

FILED

03/25/2024

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

FILED

Number: OP 24-0179

MAR 25 2024

Bowen Greenwood
Clerk of Supreme Court
State of Montana

James J. Morrison Jr.

Inmate Name

9439 24-0224

Inmate ID or AO#

Butte-Silver Bow Detention Center

Facility of Incarceration

155 W. Quartz

Address of Facility

Butte Montana

City

State

Zip

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. _____
[The Clerk of Court will assign a number]

James J. Morrison Jr.

NAME

PETITIONER,

v.

Petition for Writ of
Habeas Corpus

Mark Johnson

NAME OF WARDEN/FACILITY ADMINISTRATOR,

RESPONDENT.

I, James J. Morrison Jr., am representing myself, and I
[Name of Inmate]

believe that I am entitled to a Writ of Habeas Corpus under § 46-22-101, MCA, for one
or more of the following reasons:

[Check the applicable box]:

☐ The Department of Corrections has incorrectly calculated my sentence which
illegally extends my parole eligibility or discharge date.

☐ The Parole Board should have granted me a parole AND the Board violated my
Due Process rights in denying me a parole.

☒ I am entitled to more credit for jail time served than I received.

☐ My sentence is illegal because:

☐ I was sentenced after April 28, 1999, and I received a sentence of more than 5 years to the Department of Corrections, none of which was suspended.

☒ My sentence violates my right to be free from double jeopardy.

☐ The length of my sentence is longer than the law allows.

☐ I am entitled to good time that is not credited against my sentence.

☒ I am being held in jail and I believe my bail is excessive.

☒ Other reason incarceration is illegal.

Describe in detail why you are entitled to habeas corpus relief. Be specific. If possible, provide citations to legal authority. Attach any documents that help you explain why the Court should grant your petition. A copy of any judgments, orders or other documents that support your argument must be provided.

{ See attached Petition and documents }

The Petitioner has executed a Petition for Writ of Habeas Corpus asserting he has been grievously wronged and there exists a miscarriage of justice, and is calling out for his release.

Petitioner was arrested on the 9th day of February 2024 during a routine weekly scheduled visit with his probation officer Cacie Cain (C1F042). Immediately upon arrival he was interrogated about gang affiliations and suspicions of drug and alcohol usage. After his denial of alleged misconduct and the providing of an alleged positive test for methamphetamine, he was detained and later escorted to the Butte-Silver Bow Detention Center.

Officer Cain's suspicions were unwarranted and there was no explanation or sound basis for this unwanted and unusual interrogation which has never occurred in previous meetings with his probation officer. Nevertheless, due to the authority present petitioner complied without dispute and peacefully surrendered to law enforcement.

For the record, he jointly introduces to the higher court the denial of giving and for waiver of Miranda rights. It must be noted in pursuant to *St. v. Grey*, 247 M206, 907 P2d 951 (1995), officers should preserve a tangible record of the giving and waiver of Miranda rights when the means to do so is readily available, but the lack of a tangible record does not mandate suppression of a detainees statements. Rather, this is simply one factor that weighs against the State in proving its burden.

Promptly, the petitioner was arrested without a warrant, without informing him of the intention to arrest him, and of the cause of his arrest. The petitioner was not engaged in the

commission of or in the attempt to commit an offense, nor was he pursued immediately after its commission, or after an escape. It must be stressed that it is unreasonable for an officer to effect an arrest and detention for a nonjailable offense when there are no leading factors or circumstances to justify an immediate arrest. A person arrested as such as the petitioner should not be subjected to the indignity of an arrest and detention when a simple, non intrusive notice to appear will serve the interest of law enforcement. See *St. V. Baver*, 2001 MT 248, 307 M105, 36 P3d 892 (2001). Distinguished in *Missoula V. Kroschel*, 2018 MT 142, 391 Mont. 457, 419 P3d 1208.

MCA 46-6-311 (1) A peace officer may arrest a person when a warrant has not been issued if the officer has probable cause to believe that the person is committing an offense or that the person has committed an offense and existing circumstances require immediate arrest.

