



ORIGINAL

FILED

04/16/2024

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: OP 24-0200

IN THE SUPREME COURT OF THE STATE OF MONTANA

OP 24-0200

ROBERT D. MAXIN,

Petitioner,

v.

ORDER

JIM SALMONSEN, Warden,
Montana State Prison,

Respondent.

FILED

APR 16 2024

Bowen Greenwood
Clerk of Supreme Court
State of Montana

Robert D. Maxin petitions this Court for habeas corpus relief, contending that he is being held illegally. Maxin argues: “The Court has failed in the past stating that its 5th Amendment of the Constitution U.S. has not been extended to [persons] in the State[s].” Maxin refers to our decision in *State v. Montgomery*, 2015 MT 151, ¶ 11, 379 Mont. 353, 350 P.3d 77, in which we noted that the U.S. Constitution’s “Fifth Amendment’s grand jury requirement has not been construed to apply to the states.” *Montgomery*, ¶ 9. Maxin states that the Fourteenth Amendment “is and has been the controlling law and the protection of [h]is rights.” Maxin contends that his Judgment and sentence are void and he is entitled to immediate release.

On July 30, 2018, the Eighteenth Judicial District Court, Gallatin County, sentenced Maxin to the Montana State Prison for a forty-year term with ten years suspended for felony sexual assault. Maxin appealed and this Court dismissed his appeal after granting his counsel’s motion to withdraw, pursuant to *Anders v. California*, 386 U.S. 738, 87 S. Ct. 1396 (1967) and § 46-8-103(2), MCA. *State v. Maxin*, No. DA 19-0186, Order (Mont. Aug. 4, 2020).

Maxin's current arguments lack merit. In *Montgomery*, we relied upon United States Supreme Court case law distinguishing the grand jury requirement for indictment in federal cases as opposed to state cases. *Montgomery*, ¶ 9 (citing *Apprendi v. New Jersey*, 530 U.S. 466, 477 n.3, 120 S. Ct. 2348, 2355 n.3 (2000) (noting that the Fourteenth Amendment "has not . . . been construed to include the Fifth Amendment right to 'presentment or indictment of a Grand Jury. . . .'")).

The Montana Legislature has provided a statutory scheme for felony prosecution. This Court has held that Montana statutes offer four methods to commence a prosecution in this state, one of which is "an information after leave of court has been granted[.]" *Montgomery*, ¶ 11; § 46-11-101(3), MCA. In Montana, an information is one method to charge an offender with a criminal offense—misdemeanor or felony—under statute. Section 46-11-101(3), MCA. "[A] defendant is not entitled to any specific procedure." *Montgomery*, ¶ 11 (citing *State v. Haller*, 2013 MT 199, ¶ 8, 371 Mont. 86, 306 P.3d 338) (internal citation omitted). If the State commences prosecution by filing an application and an affidavit that identifies supporting evidence demonstrating probable cause, the district court has subject matter jurisdiction to proceed "over the felonies as stated in Mont. Const. art. VII, § 4(1) and § 3-5-302(1)(a), MCA[.]" *Montgomery*, ¶ 11.

The State of Montana commenced Maxin's felony prosecution according to Montana's Constitution and under its applicable statutory scheme by filing an application which includes an information for leave of court along with an affidavit supported by evidence. Section 46-11-201(2), MCA (2015). *See also Montgomery*, ¶¶ 9-11; Mont. Const. art. II, § 20(1); §§ 46-11-101(3), and 46-11-102(1), MCA. The District Court had subject matter jurisdiction over Maxin's prosecution and the court's Sentencing Order is not void.

Maxin has not demonstrated illegal incarceration. Section 46-22-101(1), MCA. Having exhausted the remedy of appeal, he cannot now raise claims concerning his conviction, and he is precluded procedurally from challenging it. Section 46-22-101(2),

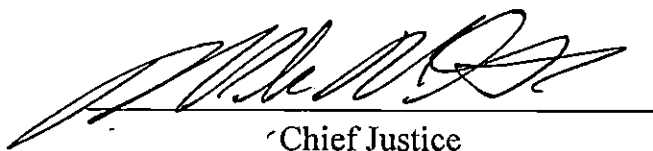
MCA. Maxin's conviction is not void. Maxin received a lawful sentence and he is not entitled to release. Therefore,

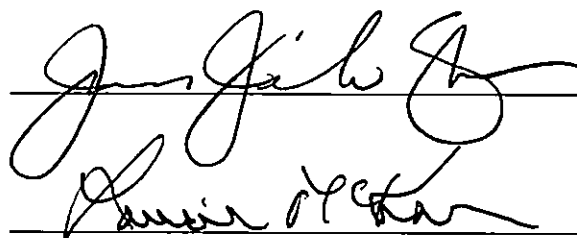
IT IS ORDERED that Maxin's Petition for Writ of Habeas Corpus is DENIED and DISMISSED.

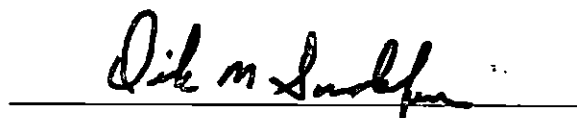
IT IS ORDERED that this case is CLOSED as of this Order's date.

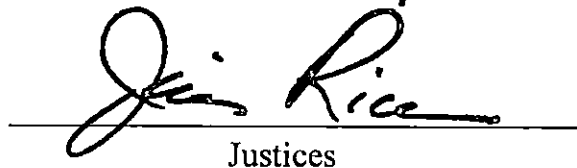
The Clerk is directed to provide a copy of this Order to counsel of record and to Robert D. Maxin personally.

DATED this 16th day of April, 2024.


Chief Justice


Justice


Justice


Justices