

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. OP \_\_\_\_\_

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JENNIFER L. TRIPLETT,

Petitioner,

v.

CASCADE COUNTY CLERK OF DISTRICT COURT,

Respondent.

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**PETITION FOR WRIT OF MANDAMUS**

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On Petition from the Montana Eighth Judicial District Court, Cascade County,  
Cause No. BDC-10-100(a), the Honorable Gregory G. Pinski, Presiding

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## **INTRODUCTION**

Petitioner Jennifer Triplett was the victim of Felony Negligent Vehicular Assault perpetrated by Wesley James Capps. Mr. Capps was convicted upon a plea of guilty and sentenced to make full restitution. The ensuing timeline is unclear, as the records have been destroyed. Years later, Mr. Capps somehow ended up in Treatment Court, where the Judge ordered the expungement of a drug-related court case and, mistakenly, the felony sentence with outstanding restitution. The Clerk, in error, destroyed all outstanding records of the underlying case(s), resulting in the outstanding restitution obligation being essentially vacated.

The actions of the District Court and Clerk of Court have left the Petitioner with no alternative route to obtain the restitution money she was awarded. Ms. Triplett requests an extraordinary writ directing the District Court Clerk to re-enter the case information in Cause No. BDC-10-100(a), *State of Montana v. Wesley James Capps*, in Montana Eighth Judicial District Court, Cascade County. This case is submitted upon affidavit of the Petitioner.

## **STATEMENT OF THE CASE**

On April 25, 2011, the Defendant, Wesley James Capps, was sentenced for the crime of Negligent Vehicular Assault, a felony, of which Jennifer Triplett was a victim, in Cause No. BDC-10-100(a), *State of Montana v. Wesley James Capps*, in Montana Eighth Judicial District Court, Cascade County. The actions of the

Defendant resulted in significant physical and mental harm to Ms. Triplett. She suffered a broken neck, broken jaw, and traumatic brain injury. Today, thirteen years later, she suffers from PTSD, chronic migraines, back pain, extreme anxiety, and depression.

The Petitioner cannot seek relief in a civil suit. Ms. Triplett had originally filed a civil suit for damages (Cascade County District Court No. DV-7-2010-617-PI, *Jennifer L. Triplett vs. Wesley James Capps, et. al.*), but withdrew the civil action when the criminal case awarded her restitution. Her civil suit was dismissed with prejudice, leaving Ms. Triplett with no other recourse to obtain the moneys she is owed for the damages she suffered as a result of the Defendant's malfeasance.

The District Court "ordered victim restitution in the total amount of \$35,588.00" *Appendix A*. The owed restitution was broken down as follows: "\$280.00 to Angela Meyers, LCPC, LAC," "\$25,000 to Crime Victim Compensation Program," "\$5,308.00 to Services of Dr. Santin," and "\$5,000 to Future medical/counseling costs." *Id.* The Petitioner is seeking the reinstitution of the \$5,000 to which she is entitled for, what was at the time, "future" medical costs.

The Order further states that "The Defendant shall continue to make monthly restitution payments until she (*sic*) has paid full restitution, even after incarceration or supervision has ended." *Id.*

The Defendant did not complete his restitution payments. Ms. Triplett only received approximately \$300 in restitution payments and was forced to file bankruptcy to pay her medical bills that were not covered by insurance.<sup>1</sup>

Without notice to the victim, the case was ordered to be expunged on March 27, 2018, and as a result all outstanding restitution vacated. The victim was not given notice of any hearing and was not present or heard. The *Order of Expungement* states “Notice is hereby given that Wesley James Capps has successfully completed the Eighth Judicial District Drug Treatment Court program. Without objection by the parties, and with good cause appearing; IT IS HEREBY ORDERED, pursuant to §46-1-1104(5), M.C.A., that the Defendant’s plea of Guilty is withdrawn and the above-captioned case is dismissed.” *Appendix B*.

All records have been destroyed, per the *Order of Expungement*, which states “IT IS FURTHER ORDERED, pursuant to §46-1-1104(3)(d), M.C.A., that the record in this matter is expunged and that the agencies listed below shall destroy all records pertaining to the above-captioned case.” *Id.* The “below listed agencies” included the Montana Department of Justice and the Montana Department of Corrections. *Id.*

The procedure for restitution payment for a felony offense is outlined by §46-18-241(2)(b), M.C.A., which states

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<sup>1</sup> There is no record of what payments were made. *See Appendix C*.

