

IN THE SUPREME COURT FOR THE STATE OF MONTANA

No.

GAIGE ALEXANDER CAYE,

Petitioner,

v.

LAKE COUNTY SHERIFF DON BELL, and
DEPARTMENT OF CORRECTIONS DIRECTOR BRIAN GOOTKIN

Respondents.

PETITION FOR WRIT OF HABEAS CORPUS

MONTANT TWETIETH JUDICIAL DISTRICT, LAKE COUNTY,
HONORABLE JAMES A. MANLEY, PRESIDING

APPEARANCES:

TOBY COOK
Snyder, Beaudry & Cook, PC
P.O. Box 717
Bigfork, MT 59911

Attorney for Petitioner

AUSTIN KNUDSEN
Montana Attorney General
215 N. Sanders
Helena, MT 59620-0145

JAMES LAPOTKA
Lake County Attorney
Polson, MT 59860

Attorneys for Respondent

TABLE OF CONTENTS

Table of Contents	i
Table of Authorities	ii
I. Statement of Jurisdiction	1
II. Legal Issues Raised	1
III. Statement of Facts	1
Standard of Review	4
Argument.....	4
IV. The Parole Board and DOC have violated Gaige’s Due Process rights regarding his pending parole	6
V. Gaige is entitled to habeas relief because the District Court issued a lawful order releasing him from custody, which the DOC and Lake County Jail disobeyed.....	8
Conclusion	10
Certificate of Compliance	11
Certificate of Service	12
APPENDIX	
Original Judgment.....	Exhibit “A”
Order Continuing Sentencing	Exhibit “B”

TABLE OF AUTHORITIES

Cases

Morrissey v. Brewer, 408 U.S. 471 (1972)6

State v. Cameron, 2021 MT 198, ¶ 13, 405 Mont. 160, 494 P.3d 314.....4

United States Constitution

Fourteenth Amendment3

Montana Constitution

Article II, Section 173

Statutes

Mont. Code Ann. § 46-22-2013

Mont. Code Ann. § 46-22-2023

Mont. Code Ann. § 46-22-1018

Mont. Code Ann. § 46-23-5077

Mont. Code Ann. § 46-23-10247

Mont. Code Ann. § 41-5-25035, 9

Mont. Code Ann. § 41-5-25105

I. FACTS SUPPORTING THE EXERCISE OF SUPREME COURT JURISDICTION

Petitioner Gaige Alexander Caye (hereinafter “Gaige”) is incarcerated at the Lake County Detention Center in violation of the Twentieth Judicial District Court’s Order releasing Gaige on his own recognizance for treatment. Gaige’s current detention violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution and Article II, Section 17 of the Montana Constitution.

Gaige has standing and jurisdiction is proper under Mont. Code Ann. §§ 46-22-201 and 46-22-202.

II. LEGAL ISSUES RAISED

1. Whether the Parole Board and Department of Corrections (hereinafter “DOC”) have violated Gaige’s Due Process rights regarding his pending parole.
2. Whether Gaige is entitled to habeas relief because the District Court issued a lawful order releasing him from custody, which the DOC and Lake County Jail disobeyed.

III. STATEMENT OF FACTS

On March 20, 2019, when Gaige was seventeen years old, he was sentenced pursuant to a plea agreement. On Count I (Robbery), the Court sentenced Gaige to

a ten-year DOC commitment with five years suspended. On Count II (Criminal Endangerment), the Court sentenced Gaige to a five-year DOC commitment with all of that time suspended. Counts I and II were to run consecutive to each other and consecutive to Gaige's Youth Court sentence. The District Court specifically recommended Gaige "be screened for mental health and chemical dependency treatment." Judgment (Doc. 24), 2, *attached as* Exhibit A. The reasons stated for the sentence were that "It provides for punishment or potential punishment, commensurate with the seriousness of the offense(s), and provides opportunity for Defendant's treatment or rehabilitation, and is in the best interest of the community." Ex. A at 3 (emphasis added).

When Gaige turned eighteen years old, he was transported to Montana State Prison in Deer Lodge, Montana. Instead of providing Gaige with the recommended treatment, the DOC placed Gaige in the prison's High Side Unit I with some of Montana's most dangerous criminals. While Gaige was transported to the Shelby prison during his incarceration, he was never provided mental health or chemical dependency treatment or put into a DOC treatment program. Gaige was paroled on August 3, 2022.

