

FILED

11/20/2023

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: OP 23-0681

IN THE SUPREME COURT OF THE STATE OF MONTANA

NO. OP 23-0681

FILED

NOV 20 2023

Bowen Greenwood
Clerk of Supreme Court
State of Montana

DANIEL R. WOOD,

Petitioner,

vs.

DIRECTOR BRIAN GOOTKIN,
MT DEPT. OF CORRECTIONS,

Respondent.

PETITION FOR WRIT OF HABEAS CORPUS

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Petitioner, Appearing *Pro-se*

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IN THE SUPREME COURT OF THE STATE OF MONTANA

DANIEL R. WOOD,
PETITIONER,

V.

BRIAN GOOTKIN,
RESPONDENT.

CAUSE NO. _____

PETITION FOR
WRIT OF HABEAS CORPUS

Section One: Introduction

Comes now DANIEL R. WOOD, Petitioner appearing *pro se*, and states that he believes he is entitled to a Writ of Habeas Corpus under § 46-22-101 MCA due to an unlawful criminal sentence revocation. WOOD is currently under the supervision of the MT DOC.

Section Two: Statement of Issues

In 2004, WOOD received four criminal sentences in the First Judicial District. These were revoked first on July 17, 2014, again on December 6, 2017, and a is hearing scheduled for January 2024. WOOD's claims are summed up here:

[A] The Montana courts should have honored the order of the Denver court merging the sentences.

[B] The sentences at both revocation hearings exceeded statutory parameters.

[C] WOOD believes that he should have received credit for time served.

[D] WOOD believes he suffered a violation of his Due Process rights and he has been subjected to Excessive Sanctions in violation of Mont. Const. Art. II § 17 & 22; U.S. Const. Amend. XIV. & XIII, respectively.

Section Three: Historical Background

Due to the length of these histories, only actions pertinent to this petition are shown here.

[I] Original Charges (2004 To 2007)

[A] WOOD was arrested May 29, 2004 and charged in the First Judicial District in three causes, with four felony counts. The first cause, BDC-2004-138, has 2 counts: Forgery and Issuing a Bad Check. In the second cause, CDC-2004-126, is a charge for Intimidation. Cause CDC-2004-286 is the third, with another count of Forgery.

[B] WOOD appeared November 4, 2004 for sentencing before the Hon. Judge Sherlock in BDC-2004-138, and the Hon. Judge Honzel in the two CDC causes. Both Courts followed the Pre-Sentence Investigation, resulting in all four counts receiving an 8 year DOC commitment, 5 years suspended, all to run concurrently.

[C] WOOD discharged the three year active portion of these sentences on June 9, 2007 and began supervision.

[II] Colorado (2008 To 2014)

[A] WOOD was arrested in Denver on February 27, 2008 and charged in the District Court for the City & County of Denver in cause 08CR1051 with eighteen felony charges of varying classifications.

[B] On February 29, Probation Officer MARK BEARROW (BEARROW) issued a Report of Violation (ROV) based on the new arrest and unauthorized travel. On March 6, Deputy County Attorney LISA LECKIE (LECKIE) filed Petitions to Revoke Defendant's Suspended Sentence (PTR); warrants were issued that same day. The warrants were served on March 20 to WOOD in Denver County Jail (*see Exhibit C*).

[C] WOOD appeared for sentencing in 08CR1051 on June 5, 2008 before the Hon. Judge Mansfield. He was sentenced to 16 years, plus a 5 year mandatory parole. The sentence was ordered to run concurrently with the Montana cases (*see Exhibits A & B*).

[D] On June 8, 2012 the original Montana sentences expired.

[E] WOOD was paroled July 10, 2014. He returned to Montana under the provisions of the Interstate Compact Agreement in order to address the active warrants. The following Monday, July 14, WOOD reported to P&P to turn himself in.

[F] On July 17, WOOD appeared before the Hon. Judge Seeley for a revocation hearing in all three causes. The five suspended years in each cause were revoked, reinstated, and run consecutively to the Colorado parole.

