

FILED

ORIGINAL

05/21/2024

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: OP 24-0319

Cheyenne Rae Dawn Petersen
Inmate Name

58444

Inmate ID or AO#

Lewis and Clark County Detention Center
Facility of Incarceration

221 Breckenridge
Address of Facility

Helena MT 59601
City State Zip

FILED

MAY 21 2024

Bowen Greenwood
Clerk of Supreme Court
State of Montana

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. OP 24-0319
[The Clerk of Court will assign a number]

Cheyenne Rae Dawn Petersen
NAME

PETITIONER,

v.

Petition for Writ of
Habeas Corpus

Captain Bradley Bragg
NAME OF WARDEN/FACILITY ADMINISTRATOR,

RESPONDENT.

I, Cheyenne RD Petersen, 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.

According to Mont Code 46-11-410 "a defendant
may not be convicted of more than one offense
if a) one offense is included in the other;
b) one offense consists only of a conspiracy
or other form of preparation to commit the
other; c) inconsistent findings of fact
are required to establish the commission
of the offenses; d) the offenses differ
only in that one is defined to prohibit a
specific instance of the conduct; or e)
the offense is defined of conduct and the

defendants course of conduct was interrupted,
unless the law provides that one specific periods
of the conduct constitute separate offenses
On the night of October 2nd 2022 I was
charged with 2 counts of Attempted Deliberate
homicide for one Alleged victim and one
on going Act of self defense occurring inside
my residence (114 Edwards St Apt 16 Helena, MT)
undisputed facts in my case the alleged victim
showed up uninvited to my home approx 9-9:30pm 10/2/22
and the neighbors called the police/heard fighting
@ 10:58pm and the police entered my
residence @ 11:17pm. my self defense is All
under 30 minutes - one ongoing Act.
Thus me being charged with 2 counts
of Attempted Deliberate Homicide, per the
law and per the statute of multiple charges
by law I should have only been charged
with one count. Secondly At my trial
I was then convicted of Double Jeopardy - the
first count was Amended to attempt mitigated
homicide

[Use extra pages if necessary]

(see pg
A-1)

P. 3 of 5

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:

A settlement in the amount
of \$1,100 a day for every day
I've sat for wrongful imprisonment
and for personal injury and Added trauma

VERIFICATION

STATE OF MONTANA)

County of Lewis and Clark) ss.

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 13th day of May, 2024.


Inmate Signature

Cheyenne Rae Dawn Petersen
Printed Name

CERTIFICATE OF MAILING (SERVICE)

I hereby certify that on May 15th, 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)

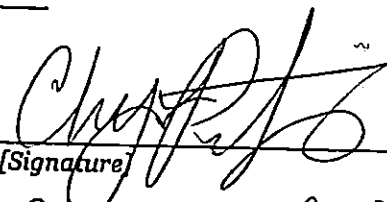
Office of the Attorney General

P. O. Box 201401

Helena, MT 59620-1401

or

☐ _____ County Attorney (see INSTRUCTIONS #9)
[Write name of County]


[Signature]

Cheyenne Rae Dawn Petersen
[Print name]

(A-7)

and also convicted of the 2nd count of Attempted deliberate homicide which is unlawful per Mont Code 46-11-410

see case State v. Valenzuela, DA 20-003 (Mont Sep 28, 2021)

"Each offense created must require proof of a different element" in this case DA 20-0032 the defendant was looking at Double Jeopardy because of sexual assault being an included offense of incest... Double Jeopardy is to protect a person from being prosecuted if one offense is included in the other... the court must determine whether one of the two charges is an included offense.

At my trial - case # BDC-22-502 in order to convict me of attempt mitigated homicide, the Jury first had to find me guilty of Attempted deliberate homicide, then amend it down to Mitigated.

Thus by law mitigated homicide is included in the offense of attempted deliberate homicide. Being charged with 2 counts of the exact same offense, would you not agree these offenses are included in each other?

At my trial I was convicted of attempted mitigated homicide and attempted deliberate homicide, thus making my case double jeopardy because these two offenses are included in each other for the one ongoing act with one alleged victim. I should have never been charged with

1 counts.

