

FILED

06/03/2024

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: OP 24-0350

ORIGINAL

Rachell Rene Flores

Inmate Name

#35296 LCCDC

Inmate ID or AO#

221 Breckenridge (only currently)

Facility of Incarceration

Helena MT 59601

Address of Facility

FILED

JUN 3 2024

Bowen Greenwood
Clerk of Supreme Court
State of Montana

City

State

Zip

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. OP 24-350

[The Clerk of Court will assign a number]

Rachell Rene Flores

NAME

PETITIONER,

v.

Petition for Writ of
Habeas Corpus

Judge LOREN TUCKER / PROBATION & PAROLE

NAME OF WARDEN/FACILITY ADMINISTRATOR,

Captain BRADLY BRAGGS - currently in LEWIS -
RESPONDENT. - CLARK JAIL.

I, Rachell Flores

[Name of Inmate]

, am representing myself, and I
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. CONSECUTIVE for a MUTUALLY DEPENDENT CRIME.



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.

CONCURRENT
Possibly -

☐ 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. CRIME.

☐ 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. Reformed LAWS =

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.

My Sentence is 10 years all suspended in Judge TUCKER'S COURT ROOM. My conviction of 45-10-311(B) only allows up to five years for convictions of values less than \$5,000⁰². And my conviction is \$43000⁰² (\$4,300⁰²) under the \$5,000⁰². Longer than The law allows. - CURRENT LAWS *

Under 46-18-201 - Section(E) of 2(b)(vii) - 5 year limit for supervision in the community for my offence of 45-10-311(B)

46-18-401 " and 46-11-503 (B) are also brought before this court to consider, for possible grounds of double jeopardy. " Mutually Dependent "

18. USC 3553 - imposition of a Sentence

(B)(6) " UNWARRANTED SENTENCE disparities " R. 2 of 5

PRO SE PETITION FOR HABEAS CORPUS & Form 5(1)
Montana Supreme Court (Rev. April 2021)

Lack of INVESTIGATION By JEFFERSON COUNTY -

Reformed LAWS that are Half or LESS than I have

As relief, I request the following:

- ☒ my immediate release from prison (OR DURING REMAND)
CONSIDER "CIVIL JURISDICTION" AS VIOLATION OF MY 5th AMENDMENT FOR DUAL CONVICTION
- ☒ REDUCTION of my SENTENCE OR THAT THIS COURT REMAND THIS CASE TO THE DISTRICT COURT, DIRECTING THE COURT TO RESENTENCE ME TO A LESSER SENTENCE.
- ☒ THAT THE DEPARTMENT OF CORRECTIONS RECALCULATE my SENTENCES AS THIS COURT DIRECTS
- INVESTIGATE CO-MISDEMEANOR - ONE WHO WAS THERE TELLING OTHER RELIEF EXPLAINED: TO RUN OR HAVE RAN THIS ME TO DO IT.

CONCURRENT, TO CONSIDER THIS MUTUALLY DEPENDENT AND AWARD TIME FROM WHEN LEWIS-CLARK COUNTY SENTENCE BEGAN. TO CONSIDER GROUNDS FOR DOUBT. JEOPARDY BASED ON ONE MUTUALLY DEPENDENT CRIME TO POSSIBLY OVERTURN CONVICTION IF SO. CONSIDER LAW REFORMS TO APPLY WHEN A SENTENCE HAS YET TO BEGIN, AND BE SUBJECT TO CURRENT LAW. TO HAVE JEFFERSON COUNTY DO ITS OWN INVESTIGATION INTO MY ONE CHECK AND GET MY VICTIM'S STATEMENT OF OTHERS INVOLVED, TO PROSECUTE ACCORDINGLY TO ACKNOWLEDGE THE DISPARITIES OF SENTENCE.

Verification:

STATE OF MONTANA

[Use extra pages if necessary]

p. 3 of 5

: SS,

County of

PRO SE PETITION FOR HABEAS CORPUS & Form 5(1)
Montana Supreme Court (Rev. April 2021)

I BELIEVE I AM BENEFITING FROM INCARCERATION
I CERTIFY THAT THE CONTENTS OF THIS PETITION ARE TRUE
AND ACCURATE TO THE BEST OF MY KNOWLEDGE.
11th / 12th / 2024

Rachael

CERTIFICATE OF MAILING (SERVICE)

I hereby certify that on 29 April, 2024
March 27th, 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]

Rachael Flores
[Signature]

RACHEL FLORES
[Print name]

Affidavit # 1-11-

(1)

Rachel Flores

I ASK THE COURTS TO CONSIDER
SECTION 46.11.502

" When the SAME TRANSACTION may
... ESTABLISH the commission of MORE than
ONE OFFENSE, a person charged with
such conduct may be PROSECUTED for
EACH such OFFENSE. He may NOT HOWEVER
BE CONVICTED of MORE than ONE OFFENSE

if,

- (1) OFFENSE is included in the other
- (2) ONE OFFENSE consist only of a
CONSPIRACY OR OTHER FORM of PREPARATION
TO COMMIT the other "

Blockburger V. UNITED STATES 1932

Consider if the SAME CRIME is my
CONVICTION in TWO SEPRATE COUNTRIES.