[III] Current (2015 To 2023)

[A] WOOD was arrested in Yellowstone County on March 6, 2017 and charged in cause DC-17-270, Thirteenth Judicial District. He posted bail. While on bail, WOOD was arrested on October 13, 2017 after a parole search of his residence turned up drug paraphernalia and

methamphetamine. WOOD was charged in cause CDC-2017-441.

[B] On November 13, 2017 Probation & Parole Officer JAIMEE SZLEMKO (SZLEMKO), filed an ROV based on the arrests. PTRs were filed in each cause.

[C] WOOD appeared December 6, 2017 for sentencing on CDC-2017-441 and also the revocation hearing in these causes. Presiding was the Hon. Judge McMahon. WOOD was sentenced in CDC-2017-441 to 5 years in the DOC, none suspended. The 2004 sentences were revoked, reinstated, and run consecutively to the new sentence.

[D] On February 22, 2018 WOOD appeared before the Hon. Judge Todd, Thirteenth Judicial District, for sentencing in DC-17-270 and was sentenced to 5 years in the DOC, none suspended, to run concurrently with CDC-2017-441.

[E] WOOD discharged his Colorado Parole on April 10, 2018 while in NEXUS.

[F] On February 18, 2021 WOOD was subjected to an unreasonable probation search, resulting in his arrest. He was charged in cause DC-21-86A in the Eighteenth Judicial District. On June 28, the

charges were dismissed.

[G] WOOD discharged DC-17-270 on May 28, 2022 and started supervision in cause CDC-2004-126. He discharged CDC-2017-441 on October 15, 2022 and began supervision on the remaining two causes.

[H] August 5, 2023 WOOD was subjected to what he insists was an unreasonable probation search, resulting in his arrest and charges in CDC-2023-388. Probation & Parole Officer MCKENZIE LYONS (LYONS) issued an ROV. Deputy County Attorney RUNE VANDER WAY filed PTRs. WOOD posted bail in September. Three weeks later, based on an Affidavit by LYONS, warrants were issued for WOOD's arrest as a probation violator.

[I] WOOD has been avoiding arrest while working on this Petition. Today, WOOD is technically a fugitive from justice and is on absconder status. He still maintains weekly contact with his Public Defender, Mr. STEVEN SCOTT (SCOTT), and provides weekly status updates to LYONS via email. He also maintains his employment and contact with his family.

Section Four: Specific Claims & Arguments

Please note that in this Section all references to the MCA, unless otherwise noted, come from the 2003 Edition of the Montana Code Annotated because “the applicable sentencing statutes are those in effect at the time the underlying offense was committed.” *State v. Tracy*, 327 Mont. 220 (2005), 2005 MT 125, 113 P.3d 297 at ¶ 16.

[I] Concurrent Sentences

[A] As Ordered By Denver

WOOD claims the Montana Court was bound by state law to honor the Denver court’s order merging the sentences.

[B] Arguments

This argument is based on plain language reading of § 46-18-401(1), (3), and (4), MCA, which states in part:

“(1) Unless the judge otherwise orders:

“(b) whenever a... suspended sentence... is sentenced for another offense, the period still to be served... may not be merged in any new sentence...

“(3) If an unexpired sentence is merged pursuant to subsection (1), the court that imposed the sentence shall modify it in accordance with the effect of the merger.

“(4) Separate sentences for two or more offenses must run consecutively unless the court otherwise orders.” - *emphasis added, portions omitted*

The question has been raised regarding whether these statutes apply only to Montana judges and sentences, however that ruling only addressed the application when ordering a new Montana sentence run consecutive to a previously imposed conviction originating from another state. *State v. Auld*, 333 Mont. 125 (2006), 2006 MT 189, 142 P.3d 753, at ¶ 23. It was determined that “...the public policy of Montana is to have sentences, wherever imposed, run consecutively unless otherwise ordered by a court.” *Auld*, ¶ 25, *emphasis added*.