A felony offender shall pay the restitution and cost of supervising the payment of restitution to the department of corrections until the offender has fully paid the restitution and the cost of supervising the payment of restitution. The department shall pay the restitution to the person or entity to whom the court ordered restitution to be paid.

Since the records were ordered to be destroyed by the *Order of Expungement*, and that directive was sent to both the Department of Corrections and the Department of Justice, there was no longer a mechanism for the victim to receive her restitution payments. Communication from the Department of Corrections indicates “Per the ... Order of Expungement, all records pertaining to the case were to be destroyed. We no longer have record of Mr. Capps or the case in our Offender Management System.” *Appendix C*.

### **JURISDICTION**

M. R. App. P. 14(2) affords this Court original jurisdiction to issue writs of mandamus.

### **SUMMARY OF THE ARGUMENT**

This case involves purely legal questions—whether the District Court had the authority to expunge the underlying felony conviction, and whether the Clerk of District Court was obligated to maintain appropriate records of the case, regardless of the District Court’s order.



Ms. Triplett accordingly requests that this Court order the Cascade County Clerk of Court to re-enter the case information in Cause No. BDC-10-100(a), *State of Montana v. Wesley James Capps*, in Montana Eighth Judicial District Court, Cascade County, to afford her the opportunity to receive the restitution she was originally awarded.

### **ARGUMENT**

#### **I. THIS COURT SHOULD ACCEPT JURISDICTION AND ISSUE A WRIT OF MANDAMUS TO THE DISTRICT COURT CLERK TO COMPEL THEM TO PERFORM THEIR CLEAR LEGAL DUTY.**

This Court may issue a writ of mandamus to “compel the performance of an act that the law specially enjoins as a duty resulting from an office, trust, or station.” §27-26-102, M.C.A. “A writ of mandamus is available when ‘(1) the party who applies for it is entitled to the performance of a clear legal duty by the party against whom the writ is sought; and (2) there is no speedy and adequate remedy available in the ordinary course of law.’” *Victor Fed’n of Teachers Loc. 3494 v. Victor Sch. Dist. No. 7, Ravalli Cnty.*, 2018 MT 72, ¶ 13, 391 Mont. 139, 143, 414 P.3d 1284, 1287 (quoting *Citizens for a Better Flathead v. Bd. Of Cnty. Comm’rs*, 2016 MT 325, ¶ 58, 385 Mont. 505, 386 P.3d 567). “The ‘clear legal duty must involve a ministerial act, not a discretionary act.’” *Id.* (quoting *Citizens for a Better Flathead*, ¶ 59). “An act is ministerial when ‘the law prescribes and defines the

duty to be performed with such precision and certainty as to leave nothing to the exercise of discretion or judgment.”” *Id.*

Mandamus is an extraordinary remedy available at the discretion of the court in rare cases upon an affirmative showing that the petitioner is entitled to the performance of a clear legal duty by the agency, officer, tribunal, or other person or entity at issue; and no plain, speedy, and adequate remedy is available to compel performance of the duty in the ordinary course of law. §27-26-102, M.C.A. It was the Cascade County Clerk of Court’s clear legal duty to maintain the records in Cause No. BDC-10-100(a), *State of Montana v. Wesley James Capps*.

## **II. THE DISTRICT COURT HAD NO AUTHORITY TO EXPUNGE THE DEFENDANT’S 2011 FELONY CONVICTION; THEREFORE, THE 2018 EXPUNGEMENT ORDER WAS VOID WITH NO LEGAL EFFECT**

The exact circumstances as to how the felony conviction from 2011 became the subject of the March 27, 2018, expungement hearing is unclear. The *Order of Expungement* states, “IT IS FURTHER ORDERED, pursuant to §46-1-1104(3)(d), M.C.A., that the record in this matter is expunged and that the agencies listed below shall destroy all records pertaining to the above-captioned case.” *Appendix B*. The listed agencies include the Montana Department of Justice and the Montana Department of Corrections. *See id.* Significantly, §46-1-1104(3)(d), in effect at the time of the hearing, provided that a court has authority to provide incentives to

participating in drug treatment court that include “record expungement of the underlying case.” §46-1-1104(3)(d) (2018), M.C.A.<sup>2</sup> The underlying case was not, and could not be, the 2011 felony case from seven years prior. Regardless of whether the 2011 conviction was the subject of the hearing because of a clerical (inadvertently using the wrong case number) or other mistake, it is clear that the 2011 conviction should not have been the subject of the expungement hearing.