FACTUAL BACK-ROUND FROM MY CASE: The

alleged victim showed up to my place of residence 114 Edwards St Apt 111 on the night of October 2nd, 2022 at approximately 9:30pm. The alleged victim is 37yr old James Gopher. The sexually assaulted me approx 10:30pm on 10/2/2022. The neighbors heard fighting and called the police at 10:58pm and the police entered my residence at 11:17pm from the sexual assault to me. defending myself and when the police entered my residence is all under one hour. That is less than an hour of one on going situation, one act, one alleged victim. The law states that my case is Double Jeopardy.

Secondly I would like to address what

constitution excessive sanctions/cruel & unusual punishment

I have been incarcerated at the

Lewis and Clark County Detention Center since 10/2/2022-what is 19 months. I have only been seen on bond once, my bond has stayed \$550,000 my entire incarceration. Not once

being given an opportunity for mental health or chemical dependency treatment, not once given opportunity to have an ankle monitor or any

kind of arrangements to get my affairs

in order. My case is so clearly a self defense case from the criminals, its clear what I was protecting myself from the real

dangers of society. The facts that I haven't had my bond lowered once is biased and prejudicial. \$550,000 after being incarcerated for 19 months is excessive, especially even while locked up. I have shown I am an upstanding member of society looking to better myself and my community. For example fighting for women's rights and equal rights for me and my fellow women in this facility. I had brought a case before the human rights bureau about issues in this jail and I won. I made history for women in the Lewis and Clark County Detention Center. I've attached the documents for proof of Good Character.

Now I would like to address cruel and unusual punishment. I am appalled at the way Judge McMahon's courtroom and state prosecutors belittle and gaslight victims of rape, sexual assault, and sex trafficking.

Having to stand trial and testify to a courtroom about the severe trauma I went through is cruel and unusual punishment.

I am 25 years old, at the time these offenses occurred I was only 23 years old. On the night of 10/2/2022 I had reported being sex trafficked, raped, and sexually assaulted by a large group of men, a group that the "alleged victim" in my case is apart of. I had reported previously being sex trafficked to the alleged victim whom is 50+ years older than me.

On the night of my arrest, 10/2/22, I told the police I was defending myself because the "Alleged victim" James Gopher had sexually assaulted me by licking my genitals and after sexually assaulting me, further demanded I suck his flaccid penis. I told him no and asked him to leave several times. I was mortified. The sex traffickers had broken my cellphone so I had no way to call the police for help, my broken cellphone is even in police evidence. I have no choice but to defend myself and my home. I told the police all of these things, even went to the hospital that night and got a rape kit done so I could prove James Gopher sexually assaulted me.

Sexual Assault is an assault. Sex trafficking and sexual assault are forcible felonies and the State sat there and told my jury it's not. That's cruel and unusual punishment. Being sex trafficked, raped, assaulted and then being left with no choice to defend myself was traumatic enough. How is what the State's doing Justice? It's not.

I would like now to address other reasons as to why I believe my incarceration is illegal. Please - See Mont Code 46-11-503

Mont Code 46-11-503

- there is a legal defect in the proceedings that would make any judgement entered upon a verdict reversible as a matter of law
- prejudicial conduct makes it impossible to proceed with the trial without manifest injustice to either the defendant or the State

* See Mont Code 46-10-131 Justifiable use of force Burden of proof: With my tox screen; with my positive DNA report from my rape kit; my testimony; James Gopher Being an intruder in my home; the danger was a present one, I was lawful to be in my home, sexual assault + sex trafficking are unlawful forcible felonies all of the facts in my case, the State was not or should not have been able to proceed with trial because they cannot disprove my actions weren't justified - thus a legal defect in the proceedings

* The other men involved in sex trafficking me, men that I included in my reports to law enforcement 2022; have now been charged with sexual abuse of a minor, see cause #CDC-2024-093. Had the state thoroughly investigated my claims of justifiable use of force back in 2022, the men (Eric Kask) would've already been arrested. The state had sufficient evidence in their

possession to arrest those men, and chose to turn a blind eye. Now a minor child had to go through what I went through because of the States ignorance and negligence.

The States failure to investigate my claims of justifiable use of force per Mont Code 45-3-112 investigation of alleged offense involving claim of justifiable use of force is not only a legal defect, its prejudicial, caused many gross injustices, cruel and unusual punishment for me and all victims involved.