On November 9, 2022, the Lake County Attorney's Office filed a petition to revoke Gaige's suspended sentence. Simultaneously, the DOC moved to revoke Gaige's parole. The grounds for revocation were: Count I – Absconding (non-

compliance violation); Count II – Failure to Maintain Employment (compliance violation); and Count III – Failure to Register as a Violent Offender (non-compliance violation). On June 28, 2023, during his probation revocation hearing, Gaige admitted to Count I – Absconding, and the remaining counts were dismissed.

On July 19, 2023, the Twentieth Judicial District Court (hereinafter “District Court”) held a Sentencing Hearing on Gaige’s probation revocation. At that hearing, Gaige moved for a sentence review hearing pursuant to Mont. Code Ann. §§ 41-5-2503 and 41-5-2510. The Court continued the Sentencing Hearing for one week so counsel could file a written motion requesting a Sentence Review Hearing.

On July 26, 2023, the District Court resumed the Sentencing Hearing in which the District Court took testimony from several witnesses, including Gaige’s Probation/Parole Officer, Katie Campbell (hereinafter “Ofc. Campbell”). Ofc. Campbell testified that Gaige’s parole revocation proceedings were pending and that the DOC had placed a secure hold on Gaige. The District Court was frustrated that the DOC had apparently ignored the Court’s recommendation in its original Judgment, which recommended that Gaige receive mental health and chemical dependency treatment. *See* Ex. A. Additionally, Gaige had already applied for and

was accepted into a 90-day treatment program at Rimrock Treatment Center (hereinafter “Rimrock”) in Billings, Montana, with a bed date of August 11, 2023.

In light of the DOC’s failure to provide treatment, Gaige’s initiative to obtain a bed date for long-term in-patient treatment, and with knowledge of the pending parole proceedings, the District Court issued an order continuing the Sentencing Hearing and releasing Gaige from custody on August 10, 2023. The conditions of Gaige’s release were that he report to Rimrock “on August 11, 2023, and follows all their requirements pending his Sentencing. He is to obey all laws and to attend all his court dates.” Order Continuing Sentencing, *attached as* Exhibit B. On August 10, 2023, the Lake County Detention Center refused to release Gaige citing a parole hold in this case.

STANDARD OF REVIEW

“This Court exercises plenary review of constitutional questions, including whether a probationer’s right to due process has been violated.” *State v. Cameron*, 2021 MT 198, ¶ 13, 405 Mont. 160, 494 P.3d 314.

ARGUMENT

IV. THE PAROLE BOARD AND DOC HAVE VIOLATED GAIGE’S DUE PROCESS RIGHTS REGARDING HIS PENDING PAROLE.

The United States Supreme Court has long-held that “the liberty of a parolee, although indeterminate, includes many of the core values of unqualified liberty and its termination inflicts a ‘grievous loss’ on the parolee and often on

others.” *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972). This is so because “[s]ociety has a stake in whatever may be the chance of restoring [Gaige] to normal and useful life within the law . . . And society has a further interest in treating the parolee with basic fairness: fair treatment in parole revocations will enhance the chance of rehabilitation by avoiding reactions to arbitrariness.” *Id.*, 408 U.S. at 484. The Court further held “due process requires that after the arrest, the determination that reasonable ground exists for revocation of parole should be made by someone not directly involved in the case.” *Id.*, 408 U.S. at 485.

The Supreme Court further determined that, while parolees are not entitled to the full panoply of rights associated with a criminal trial, some minimum requirements of due process apply. “They include (a) written notice of the claimed violations of parole; (b) disclosure to the parolee of evidence against him; (c) opportunity to be heard in person and to present witnesses and documentary evidence; (d) the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation); (e) a ‘neutral and detached’ hearing body such as a traditional parole board, members of which need not be judicial officers or lawyers; and (f) a written statement by the factfinders as to the evidence relied on and reasons for revoking parole.” *Id.*, 408 U.S. at 489. Montana’s legislature has codified these requirements.

Montana law requires an initial hearing within five days of the parolee's arrest unless he is charged with an additional crime. *See* Mont. Code Ann. § 46-23-1024. In this case, Gaige was charged with failing to register as a violent offender pursuant to Mont. Code Ann. § 46-23-507. However, that charge was dismissed with prejudice on June 28, 2023. Since then, Gaige has received no notice of an initial hearing on his parole revocation. Further, the DOC has not issued an arrest warrant pursuant to Mont. Code Ann. § 46-23-1023(1). It appears the Parole Board is waiting to make its determination until after the District Court has completed the probation revocation proceedings so the Parole Board and DOC can have the final say regarding Gaige's future.