Significantly, “[a]bsent explicit authorization from the legislature . . . the judiciary has no power to expunge criminal records.” *State v. Chesley*, 2004 MT 165, ¶ 15, 322 Mont. 26, 30, 92 P.3d 1212, 1215. In 2018, when the court ordered the expungement, Montana law did not authorize expungement of the 2011 negligent vehicular assault conviction. *See, e.g.*, §46-18-1101 (2018), M.C.A. (repealed 2019) (authorizing expungement of misdemeanor records); §46-24-219 (2018), M.C.A. (authorizing expungement of identity theft victim’s records); §46-23-510 (2018), M.C.A. (authorizing expungement of records with reversal of conviction for sexual or violent offense). Therefore, the district court had no authority to expunge the records of the 2011 felony case.

Court orders made without legal authority cannot be enforced and have no legal effect. *See State v. Hanners*, 254 Mont. 524, 526, 839 P.2d 1267, 1268 (1992) (concluding an amended judgement was “null and void and should be

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<sup>2</sup> Current version at §46-1-1104(4)(d), M.C.A.

declared stricken from the record” because the district court did not have authority to modify the sentence and enter the amended judgment); *cf. State v. Darrah*, 2009 MT 96, ¶ 9, 350 Mont. 70, 72, 205 P.3d 792, 794 (finding there was no authority under which the Youth Court could order expungement of DUI offenses, and a statement of support for an unlawful action cannot be enforced by judicial estoppel or otherwise); *State ex rel. Enochs v. Dist. Ct. of Fourth Jud. Dist. in & for Missoula Cnty.*, 113 Mont. 227, 123 P.2d 971, 974 (1942) (“There is no doubt that a party cannot be guilty of contempt of court for disobeying an order which the court had no authority to make.”).

Consequently, the 2018 expungement order is void with no legal effect. Since the 2018 expungement order is void, the felony conviction remains, and with it the associated sentence and restitution order; it must be memorialized in government records.

**III. THE COURT CLERK HAS A CLEAR LEGAL DUTY TO MAINTAIN ACCURATE COURT RECORDS; AND THE RECORDS ARE ACCURATE ONLY IF THEY REFLECT THE EXISTENCE OF THE 2011 FELONY CONVICTION AND A JUDGMENT THAT INCLUDES THE RESTITUTION ORDER**

Significantly, the district court clerk has a clear official duty to maintain accurate court records. *See* §3-5-501(1)(a), M.C.A. (“The clerk of the district court, in addition to keeping the records and performing the duties prescribed elsewhere, shall...take charge of and safely keep or dispose of according to law all

books, papers, and records that are filed or deposited in the clerk's office[.]").

Since the expungement order requiring destruction of all records related to the 2011 felony conviction was unlawful, the criminal conviction still stands, and the clerk's office has a duty to safely keep the records of that conviction.

The Petitioner is entitled to have court records accurately reflect the existence of the 2011 felony conviction and a judgment that includes the restitution order requiring Mr. Capps to pay for losses she suffered as a result of his criminal conduct. The original Court ordered restitution in the total amount of \$35,588.00."

*Appendix A.* Since the Petitioner has no other remedy to redress the missing restitution order records, this Court must issue a writ of mandamus to the clerk requiring the re-entry of the 2011 judgment of conviction and restitution order into the court database.