It stands to reason that if Montana courts have discretion to order a new criminal sentence either merged or not with a pre-existing conviction from out of state, the inverse is also true. The requirement which must be met is that a judge orders the merger. That is exactly the case here. Judge Mansfield exercised her discretion running the sentences concurrently. Judge Mansfield was a District Court judge with similar jurisdiction, and Colorado law provides similar discretion in criminal proceedings. C.R.S. 18-1.3-409 states:

“Before remitting any mittimus to the department of corrections sentencing a defendant to the custody of the department, a court shall confirm that the mittimus properly

reflects the sentencing order of the court and includes all necessary information regarding the sentence and any information as to whether a sentence is to be served concurrent with, or consecutive to, the sentence for any other count or any other case." - *emphasis added*

The Montana courts should have modified the judgements in the 2004 causes.

[II] Unlawful Sentences

[A] Sentences Exceed Statutory Parameters

The sentences pronounced at both the 2014 and 2017 revocation hearings imposed a longer term of commitment than the original sentence, exceeding statutory parameters.

[B] Arguments

A revocation hearing for a suspended sentence is particularly and expressly governed by the provisions found in § 46-18-203, MCA. *State v. Seals*, 336 Mont. 416 (2007), 2007 MT 71, 156 P.3d 15 at ¶ 15. The specific statute at play is § 46-18-203(7)(a)(iii), MCA, which reads in part:

“(a) If the judge finds that the offender has violated the... sentence, the judge may:

“(iii) revoke the suspension... and require the offender to serve either the sentence imposed or any sentence that could have been imposed that does not include a longer imprison-

ment or commitment term than the original sentence..." -
emphasis added, portions omitted

The laws which grant sentencing judges discretion regarding consecutive vs. concurrent sentences as found in § 46-18-401, MCA, have been upheld to have no application in a revocation sentencing hearing. *Seals*, ¶ 15. Neither of the 2008 nor 2017 causes existed during WOOD's original sentencing, running the re-imposed suspended time consecutive to those sentences is unlawful. The only lawful way to apply the revoked suspension in 2014 would have been to run it concurrent with any sentences being served at the time. The 2017 Court could have run the new cause consecutive with the revocation, but not the other way around as it did on December 6. *State v. Youpee*, 391 Mont. 246 (2018), 2018 MT 102, 416 P.3d 1050 at ¶ 12.

[III] Time Served

[A] From March 20, 2008 – June 8, 2012

WOOD claims he was entitled to credit for time served on the 2004 sentences from March 20, 2008 through June 8, 2012.

[B] Arguments

The applicable statute here is § 46-18-203(7)(b), MCA, which

states:

“If a suspended or deferred sentence is revoked... Credit must be allowed for time served in a detention center or home arrest time already served.” - *emphasis added, portions omitted.*

The situation is similar to *Allison*. *State v. Allison*, 346 Mont. 6 (2008), 2008 MT 305, 192 P.3d 1135. Allison was serving a 20 year suspended Montana sentence when he Interstate Compacted to Oregon where, within several years, he was arrested on new felony charges. *Allison*, ¶ 5. Upon returning Allison to Montana for revocation proceedings, the district court gave him credit for time served from the date the warrants were served until sentencing. *Allison*, ¶ 8. In the Opinion of this Court it was noted:

“Montana took no action on the Offender Violation report until well after Allison was convicted and sentenced by the State of Oregon for the offenses he committed there. All the evidence in the record supports the conclusion that the time Allison served in Deschutes County was related to his Oregon crimes, not his Montana sentence.” Allison, ¶ 13.

WOOD was being held on the 2004 cases in addition to his new cahrges, and he should be allowed credit for all the time served from the service of the warrants through the expiration of the original sentences.

[IV] Constitutional Rights Violations

[A] Due Process

The State caused and then perpetuated an unreasonable delay in the execution of the warrants issued in March 2008. The six year delay prejudiced WOOD by causing a negative impact on his incarceration in Colorado; blocked WOOD from remaining in Denver on parole; and also during his revocation hearing in 2014.

[B] Arguments

State law requires that a defendant must be brought “without unnecessary delay” before the judge to be advised of the allegations against him, and his rights (*see § 46-18-203(4), MCA*).