However, unwavering in their function the petitioner was escorted and booked into the detention center on a 72 hour hold. Following the 72 hour hold the petitioner was brought before a justice court judge via audio-video communication, where we was provided with attached document, [see Exhibit B], "Authorization to Pick up & Hold Probationer" in the Stillwater County Jail. Stillwater County Jail? After his appearance and another 24 hours in holding he was finally classified to General Population on the 13th of February 2024 [see Exhibit E]

34 days after initial arrest ~~and after 34 days~~, detention staff delivered a copy of a "Bench Warrant" executed March 12th 2024, and the alleged arrest of the Petitioner on the

14th of March 2024. [see Exhibit] So the Petitioner was arrested the same day he was ~~going~~ given the warrant by detention staff? 34 days after initial arrest? Upon the serving of the warrant petitioner was immediately escorted to justice Court judge Kremlin via video-audio communication for another appearance.

Bench warrant states and reflects the State filed a petition to Revoke Suspended Sentence alleging the petitioner violated the terms and conditions of his suspended sentence. To this date, Petitioner has not received his copy of Application For Leave to File an Information by Affidavit and the grounds on which he is being revoked. Upon close examination, the procedure to leave to file an Information for an ~~offense~~ criminal offense is not equally procedurally processed as a probation violator, outlined in 46-23-1012.

No matter the procedure the State must follow in its desire to revoke the petitioner, it does not negate the fact that there must be a probable cause hearing before ~~the~~ an administrative hearing commences. It's understood procedure must be followed and ~~appearances~~ appearances made without unnecessary delay. But, it is apparent petitioner has been in confinement 40 days and counting, without a probable cause hearing by the Probation and Parole Bureau and flat on its face his Constitutional rights are being violated.

In regards to his appearances and alleged arrests there exists extreme contradictions amounting to heavy criticism and weighty responses. Documents provided herein declares magnifying judgment to its evidentiary contents. The first

question that requires a response is: Why did probation officer Cacie Cain publish a bogus document "Authorization to Pick up & Hold Probationer" when she initiated and witnessed the petitioners arrest at the probation office by arresting officer Jorey Thatcher #485? [see Exhibit A]. Secondly, heightened scrutiny is reserved and questioning regarding the accuracy of the alleged second arresting officer Blake Kraus #126 [see Exhibit D].

How is this document reliant and being entered into the record or to other authorities as official business or an executed event.

Thirdly, why did the petitioner appear in front of the second justice court judge, 34 days after his initial arrest, and still not answer to alleged probation violation. Why?

At present it has been 40 days and Petitioner is still unaware of the full scope ~~of~~ of his confinement.

Rigorous standards are important when the trial court is passing upon the State motion to revoke a deferred or suspended sentence. The trial judge must have, and the record must reflect that he has substantially correct information concerning the defendant before he can affect a defendant's substantial rights by entering an order of revocation. *St. V. Knapp*, 174 M373, 570 P2d 1138 (1977).

The petitioner now may be challenging whether the prosecution developed evidence or obtained a confession during the delay. It may be considered, in determining if the charges should be dismissed with prejudice. *State V. Strong*, 2010 MT 163, 357 Mont. 114, 236 P.3d 580. ~~The case law states that the State has the burden of proving its case by a preponderance of the evidence.~~

Convening on the matter is the addition of false documenting arrest on the "Bench Warrant" by officer Kraus in exhibit D, and the "Authorization to Pick up & Hold Probationer" orchestrated by Officer Cain.

By their own volition is voluminously substantial and prejudicial toward the petitioner. By the submitting of signature and date by named individuals, including district court judge Krueger, an offense has been committed and the impression must be found that each person had to correlate and purposely corroborate false information to a special interest group, body, department and/or organization to receive a specific advantage, gain, interest and/or benefit. ~~and~~

Said persons meant to mislead in performing an official function, submit and invite reliance on in writing they knew to be lacking in authenticity and fabricated physical evidence, believing an official proceeding is about to be instituted.

The Petitioner understands the complaint of a criminal offense is improper in the instant Writ and must be brought up in separate ~~and~~ pleading but the petitioner wanted to ~~exercise~~ exercise his right to make a record of its existence in hopes of establishing a paper trail in case of future proceedings.

The petitioner declares that a picture must be painted, and viewed through the lens of justice that if the petitioners ~~petition~~ rights and liberties were recognized by the court, and its affiliates, these routine practices would be non-existent. It is the hubris and diluted integrity causing unnecessary costs, harm and delays.