#### **IV. MANDAMUS IS A PROPER REMEDY IN THIS CASE**

The Petitioner has met the statutory requirements for a Writ of Mandamus under §27-26-102, M.C.A. Under Montana case law, another limitation applies when considering requests for mandamus relief: mandamus cannot be utilized to correct or undo an act already performed. *See, e.g., State ex rel. Popham v. Hamilton City Council*, 185 Mont. 26, 29, 604 P.2d 312, 314 (1979) (denying petition for writ of mandamus directing city council to rescind its approval of a

child care center). Analysis of case law that addresses this court-imposed rule suggests it was adopted to ensure that mandamus would not be issued to correct or undo an action that was taken pursuant to *lawful discretion*.

For example, in *State v. State Board of Equalization*, 186 P.697 (Mont. 1920), the Court stated:

[T]he manner in which [the State Board of Equalization] should proceed and the result to be reached *were entirely within its own judgment and discretion*. The court could compel action, in the event of the failure or refusal of the board to act; *but, having proceeded in the matter, exercising its own judgment and discretion*, in the absence of any statutory provision directing how the board shall proceed, and in the absence of fraud or what amounts to fraudulent action, the court is powerless to compel the board to proceed in any particular manner in arriving at its conclusion or to reverse its decision. The writ of mandamus is not a writ to correct errors, but to compel action.

*Id.* at 698-99 (emphasis added). In *State ex rel. Thompson v. Babcock*, 409 P.2d 808 (Mont. 1966), this Court applied this rule in another case that involved a request for a writ of mandamus to undo a discretionary action. *Id.* at 810 (stating that “[i]t is axiomatic that an action already done may not be undone by mandamus” and citing *State v. State Board of Equalization* in a case where the State Board of Land Commissioners “has already acted, using *its own judgment and discretion*, and there is no fraud involved” (emphasis added)). This rule appears to be another way of stating the limitation that mandamus is available only where “[t]he ‘clear legal duty . . . involve(s) a ministerial act, not a discretionary

act.”” *Victor Fed’n of Teachers Loc. 3494*, 414 P.3d at 1287 (quoting *Citizens for a Better Flathead*, ¶ 59); see, e.g., *Jeppeson v. State, Dep’t of State Lands*, 205 Mont. 282, 290, 667 P.2d 428, 432 (1983) (involving a request to undo actions taken by the Department of State Lands, which is an agency with “broad discretionary authority”); *State ex rel. Popham*, 604 P.2d at 314 (involving an approval made by a city council pursuant to an ordinance that the district court found to be “loosely enough drawn that it gives the Council some discretion”); *Boehm v. Park Cnty.*, 2018 MT 165, ¶ 14, 392 Mont. 72, 76, 421 P.3d 789, 792 (involving a county action that is “discretionary”).

As the Petitioner has demonstrated above, a discretionary act is not at issue in this case. The district court had no power to expunge the 2018 felony conviction; and the court clerk has no discretion when it comes to maintaining accurate court records.

In determining whether mandamus is a proper remedy, this Court has considered the distinction between the duty sought to be compelled and the act that has already been performed. Where the act performed was done without lawful authority, and there is a clear legal duty remaining—as is the case here—mandamus is the proper mechanism for seeking a remedy. See, e.g., *State ex. rel. Malott v. Cascade County*, 22 P2d 811, 816 (Mont. 1933) (holding bondholders with an interest in lands that were “sold” by the county treasurer were entitled to a

writ of mandamus to undo the sale where the county treasurer “acted without authority” when he assigned the county’s rights to land to another); *Kadillak v. Anaconda Co.*, 184 Mont. 127, 143–44, 602 P.2d 147, 156–57 (1979) (rejecting defendant’s argument that mandamus was improper because plaintiffs sought to undo an act already done—the issuance of a permit to a mining company based on an incomplete and inadequate application; and holding a writ of mandamus was proper where the Department of State Lands “had a clear legal duty to require” the mining company to submit a complete application, and the approved permit “was void from the beginning” in light of the department’s failure to reject and return an incomplete application), *superseded by statute on other grounds as recognized in Park Cnty. Env’t Council v. Montana Dep’t of Env’t Quality*, 2020 MT 303, 402 Mont. 168, 477 P.3d 288; *Bd. of Trustees v. Bd. of Cnty. Comm’rs of Yellowstone Cnty.*, 186 Mont. 148, 157, 606 P.2d 1069, 1074 (1980) (rejecting respondents’ argument that mandamus was improper because petitioner sought to undo an act already done—the county commissioners’ meeting and all actions taken at that meeting; finding “[t]he failure here to follow proper statutory procedures of notice has the effect of invalidating” the decisions made at the meeting petitioner’s request; and holding a writ of mandamus to void the actions taken at that meeting was a proper remedy where petitioner’s request “could fit under the Kadillak rationale”); *cf. Victor Fed’n of Tchrs.*, 414 P.3d at 1289 (concluding the non-