As set forth above, the DOC either willfully ignored the District Court's recommendation for treatment or showed deliberate indifference to it. Now, the DOC apparently has changed its position to one of actively interfering with the District Court's lawful order for Gaige to get rehabilitative treatment. The DOC's desire to warehouse Gaige on the High Side of Montana State Prison is not sufficient justification for violating Gaige's due process rights. As such, this Court should grant Gaige habeas relief and order his immediate release so that he can attend treatment consistent with the intent of the District Court's original Judgment and its July 26, 2023, Order.

V. GAIGE IS ENTITLED TO HABEAS RELIEF BECAUSE THE COURT ISSUED A LAWFUL ORDER RELEASING HIM FROM

**CUSTODY, WHICH THE DOC AND LAKE COUNTY JAIL
DISOBEYED.**

Montana law provides that “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.” Mont. Code Ann. § 46-22-101(1). However, “[t]he 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. The relief under this chapter is not available to attack the legality of an order revoking a suspended or deferred sentence.” Mont. Code Ann. § 46-22-101(2). Because Gaige is solely attacking the legality of his current detention, and not the validity of his conviction or sentence, a writ of habeas corpus is appropriate. Because Gaige is being held in violation of a lawful court order, this Court should grant habeas relief.

As set forth above, the District Court issued a lawful order to release Gaige from custody for treatment. Because Gaige’s parole has not yet been revoked, the DOC has not issued an arrest warrant, and Gaige has not been given notice of any pending parole revocation hearing, the District Court had authority to order his release to treatment pending sentencing on Gaige’s probation revocation.

However, the Lake County Detention Center and the DOC appear to be operating under the assumption that the initial secure placement hold issued by the

DOC in February of 2020 still authorizes the continued incarceration of Gaige despite the District Court's order of release. That assumption is wrong for two reasons.

First, the District Court retained jurisdiction of this case until Gaige turned twenty-one years of age. *See* Mont. Code Ann. § 41-5-2503(b). Gaige did not turn twenty-one years old until March of 2023. Thus, even if the DOC was authorized to determine appropriate placement of Gaige when the secure placement hold was issued, it lacked jurisdiction to override a conflicting District Court order.

Second, the Parole Board granted Gaige parole after the secure placement hold was issued, and Gaige was released on August 3, 2022, pursuant to the Parole Board's determination that Gaige should be paroled. If the DOC's initial secured placement hold governs in perpetuity, the Parole Board would not have authority to release Gaige upon the granting of parole. Counsel has found no authority in Montana law to support such a proposition. As such, this Court should grant Gaige habeas release and order the DOC and Lake County Detention Center to immediately release Gaige from custody.

VI. CONCLUSION

For the reasons set forth above, this Court should grant Gaige's writ of habeas corpus and order his immediate release so that he can attend treatment

consistent with the District Court's intent in the original Judgment in this matter and the District Court's July 26, 2023, order.

/s/ Toby Cook
Toby Cook
Counsel for Gaige Caye

CERTIFICATE OF COMPLIANCE

Pursuant to Mont. R. App. P. 11(4) 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 1794 words, excluding the caption, certificates of service and compliance, and if required, any tables of contents and authorities, and exhibit index.

Dated this 5th day of September 2023.

/s/ Toby Cook
Toby Cook
Counsel for Gaige Caye

CERTIFICATE OF SERVICE

The undersigned hereby certifies that I mailed a true and correct copy of the foregoing Petition for Writ of Habeas Corpus, postage prepaid, by U.S. Mail, on this 5th day of September 2023, to the following:

Gaige Alexander Caye
Lake County Detention Center
106 4th Ave. E
Polson, MT 59860

/s/ Toby Cook
Toby Cook
Counsel for Gaige Caye

CERTIFICATE OF SERVICE

I, Tobias Joel Cook, hereby certify that I have served true and accurate copies of the foregoing Petition - Writ to the following on 09-05-2023:

Austin Miles Knudsen (Govt Attorney)
215 N. Sanders
Helena MT 59620
Representing: Don Bell
Service Method: eService

Colleen Elizabeth Ambrose (Govt Attorney)
5 S LAST CHANCE GULCH
PO Box 201301
HELENA MT 59601-
Representing: Brian Gootkin
Service Method: eService

Tobias Joel Cook (Attorney)
PO Box 717
Bigfork MT 59901
Service Method: eService
E-mail Address: toby@bigforklaw.com

Electronically Signed By: Tobias Joel Cook
Dated: 09-05-2023