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04/25/2023

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: OP 23-0220

IN THE SUPREME COURT OF THE STATE OF MONTANA

OP 23-0220

FILED

APR 25 2023

Bowen Greenwood
Clerk of Supreme Court
State of Montana

ROGER KEECH,

Petitioner,

v.

ORDER

SERGEANT BRADLEY BRAGG,

Respondent.

Self-represented Petitioner Roger Keech has filed a petition for a writ of habeas corpus, claiming that he has an illegal sentence because the two sentences should run concurrently with each other, not consecutively. Keech is presently detained in the Lewis and Clark County Detention Center.

Keech argues that his two sentences from two different District Courts should run concurrently. He states that the Lewis and Clark County District Court revoked his sentence in 2008 and that the Yellowstone County District Court issued its sentence to run concurrently with Keech's sentence upon revocation. He maintains that the consecutive nature of his sentences is thus illegal.

This Court is familiar with Keech's history. Twice before, this Court has addressed his argument. In 2012, we encountered it in his petition for habeas corpus relief where we ordered a response from the Department of Corrections. *Keech v. Kirkegard*, No. OP 11-0622, Order (Mont. Feb. 7, 2012) (*Keech I*). We provided that:

In 2002, in the First Judicial District Court, Lewis and Clark County, Cause No. 2002-181, Keech pled guilty and was sentenced on January 9, 2003, for deceptive practices (ten years with six suspended), burglary (twenty years with sixteen suspended), accountability to forgery (ten years with six suspended), forgery (six months), and theft (six months). Keech served the unsuspended portion of his sentences and was placed on probation in December of 2006.

The Lewis and Clark County Attorney filed a petition to revoke Keech's suspended sentences in July of 2007 for new crimes he committed in Nebraska.

Keech was arrested in March of 2008, for accountability for forgery in the Thirteenth Judicial District Court, Yellowstone County, in Cause No. DC-08-0173. Keech pled guilty and on November 24, 2008, Keech was sentenced to five years, to run concurrently with his sentences in Cause No. 2002-181.

The [Lewis and Clark County] District Court issued a March 17, 2009 order in Cause No. 2002-181, revoking Keech's suspended sentences which indicates that in a December of 2008 hearing, Keech waived his right to counsel, and admitted to violating conditions of his sentences. Keech appeared by videoconference and with appointed counsel in a March 12, 2009 sentencing hearing from Montana State Prison where he was sentenced to four years for deceptive practices, sixteen years with eleven suspended for burglary, and four years for accountability to forgery. This order made no mention of the sentence imposed by the [Yellowstone County] District Court, or whether the sentences were to run consecutively or concurrently.

Keech I, at 1-2. The Department of Corrections pointed out that the Yellowstone County District Court could not run a sentence concurrently to a sentence that did not exist. *State v. McGuire*, 260 Mont. 386, 388, 860 P.2d 148, 149-50 (1993). The December 2008 hearing in Lewis and Clark County District Court concerned Keech's admissions of probation violations. The District Court did not revoke his sentence until March 2009, almost four months after his sentence from Yellowstone County.¹

Acknowledging this point of law, this Court explained that Keech was mistaken in his argument.

Keech has failed to meet this burden. At the time the [Yellowstone County] District Court sentenced Keech, his suspended sentences had not been revoked, and the [Yellowstone County] District Court had no authority to order Keech's new sentence to run concurrently with the [Lewis and Clark County] District Court sentences that had yet to be imposed. *See Maguire*,

¹ We clarify these dates. The Lewis and Clark County District Court held the sentencing hearing in open court on March 12, 2009, and the court issued the written order five days later, on March 17, 2009. We also point out that Judge Honzel presided over the probation violations hearing on December 4, 2008, but retired later that month, and Judge Seeley concluded Keech's sentencing proceeding in March 2009.

260 Mont. at 388, 860 P.2d at 150. After the [Lewis and Clark County] District [Court] revoked Keech's suspended sentences, it imposed new sentences based upon Keech's behavior under community supervision. The court imposing the latter sentence is informed of the extent of incarceration and supervision an offender is facing, and has authority to determine if a sentence should be served concurrently or consecutively. Because the [Lewis and Clark County] District Court failed to specify that Keech's sentences run concurrently, they run consecutively. See § 46-18-401(4), MCA.

Keech I, at 2-3.

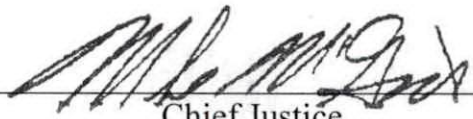
Afterwards, Keech sought relief in the Yellowstone County District Court, filing a motion to withdraw his guilty plea. The District Court deemed his motion a petition for postconviction relief and denied it as untimely. Keech appealed the denial, and we affirmed. *State v. Keech*, No. DA 12-0635, 2013 MT 111N, 2013 Mont. LEXIS 133 (Apr. 23, 2013) (*Keech II*). We noted that Keech's petition claimed "that he never would have agreed to plead guilty if he had known the sentences would run consecutively." *Keech II*, ¶ 5. We pointed to his prior habeas corpus proceeding, reiterating that "[w]e denied the petition on the basis that when the Lewis and Clark County court 'failed to specify that Keech's sentences should run concurrently, they must run consecutively.'" *Keech II*, ¶ 5.

Keech cannot demonstrate an illegal sentence. He is not entitled to release or remand to the Yellowstone County District Court. The Lewis and Clark County District Court imposed a lawful sentence when it did not mention how the sentence would run because, pursuant to statute, the sentence upon revocation must run consecutively. Section 46-18-401(4), MCA. There is no relief this Court may provide because the timing of the imposition of sentences controls. Keech has not demonstrated illegal incarceration. Section 46-22-101(1), MCA.

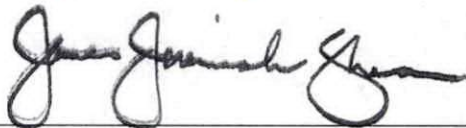
IT IS THEREFORE ORDERED that Keech's Petition for Writ of Habeas Corpus is DENIED and DISMISSED.

The Clerk of the Supreme Court is directed to provide a copy of this Order to counsel of record and to Roger Wayne Keech personally.

DATED this ⁴²25 day of April, 2023.


Chief Justice








Justices