tenured teacher was entitled to a writ of mandamus to direct the school district to renew her contract for the school year—even though the writ could be characterized as seeking to undo the school board’s vote and written decision to not renew her contract<sup>3</sup>—where the teacher was not provided with valid written notice of the non-renewal, and state law provides that a teacher in her situation would be ““automatically reelected”” as a teacher for the next fiscal year).

Similarly, in this case, the underlying expungement order was issued without authorization and therefore void or invalid, with no legal effect, just like the purported assignment of property rights in *State ex rel. Malott*, the operating permit in *Kadillak*, the county commissioner’s decision in *Bd. of Trustees*, and the written decision of non-renewal in *Victor Federation of Teachers*. And, the act to be compelled is one that the court clerk has a clear legal duty to perform—safely keeping accurate records in the clerk’s office.

As this Court stated in *State ex rel. Malott v. Cascade County*: “mandamus will lie to compel the undoing of a thing wrongfully and improperly done, when such wrongfully and improperly done thing precludes or prevents rights to which one is under the law entitled.” 22 P2d at 816. Here, Ms. Triplett is entitled to restitution from Mr. Capps. The unauthorized expungement order and the clerk’s

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<sup>3</sup> In *Victor Federation of Teachers*, the Court focused on the school district’s “‘clear legal duty’ to take the ministerial act of reelecting [the petitioner] as a teacher” for the ensuing school year.” *Id.*

failure to perform the duty of maintaining records have destroyed her ability to collect restitution or enforce that right.

Since it is the court clerk's official on-going duty to safely keep all records, and the Petitioner has no other remedy to compel the clerk to perform their duty, this Court must issue a writ of mandamus to compel the clerk to perform that duty by re-entering the 2011 case information into the court files.

### **CONCLUSION AND PRAYER FOR RELIEF**

This Court has the authority to issue a Writ of Mandamus directing the Cascade County Clerk of Court to re-enter the case information in Cause No. BDC-10-100(a), *State of Montana v. Wesley James Capps*, in Montana Eighth Judicial District Court, Cascade County.

The Petitioner respectfully asks the Court to grant the following relief:

1. That the Court grant the Petition and order the Cascade County Clerk of Court to re-enter the case information in Cause No. BDC-10-100(a), *State of Montana v. Wesley James Capps*, in Montana Eighth Judicial District Court, Cascade County.

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2. That the Court grant such other relief as it deems appropriate and just.

DATED this 14 day of June, 2024.

Respectfully submitted,

MONTANA LEGAL SERVICES ASSOCIATION

By:   
Alexandra House  
*Attorney for Petitioner*

## **CERTIFICATE OF COMPLIANCE**

Pursuant to M. R. App. P. 11, I certify that this Petition for Writ of Mandamus is printed with a proportionally spaced Times New Roman text and a typeface of 14 points and is double-spaced except for footnotes, indented quotes, and some headings. This petition contains 3,316 words, as calculated by Microsoft Word, excluding the cover sheet, table of contents, table of authorities, certificate of compliance, certificate of service, and appendix.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

Respectfully submitted,

MONTANA LEGAL SERVICES ASSOCIATION

By: \_\_\_\_\_  
Alexandra House  
*Attorney for Petitioner*

## **CERTIFICATE OF SERVICE**

I, Alexandra House, hereby certify that I have served true and accurate copies of the foregoing Petition - Writ to the following on 06-14-2024:

Joshua A. Racki (Govt Attorney)  
121 4th Street North  
Suite 2A  
Great Falls MT 59401  
Representing: Cascade County Clerk of District Court  
Service Method: eService

Electronically Signed By: Alexandra House  
Dated: 06-14-2024