This Court has already established that the U.S. and Montana Constitutions protect the rights of persons faced with a deprivation of liberty, and also that revocation of a suspended sentence can effect the probationer’s liberty interests as seriously as someone who is newly convicted. *State v. West*, 346 Mont. 244 (2008), 2008 MT 338, 194 P.3d 683 at ¶ 26; *see also Finley*, 276 Mont. 126 (1996), 53 St. Rep. 310, 915 P.2d 208. This Court has also found that executing a probation vio-

lution warrant without unreasonable delay is one of the due process rights of defendants facing revocation proceedings. *West* ¶ 27.

An unreasonable delay is not proven simply by the duration of the delay, but by determining the reasonableness of the delay when viewed in the totality of the circumstances. Some common factors this and other Courts have used to determine this question are: the State's diligence in serving the warrant; the reasons behind the State's delay in its execution; if the probationer's conduct frustrated service of the warrant; if the probationer's whereabouts were known, or readily ascertainable; and whether or not the delay caused any actual prejudice to the probationer. *West*, ¶ 34. This list is not exhaustive, but every factor should be considered, these simply provide a starting place.

Therefore the question is: was the 6-year, 3-month delay in executing WOOD's warrants unreasonable? WOOD feels that the facts he has presented here satisfy several of these factors: Yes, the State was diligent in serving the warrants, which were issued March 6, 2008 and served two weeks later on March 20. No, WOOD's conduct did not impede the service of the warrant. Yes, his whereabouts were known to

the state. What remains unknown are the reasons for the State's delay in executing (or otherwise resolving) the active warrants, and whether WOOD experienced any actual prejudice from the delay.

WOOD contends that the State failed to practice due diligence in fulfilling its statutory obligation to bring WOOD forth. WOOD made multiple attempts to find a timely and just resolution from the beginning of this Colorado term until his parole, evidenced in the letters written during that period and attached as Exhibit E.

WOOD's first letter, addressed to the Hon. Mike McGrath, then County Attorney for Lewis & Clark County, attempts to find a resolution preferably wherein Montana recognize the merger of sentences ordered by Judge Mansfield. LECKIE responded in March, denied the request for merger, and offered instead to recommend a consecutive sentence on one provision: WOOD had to arrange for a sentencing hearing via video conference. WOOD made several attempts to arrange such a conference, and failed. One of these failed attempts was documented in his 2010 letter to Governor Schweitzer (*see Exhibit E, Letter to Schweitzer (2010), pg. 7, ¶ 4 & 5*).

LECKIE placed the onus on WOOD to provide the means for the State to fulfill its statutory obligation of bringing WOOD forth. That is ultimately the State's obligation, not WOOD's. A request to have a video sentencing hearing would have been better served had an official request been made through the proper channels.

The State also failed to consider the provisions of § 46-18-203(5)(a), MCA, as a possible solution. This statute allows for a revocation to occur without a hearing. WOOD feels it is evident from his letter to that he had no intention of fighting revocation and was looking for solutions. WOOD was a prime candidate for this provision. WOOD feels the State also had a duty to inform him of all the possible solutions available to him, not just the solution it was disposed towards.

The PTRs could have been dismissed as was done in *State v. Miller*, also out of the First Judicial District. *State v. Miller*, 332 Mont. 472 (2006), 2006 MT 159, 139 P.3d 839. Miller was sentenced to a four year suspended sentence for issuing a bad check which started in 2002. In 2003 he traveled to Indiana and was caught with a controlled substance and received a two year commitment to the Indiana DOC.

Miller, ¶ 2. The record is unclear about whether Miller had permission to be in Indiana or not. The State filed a PTR based on the new offense, then dismissed it after learning of Miller's term of incarceration.

Miller, ¶ 3. The effect was that Miller's suspended commitment in Montana continued to run during the time spent in Indiana. *Miller*, ¶ 10. Had Miller not violated after his return to Montana, he would have finished his sentence on time with no disruption.

Or, returning to *Allison* for a moment, the State could have waited until WOOD was sentenced before making a decision. Montana chose not to take any action on the report until after Allison was found guilty and sentenced, at which point Montana filed a PTR on Allison's suspended Montana sentence, and a bench warrant was issued. *Allison*, ¶ 6 & 7.