(2)

46-11-503(B)

"PROSECUTION BASED ON THE SAME TRANSACTION, BARRED BY FORMER PROSECUTION"

MY SENTENCE IN LEWIS CLARK COUNTY

PRIOR TO JEFFERSON COUNTY ESSENTIALLY IS A MUTUALLY DEPENDENT CRIME.

"THE FORMER PROSECUTION RESULTED IN A CONVICTION THAT HAS NOT BEEN SET ASIDE, REVERSED OR VACATED" MAY APPLY TO THIS CASE BECAUSE CONSOLIDATION WAS

OFFERED TO JEFFERSON COUNTY BY

LEWIS AND CLARK COUNTY AND IF

CONSOLIDATION WAS POSSIBLE THEN

DOUBLE JEOPARDY IS ALSO POSSIBLE?

JEFFERSON COUNTY DECIDED TO PROSECUTE.

(3) I ASK THE COURTS TO CONSIDER
Defining "Same Transaction",
"Concurrent", "Consecutive", "another
offence", "mutually dependent", "one
offence".

28.1.2104 " Conditions concurrent
are those which are mutually dependent
and are to be performed at the same
time "

My Sentence in Jefferson
County, September 11th 2013 Judge
Loren Tucker convicted me of 45-6-316
10 years to DOC with all time
suspended to run - consecutive -
with Lewis and Clark County even
though my crime is

(4)

MUTUALLY DEPENDENT. WHAT I
THOUGHT WAS THE SAME CRIME.

46.18.401 STATES "ANOTHER OFFENSE"

BOTH COUNTIES CONVICTED ME OF A
MUTUALLY DEPENDENT CRIME OF 25-20-31(d)(B)
IS IN BOTH COUNTIES THE SAME CRIME
AS IF ONE OFFENSE.

I SHOULD HAVE GROUNDS FOR DOUBLE
JEOPARDY BASED ON NOT HAVING A
CONCURRENT SENTENCE

28.1.404 "CONDITIONS CONCURRENT
ARE THOSE WHICH ARE MUTUALLY DEPENDENT
AND ARE TO BE PERFORMED AT THE
SAME TIME" THIS MUTUALLY DEPENDENT
CRIME SHOULD BE CONCURRENT

(5)

46.18.401(1)A) "SERVING A TERM
of commitment imposed by a court in
this STATE, is COMMITTED for another
OFFENSE..."

45.6.316(B) IS ESSENTIALLY
IN BOTH COUNTIES THE SAME OFFENSE.

Please consider this writ and
the possible double JEOPARDY. I HAVE
NOT BEGAN THE COMMITMENT TO DOC FOR
THIS JEFFERSON COUNTY SENTENCE and would
LIKE TO SEEK ALSO POSSIBLE SENTENCE
DISPARITIES IN MY PROSECUTION, BECAUSE
I HAD ONE BAD CHECK IN JEFFERSON
COUNTY, THE AMMOUNT WAS \$4,300⁰⁰ IT
WAS ONLY ONE CHECK AT ONE STORE

Thank you.

Rachel HARRIS

(6)

To like lastly to have
the courts dismiss both cases / immediate
Release, on grounds of Double Jeopardy if this
case is found to be in violation of
my Fifth amendment. CIVIL RIGHTS

JEFFERS V. UNITED STATES 1977

"The facts necessary to show"

The County of Lewis and Clark and Jefferson
County both KNEW, The STATE KNEW and
"all the facts necessary" were involved

into Lewis and Clark's investigation

Shared with Jefferson County, involving
my common SCHEME bad checks.

ARTICLE II SECTION 25 of the

Montana Constitution provides in

part " NO PERSON shall be again

(7)

PUT IN JEOPARDY FOR THE SAME
OFFENSE PREVIOUSLY TRIED IN ANY JURISDICTION.

JEFFERSON CONVICTED ME AFTER MY
CONVICTION IN HELENA.

BOTH FIFTH AMENDMENT TO THE
UNITED STATES CONSTITUTION AND ARTICLE II
SECTION 25 OF THE MONTANA CONSTITUTION

PROVIDE FOR THREE SEPARATE PROTECTIONS

(1) PROTECTIONS FROM A SECOND PROSECUTION
FOR THE SAME OFFENSE AFTER ACQUITTAL.