The State is partially to blame for CDC-2024-093

This information then becomes a "Brady" issue in my case as well-which the State made sure to keep all of this Brady information out of my trial.

* The State Arguing that I wasn't a victim of sex trafficking and then turning around and charging the other men involved in my case with sex crimes and accusing those men of sex trafficking in CDC-2024-093, is a legal defect + is prejudicial

* The state Arguing that I "consented" to being sexually assaulted and sex trafficked by the alleged victim in this case is a legal defect + entirely prejudicial especially considering all the facts in this case indicate I did not consent to being sexually assaulted by 70+ yr old James Gopher, and that

caused a very biased prejudicial investigation - or lack thereof.

* The State dismissing the obstruction of a peace officer charge to prevent me from being able to use the Affirmative Defense 45-5-710 victim of Human Trafficking at my trial was a huge prejudicial legal defect that led to misrepresentation of facts and an unfair trial. Thus I wasn't allowed to present said defense or evidence at trial.

See Mont Code & General Rules of Pleading * Affirmative Defenses

- Alternative Statements or Claims of Defense. A party may set out 2 or more statements of a claim or defense alternatively or hypothetically, either in a single count or defense or in separate ones. If a party makes alternative statements, the pleading is sufficient if any one of them is sufficient.

- A party may state as many separate claims or defenses as it has regardless of consistency.

The State NEVER should have made any efforts to prevent me from submitting the Affirmative Defenses 45-5-710 and Compulsion at my trial but they did and it was extremely prejudicial.

* I wasn't allowed to instruct the jury on laws of consent
* I wasn't allowed to instruct the jury on the states duty to investigate 45-3-112

* The state was allowed to use and present whatever witness and evidence they wanted at trial, however we weren't allowed to present any evidence unless it was already a state's exhibit and they demanded an offer of proof from every witness when they should've addressed these issues before trial. My trial was unfair, the judge was super biased and prejudiced taking the states side in everything.

* I wasn't allowed a use of force expert at trial, nor were we allowed to ask the police on their training regarding self defense so the state was able to say my use of force wasn't justified without being allowed a witness to rebut those statements which was a legal defect, prejudicial

I made it clear to him his conduct was unwelcome.

*The State Arguing that sexual assault, sexual intercourse w/o consent and sex trafficking arent forcible felonies is a legal defect and entirely prejudicial

Please see Mont Code 45-2-211

Consent As a defense/consent is ineffective when/if it is given by a person by reason of youth, mental disease or disorder... or intoxication is unable to make reasonable judgment... it is induced by force or duress or deception... or the offender reasonable knew or should have known was a victim of human trafficking

*The State using prior citations that I was charged with false report of sexual assault in their arguments and briefs even though those prior citations were dismissed without prejudice (meaning I was never convicted of false report of sexual assault) because I was able to prove the last rape trauma I endured really happened through medical records etc. The State's false information regarding these past citations caused a legal defect and prejudicial rulings that caused the

Judge on my case to deny all of our Pretrial motions which negatively impacted my case.

* The State Also lied to my Jury stating James Gopher was charged and prosecuted for sexual assault in this case, which was False information.

* Officer Weems lied in my reporting documents stating I was never assaulted and left out all the information involving the sexual assault and sex trafficking - even though I can prove via Body Cam footage and my rape kit that I reported immediately I was sexually assaulted and sex trafficked. It took hours to tell Officer Weems everything that happened to me.

* Sgt Adam Shanks making the comments to witness Kyle Fisher on the night of 10/07/22 while investigating this case. "Ms. Peterson is easy to victimize... we had to let the last guy go who raped her" and proceeded to call the rape & sex trafficking incident an orgy.

These issues I also believe fall under Mont Code 37-1-410 Unprofessional Conduct

* The State mentioning prior rapes and assaults and assaults on the night of 10/7/2022 while investigating BDC-22-502 goes Against Rule 404b and

I did not have a FAIR TRIAL AT ALL

* My Mother was Kicked out of the courtroom because she was a potential witness for the defense
* the States witness Sgt Adam Shanks sat in my trial the entire time, even got reprimanded by the Judge for speaking to another witness for the State during my trial

* I was denied my right to a Speedy Trial

I never waived my right to a Speedy trial

My original trial was supposed to be March of 2023

The only reasons we kept continuing my trial was because of the State withholding evidence

All the evidence we needed was in the States possession

My second trial date was October of 2023, my DNA results for my rape kit were done July 2023 - the

State withheld this evidence and information all the way

until September 26th 2023 which was after my pretrial conference

so then I was forced to do an acknowledgement of delay, involuntarily agreeing to push my trial out again until April of 2024.