Not only were these more options the State failed to utilize, proving a lack of due diligence, these two cases also show a genuine disparity in equity as to how WOOD's situation was handled compared to similar cases. Finally, it should be noted that the deal LECKIE was offering was not a legal sentence, as it would of (and did) give WOOD a longer

term of commitment than his original sentence (*see [II.A.1] of this section*). In light of these facts, any claim of a delay caused by WOOD's lengthy incarceration, or other claim that in some way this delay was necessary and in the best interest of justice, should be summarily disregarded.

Next we'll examine whether or not WOOD suffered any prejudice resulting from the delay. WOOD was ineligible for participation in many rehabilitative, barred from lower security facilities, and most notably, was ineligible for community placement based on his Montana warrants (*see Exhibit D, Chronlog from the CDOC, pgs. 3 & 4, entries dated 6/13 to 8/5/13*). Furthermore the unresolved cases caused WOOD a great deal of anxiety and stress, as is evidenced in his letters (*see Exhibit E*). These adverse effects have already been acknowledged in the legislative finding which inspired the Interstate Agreement on Detainers (IAD), enacted in Sec. 1, Ch. 215, L. 1963 as Sec. 94-1101-1, R.C.M. 1947, now Chapter 31 of Title 46, MCA. The drafters of the IAD said:

"The inmate who has a detainer against him is filled with anxiety and apprehension and frequently does not respond to a training program. He often must be kept in close custody, which bars him from treatment such as trustyships, moderations of custody and opportunity for transfer to farms and work camps. In many jurisdictions he is not eligible for parole; there is little hope for his release after an optimum period of training and treatment, when he is ready for return to society with an excellent possibility that he will not offend again. Instead, he often becomes embittered with continued institutionalization and the objective of the correctional system is defeated." - Council of State Governments, Suggested State Legislation, Program for 1957, p. 74 (1956)

These adverse effects have also been acknowledged by the federal courts as prejudicial. In *Heath v. United States Parole Commission*, 788 F.2d 85 (2d Cir. 1986), Heath was on parole for a federal sentence when he was arrested in New York state. A parole violation warrant was issued, but lodged as a detainer. In his first petition, Heath requested reinstatement of his parole on grounds of being deprived of a timely revocation hearing. It was determined that any delay in holding the hearing was due to Heath's refusal to return forms requested by the Commission, and his petition was denied. *Heath Sec. 1, ¶ 2*. Heath filed another petition reasserting his original stance. *Heath Sec. 1, ¶ 3*. The second petition was denied, again based on Heath's causing the de-

lay. It is this second denial Heath appealed, where it was determined that even if Heath's arguments had substance, the correct remedy was a writ of mandamus. In failing to show that the delay was indeed unreasonable, Heath's claims of similar prejudice were acknowledged, however they were attributed to the lawful decision of the Commission to maintain the detainer after Heath's hearing. *Heath Sec. III, ¶ 10.*

Unlike *Heath*, WOOD was not responsible for the delay. Unlike *Heath*, WOOD feels his delay has been shown to be unreasonable, and the resulting prejudice is not due to any justified decision to allow a long delay, but is directly attributable to the delay itself.

WOOD claims prejudice by being unable to make a parole plan which lined up with his personal goals. If WOOD were to remain in Denver, the open warrants would place him in constant violation of his parole, as well as subject to arrest every moment of every day. CDOC required WOOD to resolve the warrants to remain in Colorado. After being paroled on July 10, he boarded a bus from Denver to Montana, paying for the ticket out of pocket. He had four days of freedom, after almost 6.5 years straight incarceration. He hadn't left the ten acres of

the Arkansas Valley Correctional Facility in five years. The four days were overwhelming, but amazing.

This brings us to the final point of prejudice. WOOD turned himself in on the 14th, and was in jail the same amount of days he had tasted fleeting freedom. As soon as an opportunity presented itself for him to go see his family, to go home, he abandoned the fight for concurrent sentencing, spaced asking for street credit from June 9, 2007 to February 27, 2008. Jail was stifling, and freedom was an option.

[C] Excessive Sanctions

WOOD claims his sentences no longer conform to the criminal justice policies of this state as outlined in Mont. Const. Art. II, § 28(1) and the provisions of Title 46, Chapter 18, Part 1. These sentences have become a cruel and unusual punishment when viewed from the totality of the circumstances.

