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COUNSEL FOR RESPONDENT

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. OP 24-0085

MICHAEL ANTHONY GOMEZ,

Petitioner,

v.

JAMES SALMONSEN, WARDEN,
Montana State Prison,

Respondent.

**ATTORNEY GENERAL'S RESPONSE TO MOTION FOR LEAVE TO
SUPPLEMENT PETITION FOR WRIT OF HABEAS CORPUS**

On March 8, 2024, Petitioner Michael Anthony Gomez (Gomez) moved this Court to grant him leave to supplement his Petition for Writ of Habeas Corpus based on the district court issuing an amended judgment on March 5, 2024, that conformed to the oral pronouncement of Gomez's sentence. The State objects.

RELEVANT PROCEDURAL HISTORY

On January 21, 2022, the district court, in relevant part, sentenced Gomez to the Montana State Prison for 40 years, with 20 years suspended, and imposed a 7-year parole restriction. (Pet. Ex. B at 155.)¹ Despite the court reiterating it had sentenced Gomez to the Montana State Prison in its written reasons for the sentence, the court's written judgment mistakenly stated, in pertinent part, that Gomez was committed to the Department of Corrections for a term of 40 years with 20 years suspended. (Pet. Ex. A at 2, 11.)

After receiving Gomez's February 7, 2024 Petition for Writ of Habeas Corpus, in which Gomez argued his sentence was illegal pursuant to Mont. Code Ann. § 46-18-201(3)(a)(iv)(A), the district court issued an amended judgment on March 5, 2024, that conformed to the oral sentence pronounced. (Ex. 7.) The Lewis and Clark County Attorney's Office provided the State with a copy of this order which the State attached to its Response filed on March 7, 2024. The State was unaware that Gomez had filed an objection to the court issuing an amended order. (See Motion at 4.)

In its response to Gomez's Petition for Writ of Habeas Corpus, the State argued that Gomez's sentence was not illegal because the oral pronouncement

¹ Petitioner attaches exhibits to his Motion for Leave to Supplement Petition for Writ of Habeas Corpus that are labeled alphabetically. The exhibits cited in the instant response are to the exhibits attached to Gomez's Petition for Writ of Habeas Corpus or attached to the State's Response to Petition for Writ of Habeas Corpus.

controlled, and that the sentence fell within the statutory parameters. The State also asserted that the district court's March 5, 2024 amended judgment rendered moot Gomez's Petition for Writ of Habeas Corpus. The State stands by its Response to Petition for Writ of Habeas Corpus.

ARGUMENT

The district court issuing an amended judgment on March 5, 2024, does not warrant this Court granting Gomez leave to supplement his Petition for Writ of Habeas Corpus. First, the State maintains that the sentence the district court orally pronounced at the January 21, 2022 sentencing hearing "is the legally effective sentence and valid, final judgment." *State v. Lane*, 1998 MT 76, ¶ 40, 288 Mont. 286, 957 P.2d 9. Therefore, the March 5, 2024 amended judgment already reflects the only appropriate relief available to Gomez's petition for state habeas.

Second, Mont. Code Ann. § 46-18-116 authorizes the district court to *sua sponte* correct the judgment more than 120 days after it was issued to correct a factual error. Here, as the district court correctly noted, its judgment merely corrected a scrivener's error by changing the Department of Corrections to Montana State Prison. Furthermore, as it explained, judicial economy also supported the district court affording Gomez the only relief he was entitled to: a written judgment that conformed to the oral pronouncement.

Additional briefing will not alter the undisputed fact that the district court sentenced Gomez to the Montana State Prison, and not the Department of Corrections. The written judgment was required to reflect Gomez's legally effective sentence is 40 years incarceration at the Montana State Prison, with 20 years suspended, and a 7-year parole restriction. It now does. Accordingly, this Court should deny Gomez leave to supplement his Petition for Writ of Habeas Corpus because his sentence is not illegal, and the written judgment has been corrected to conform to the legal sentence that the district court imposed with Gomez present.

CONCLUSION

The State respectfully requests that this Court deny both Gomez's Petition for Writ of Habeas Corpus and his Motion for Leave to Supplement Petition for Writ of Habeas Corpus.

Respectfully submitted this 11th day of March, 2024.

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By: /s/ Cori Losing
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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this response 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 671 words, excluding caption, signatures, certificate of compliance, certificate of service, and any exhibits.

/s/ Cori Losing
CORI LOSING

CERTIFICATE OF SERVICE

I, Cori Danielle Losing, hereby certify that I have served true and accurate copies of the foregoing Response/Objection - Other to the following on 03-11-2024:

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Electronically signed by LaRay Jenks on behalf of Cori Danielle Losing
Dated: 03-11-2024