As cited in Montana Code of Judicial Conduct, Canon 2.

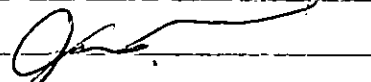
Rule 2.5 [3] Prompt disposition of the court's business requires a judge to devote adequate time to judicial duties, to be punctual in attempting court and expeditious in determining matters under submission, and to take reasonable measures to ensure that court officials, litigants, and their lawyers cooperate with the judge to that end. [4] In disposing of matters promptly and efficiently, a judge must demonstrate due regard for the rights of parties to be heard and to have issues resolved without unnecessary cost or delay. A judge should monitor and supervise cases in ways that reduce or eliminate dilatory practices, avoidable delays, and unnecessary costs.

In Conclusion, 40 days has elapsed and the petitioner proclaims to be continually burdened with illegal confinement. He has suffered enough and is seeking immediate release from captivity. His bondage has created much pain and suffering. This is by definition cruel and unusual punishment.

The petitioner declares under the penalty of perjury these statements herein are accurate and true.

Wherefore, based upon the facts herein the Petitioner requests for relief in the Order of Suppression of Evidence, Vacate the Revocation, and the Order of immediate release from custody and any other relief this court deems fair, appropriate, fitting and necessary.

Dated this 20th day of March 2024

James J. Morrison Jr


Timeline of Events

- Feb. 9th, 2024 - Reported to Probation office and was arrested by AP+P Jorey Thatcher #485. [see Exhibit A]
- Feb. 13th, 2024 - Was arraigned after 72 hour hold and was given document "Authorization to Pick Up & Hold Probationer" in Stillwater County Jail. [see Exhibit B]
- Feb. 28, 2024 - State filed Petition to Revoke Suspended Sentence 19 days after initial arrest [see Exhibit C]
- Mar. 12th, 2024 - Judge Krueger signed and dated Bench Warrant [see Exhibit C]
- Mar. 14th, 2024 - Alleged arresting officer Blake Kraus #126 dated and signed Bench Warrant, alleging arrest [see Exhibit D]
- Mar. 15th, 2024 - Requested information and evidence of arresting date and name of arresting officer - delivered by detention officer Dietz #145 [see Exhibit A]

[Use extra pages if necessary]

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As relief, I request the following:

☒

my immediate release from prison.

☐

reduction of my sentence or that this Court remand this cause to the district court directing the court to resentence me to a lesser sentence.

☐

that the Department of Corrections recalculate my sentence as this Court directs.

☒

Other relief. Explain:

Vacate the Revocation and the Suppression of evidence

VERIFICATION

STATE OF MONTANA

)

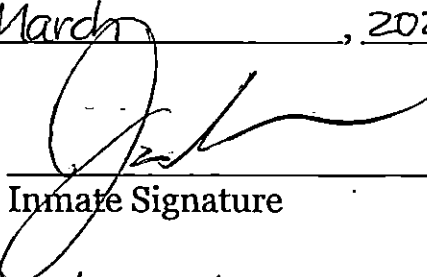
: ss.

County of Butte-Silver Bow

)

I believe I am being incarcerated illegally. I certify that the contents of this petition are true and accurate to the best of my knowledge.

DATED this 20th day of March, 2024.


Inmate Signature

James J. Morrison Jr.
Printed Name

CERTIFICATE OF MAILING (SERVICE)

I hereby certify that on March 20th, 2024, I have mailed the Petition for a Writ of Habeas Corpus, as noted by a check mark (✓), to the following attorney by placing a copy in the United States Mail, postage prepaid:

☐ State of Montana

(see INSTRUCTIONS #9)

Office of the Attorney General

P. O. Box 201401

Helena, MT 59620-1401

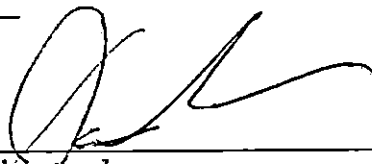
or

✓ Ann Shea County Attorney (see INSTRUCTIONS #9)
[Write name of County]

Butte-Silver Bow Courthouse

155 W. Granite

Butte, Montana 59701


[Signature]
James J. Morrison Jr.
[Print name]