[D] Arguments

WOOD feels the only way to prove this claim is to view the facts of these three causes as they exist today, with the added benefit of hindsight. It has taken 14 years to start serving these sentences, for the

second time. The Courts made multiple errors. The County Attorney's Office failed. As discussed above, his few days of freedom were intense. He also avoided his parents during that weekend, because he didn't want them to be able to touch him and see him in regular clothing, only to have him placed back in prison. He knew they would be hurt worse by that, than by his avoidance. His parents drove in every day that weekend trying to find WOOD. It broke all of their hearts. Repeatedly.

WOOD expected to do another five years in MSP. He turned himself in on those warrants to face what was owed to Montana – to do the right thing. WOOD had a simple faith that the actions taken by the judges and prosecutors were lawful. They had to be, they were the representation of the law.

He didn't start to question things until the 2017 hearing. Disheartened, WOOD accepted consecutive sentence. Seemingly, these 2004 sentences are never going away. Now once again, WOOD stands to lose the little he has been able to replace of the entirety of all that he lost.

Section Five: Conclusion

LYONS's ROV requests that WOOD receive 91 days credit on these sentences. That would bring the total to 95 days. This has become a bit much. WOOD hasn't victimized anyone with a property crime since 2008. The community isn't at risk when he's in it. He successfully discharged the 2017 causes with no violations or write-ups, including completion of both NEXUS and the Helena Pre-Release Center. It's been over six years since WOOD had a run-in with the law based on his behavior in the community. WOOD is as reformed as one can get. He is obviously doing things very different on every level.

Then there's the fact that he has been legitimately wronged here by our state's legal system. He may not know what to call it, or be able to find the right case to back it, but common sense says: Hey, this is wrong.

Let's do some quick figuring: if the 2014 court ran the time concurrent with the Colorado parole and we assume that WOOD still would have violated in 2017 and been revoked, he most likely would have received two years street time credit. He then would have served

the remaining time on an active commitment, let's call it 2.5 years. That time would be served either prior or concurrently with the 2017 sentences. This is all conjecture, but it proves a point: the end result is that no matter what had this been done properly, these sentences would have discharged by late 2019 at the latest.

Section Six: Request for Relief

[I] As Regards The 2004 Causes

[A] That this court find these sentences either:

[1] should have run concurrently with the Colorado sentence, based on the Denver Court's order; or,

[2] that the revoked sentences in 2014 and 2017 are indeed illegal, and well past the date of any expiration that could have been already achieved had the sentences been legal.

[3] Therefore, WOOD requests that his current sentences be vacated, especially if his arguments regarding due process and excessive sanctions carry any weight at all. .

[II] Regarding The Pending Revocations

[A] WOOD further requests that the current warrants for his

arrest in these three causes be quashed; and,

[B] that the Petitions to Revoke be dismissed *with prejudice*.

[III] Regarding CDC-2023-388


[A] He further prays that the new criminal case in CDC-2023-388 be dismissed *with prejudice* and any warrants quashed, on the grounds that the search authorization was invalid because the supervision was a result of an illegal sentence.

VERIFICATION

STATE OF MONTANA)
 : SS.
LEWIS & CLARK COUNTY)

I believe I am being supervised under an unlawful sentence. I certify that the contents in this Petition are true and accurate to the best of my knowledge.

DATED this 15 day of November, 2023.

By: 
Daniel R. Wood, Petitioner

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the M. R. App. P., I certify that this Petition is printed with a proportionately spaced Latin Modern Roman text typeface of 14 points and is double-spaced except for quoted material, section headings, subheadings, and tables. The right and left margins are no less than 1". The word count calculated by LibreOffice Writer is less than 4,000, excluding citations, indented quotes, headings, subheadings, tables, or the caption.



Daniel R. Wood, Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on the 15 day of November, 2023, a copy of the foregoing *Petition for Writ of Habeas Corpus* was served on the following person by U.S. Mail, First Class, Postage Prepaid:

Office of the Attorney General
Attn: Austin Knudsen
PO Box 201401
Helena, MT 59620-1401



Daniel R. Wood, Petitioner