply. Consequently, Stevens is legally incarcerated and not entitled to habeas relief. This Court should deny and dismiss Stevens' Petition.

Dated this 9th day of February 2023.

Wes Somogy

Wesley E. Somogy

Attorney

Montana Department of Corrections

CERTIFICATE OF COMPLIANCE

Pursuant to Local Rule 7.1(d)(2), I certify that this brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double spaced except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word for Windows is 1,792 words, excluding the caption, certificates of service and compliance, and if required, any tables of contents and authorities, and exhibit index.

Dated this 9th day of February 2023.

Wes Somogy

Wesley E. Somogy

Attorney

Montana Department of Corrections

CERTIFICATE OF SERVICE

The undersigned hereby certifies that I mailed a true and correct copy of the foregoing Response to Petition for Writ of Habeas Corpus, postage prepaid, by U.S. Mail, on this 9th day of February 2023, to the following:

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Kara Thompson

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CERTIFICATE OF SERVICE

I, Wesley Emerson Somogy, hereby certify that I have served true and accurate copies of the foregoing Response/Objection - Petition for Writ to the following on 02-09-2023:

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Electronically signed by Kara Thompson on behalf of Wesley Emerson Somogy
Dated: 02-09-2023