All of this is conclusive evidence that my incarceration is illegal and full of injustice.

In the petition I have Attached various documents that help back up everything I am stating in this petition.

Special Verdict Form, instruction No. 4, instruction 31, instruction 19, instruction 20, instruction 21 is evidence that helps prove my case is double jeopardy

Instructions No 26, 27, 28, 29, 30 helps support my defense and evidence to show the State couldn't prove my use of force wasn't justified.

I've included other documents such as my witness list - this is to show Eric Kask is involved in my case and CDC-2024-093 (the Brady info) copies of all motions, orders, the positive report for you to review and see for yourself the legal defects, prejudices, and injustices in my case.

Thank you for your time and consideration.

Sincerely,
Chunhoff

46-11-410 Multiple Charges

1) When the same transaction may establish the commission of more than one offense, a person charged with the conduct may be prosecuted for each offense.

2) a defendant may not, however be convicted of more than one offense if

a) one offense is included in the other;

b) one offense consists only of a conspiracy or other form of preparation to commit the other;

c) inconsistent findings of fact are required to establish the commission of the offenses

d) the offenses differ only in that one is defined to prohibit a specific instance of the conduct or

e) the offense is defined to prohibit a continuing course of conduct and the defendant's course of conduct was interrupted, unless the law provides

A-8 (13)

that the specific periods of the
conduct constitute separate
offenses.

46-11-503 Prosecution Based on Same Transaction barred by former prosecution

1) When two or more offenses are known to the prosecutor, are supported by probable cause, and are consummated prior to the original charge and jurisdiction and venue of the offenses lie in a single court, a prosecution is barred if:

a) the former prosecution resulted in an acquittal. There is an acquittal whenever the prosecution results in a finding of not guilty by the trier of fact or in a determination that there is insufficient evidence to warrant a conviction. A finding guilty of a lesser included offense that is subsequently set aside is an acquittal of the greater offense that was charged.

b) the former prosecution resulted in a conviction that has not been set aside, reversed or vacated.

c) after a charge had been filed the prosecution was terminated by a final order or judgement for the defendant that has not been set aside, reversed or vacated; or

d) the former prosecution was

13

terminated for reasons not amounting to an acquittal takes place

- i) in a jury trial when the jury is impaneled or sworn; or
- ii) in a nonjury trial, a juror the first witness is sworn but before a judgement as to guilt or innocence is reached

2) A prosecution based upon the same transaction as a former prosecution is not barred under subsection (1)(d) when:

a) the defendant consents to the termination or waives the right to object to the termination; or

b) the trial court finds that the termination is necessary because:

i) it is physically impossible to proceed with the trial in conformity with law

ii) there is a legal defect in the proceedings that would make any judgement entered upon a verdict reversible as a matter of law;

iii) prejudicial conduct makes it impossible to proceed with the trial without manifest injustice to either the defendant or the State;

iv) the jury is unable to agree on a verdict
v) false statements of a juror on voir dire prevent

A-10 (10)

a fair trial

10

State V. Williams, 228 P.3d 1127, 2010
MT 58, 355 Mont. 354 (Mont 2010)

In this case Williams is charged
with sexual intercourse without
consent and sexual assault

"Williams entered Jane Doe's
room and tried to rape her.
Jane Doe tried to escape. Williams
choked her and threatened to
kill her if she told her mother.
Williams kissed her, touched
her all over her body and
penetrated her vagina with his
finger."

In my case BDC-22-502
I reported similar and worse
things happening to me.

FACTUAL BACKGROUND IN
my case:

Between August + September 2022
I was sold to the alleged victim 70+ yr
old James Gopher in exchange for drugs
where I was forced to show James my
breast and suck his flaccid penis. This
constitutes as sex trafficking.