(2) PROTECTIONS FROM A SECOND PROSECUTION
FOR THE SAME OFFENSE AFTER CONVICTION

(3) PROTECTIONS FROM MULTIPLE PUNISH-
MENTS FOR THE SAME OFFENSE."

(8)

"THE BAR TO RE-TRIAL AFTER
ACQUITTAL OR CONVICTION ENSURES THAT
THE STATE DOES NOT MAKE REPEATED
ATTEMPTS TO CONVICT AN INDIVIDUAL,
THEREBY EXPOSING HIM OR HER TO
CONTINUED EMBARRASSMENT, ANXIETY,
EXPENSE, AND INCREASED RISK OF
WRONGFUL CONVICTION OR IMPERMISSIBLE
ENHANCEMENT OF SENTENCE"

IF GROUNDS FOR POSSIBLE FIFTH
AMENDMENTS VIOLATIONS THAT I SEEM
TO SEE ARE VERIFIED BY THIS COURT
I REQUEST IMMEDIATE RELEASE AND
COMPENSATION FOR WRONGFUL CONVICTION AND
BOTH CASES DUALY OVERTURNED.

PLEASE CONSIDER ALL.

Racheel L.

(9) Final question:

Is "any jurisdiction" when written in article II section 25 of the Montana constitution applicable to my two same 45.6.316 (B) convictions, one in Lewis & Clark County and one in Jefferson County?

Is "mutually dependent" in terms of a crime a reason to consider only one charge of 45.6.316 to be consolidated automatically? Or, a concurrent sentence that may not be denied, if mutually dependent, and if so, as in not an concurrent is that grounds for Double Jeopardy if mutually dependent.

If mutually dependent in "any jurisdiction" is not consolidated into one prosecution, is that essentially

Double JEOPARDY?

If By Definition the "same TRANSACTION" is "included in the other" "CONSPIRACY OR OTHER FORM OF PREPERATION" IS ONE charge OR CRIME then would TWO counts of the SAME CRIME BE double JEOPARDY? in "any JURISDICTION"?

Would PROSECUTION BASED ON THE SAME TRANSACTION BARRER BY FORMER PROSECUTION ESSENTIALLY BE double JEOPARDY IF MY CHECK WERE MUTUALLY DEPENDENT?

Does ONE CRIME SPEE OF ONE Bank account all in a common scheme prosecution define "ONE TRANSACTION" in "any JURISDICTION" TO INCLUDE ALL CHECKS WROTE?

JEFFERSON COUNTY HAD ONE CHECK

(11)

THAT WAS ALSO MENTIONED IN MY
LEWIS & CLARK CASE AS MY "COMMON SCHEME"
EVIDENCE FOR MY CHARGE / CONVICTION OF
COMMON SCHEME. SHOULDN'T HAVE JEFFERSON
COUNTIES CHECK & I WAS PROSECUTED FOR
HAVE BEEN IN-CLUDED INTO THE ONE
JURISDICTION IF USED IN COURT IN LEWIS &
CLARK AS "PENDING CHARGES" AS EVIDENCE?

BOTH COURTS MENTIONED EACH OTHER
IN MY PROSECUTION ESSENTIALLY ADMITTING
BOTH WERE INCLUDED IN THE OTHER

THANK FOR CONSIDERATION.

(1)

(Affidavit # 1-2)

Rachell Flores

THERE was a co accomplice. Lewis-Clark
County INVESTIGATED All video and found Him with
me "Shopping" picking out Merchandise. HE
was in Jefferson County and Had TO TAKE
~~ME OUTSIDE TO TALK ME INTO writing the check~~
The investigation into his involvement was
Never followed up on in Jefferson County.
They should have, Jefferson County failed
to bring charges against Him as well, And
I'd like to know why? HE KNEW I had NO
money in the Bank. He was at the time
charged with felony assault with weapon and
I was his victim. He told the store owner
He had to take me outside to talk
me into it. The one check in Jefferson
County, his idea.

(2)

UNITED STATES V. FOLEY 308 F3 D. 627

" DISTRICT COURT may hold all participants in a conspiracy responsible for the losses resulting from the reasonably foreseeable acts of co-conspirator in furtherance of the conspiracy when the acts and omissions 1) are within the scope of the jointly undertaken criminal activity. 2) in the furtherance of the activity. 3) reasonably foreseeable in connection with activity."

Why was Kevin Cravens NOT PROSECUTED in Jefferson county He was my X - my abuser who was there.

• SUBSTANTIVE reasonableness of Sentence imposed under abuse of discretion STANDED; is what I ask you to ALSO consider