September 29/30 Eric Kask sold me without
my consent to two other men who raped me

in exchange for drugs. This constitutes as sex trafficking/sexual intercourse without consent

October 2nd 2022: James Gopher shows up uninvited/unannounced at my place of residence. I set several boundaries/made it clear he + his conduct was unwelcome. Before sexually assaulting me 70+ yr old James Gopher mentions the other sex trafficking incident that involved Eric Kask. Then James Gopher sexually assaults me by licking my vagina and sticking his fingers inside me, then after sexually assaulting me James asked me if I liked it. I yelled at him NO. Told him to leave. James refused to leave my bedroom/place of residence and continued to demand I suck his penis. I told him no several times, so then I decided to use force + defend myself.

Sexual Assault IS An Assault

Also please refer to State v. William for more info on double Jeopardy

*The state erred in arguing that I was the aggressor.

sexual assault is an assault and a forcible felony, and his refusal to leave my residence makes him the aggressor

State v. Cameron, 2005 MT 32, 326
Mont. 51, 106 P3d 1189 (Mont 2005)

"Cameron grabbed her breasts...
licked her face..."

Cameron was charged with
one count of felony sexual
Assault

Licking, touching, grabbing all
equal the felony sexual assault

Sexual Assault is a forcible
felony

With All the facts in my
case,

James Gopher should have
been charged with felony sexual
Assault

and my charges should be
dismissed without prejudice
because my use of force was
justified

State v. Resh, 2019 MT 270, 397
Mont. 254, 448 P.3d 160 (Mont 2019)

A Lincoln County Jury found Hadley
Gene Resh guilty of Felony ^{Sexual} Assault

Resh went into her Bedroom

- KISSING
- inserted fingers into the
vagina

"A person commits sexual
Assault by knowingly having
Any sexual contact without
consent" with another person

State v. Kizer, 2022 WI 58, 971
N.W.2d 356, 403 Wis. 2d 142 (Wis 2022)

IN WISCONSIN, VICTIMS OF HUMAN
trafficking... have an affirmative defense
for any offense committed as a
direct result of the trafficking

Chrysti Kizer wants to rely on
this defense when she is tried on
charges of first degree intentional
homicide in connection with the
death of the man she says
trafficked her

3041 We further hold that 939.46(1m)
is a complete defense to a
charge of first degree intentional
homicide

Victim of Human Trafficking

People v. Oliver, 54 Cal. App. 5th 1084,
269 Cal. Rptr 3d 201 (Cal 2020)

"For most of the sex crimes listed, ante, 'consent' of the victim is statutorily defined as 'positive cooperation in act or attitude pursuant to an exercise of free will. The person must act freely and voluntarily and have knowledge of the nature of the act or transaction involved' (261.6). As this court has previously stated a victim's mere submission to an act does not amount to actual consent... for instance a victim's decision to submit to an attacker's sexual demands out of fear of bodily injury is NOT consent, because the decision is not freely and voluntarily made. A selection by the victim of the lesser of two evils - rape versus the violence by the attacker if the victim resists is hardly an exercise of free will."

Parker v. Cnty. of Riverside, 78 F.4th
1109 (9th Cir. 2023)

Summary: Plaintiff was Arrested for murder and held for almost four years before the charges against him were dismissed, months after another person confessed to the crime.

Years later, Plaintiff then sue the County of Riverside and various County officials under 42 U.S.C. Section 1983, claiming that they had violated his due process rights under Brady v. Maryland, 373 U.S. 83 (1963), by suppressing the separate confession. The district court denied a motion for judgment on the pleadings on the Brady claim. The Ninth Circuit reversed and remanded without prejudice to Parker asserting a different due process claim. A Brady violation requires that the withheld evidence have a reasonable probability of affecting a judicial proceeding.

In my case the State withholding the evidence in Case #CDC-2024-093 is a Brady violation and a violation of my rights to due process.

Rule 404 Character Evidence not admissible to prove conduct, exceptions; other crimes; character in issue...

b) Other crimes, wrongs, acts. Evidence of other crimes, wrongs or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity or absence of mistake or accident.

The state never should've been able to use my previous false report citations to judge my character in this case per Rule 404 and considering the facts that I can prove I was never even convicted of false report it was dismissed, thus it should've never been mentioned as an issue in this case.