

FILED

07/22/2024

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: OP 24-0435

IN THE SUPREME COURT OF THE STATE OF MONTANA
No. _____

GREGG ALLEN ZINDELL,
PETITIONER

V.

FILED

JUL 22 2024

Bowen Greenwood
Clerk of Supreme Court
State of Montana

JIM SALMONSEN, WARDEN OF
MONTANA STATE PRISON,
RESPONDANT,

and

CHRIS NORDSTROM, SAM GRIFFELL,
STACEY TAYLOR AND DOES (1 thru
10).

INJUNCTION RELIEF

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1 GREGG ALLEN ZINDELL

2 Petitioner

3 V.

4 JIM SALMONSEN, WARDEN OF
MONTANA STATE PRISON;

5 RESPONDANT,

6 and

7 CHRIS NORDSTROM, SAM GRIFFELL,
8 STACEY TAYLOR AND DOES (1 thru
9 10).

INJUNCTION RELIEF- DUE PROCESS,
THE EQUAL PROTECTION ACT, AND
D.O.C. POLICIES, SENTENCE
ENHANCEMENT.

Cause No. _____

10
11 SUMMARY OF PROCEEDINGS

12 The group providers for ICPM (Chris Nordstrom(Nordstrom), Sam
13 Griffel(Griffel), and Stacey Taylor(Taylor) decision to deny Zindell
14 group participation until his "Discharge Date" is not only illegal,
15 but against DOC policy and 9th Circuit decision.

16
17 STATEMENT OF FACTS

18 On or about September 10, 2023, Gregg Allen Zindell(Zindell)
19 started to inquire about the new ICPM group. In 2018 the B.O.P.P.
20 established a restriction on Zindell to finish S.O.P. II before he
21 could see the B.O.P.P. again. The prior group forbid Zindell to
22 participate as long he was in court. Griffel's informed Zindell that
23 he could complete the group while still pursuing his innocence.

24 On March 5, 2024 Zindell sent a 'kite' to Griffel's inquiring
25 and explaining the urgency of Zindell's situation. On March 15, 2024
26 Griffel's response was shocking. Accordingly, Zindell would have to
27 wait for his "Discharge Date" to be parole 'eligible'.

1 Zindell informed the Warden, Jim Salmonsens(Salmonsens), of this
2 change of policy and his response was "parole eligibilty date" is
3 the proper prioritize list. Zindell sent multiple kites from
4 different staff/divisions contradicting his response. Warden Salmomsen
5 response was "It appears that your question has been answered by
6 4 staff". "I do apologize that the answers you have recieved are
7 not the answers you want" on April 18, 2024.

8 Here now Mr. Zindell files this Injunction Relief, in pro se,
9 seeking the Montana Supreme Court to settle this matter of "eligibility"

10
11 SUMMARY OF THE ISSUES

12 Montana State Prison staff, private contractor's(Nordstrom,
13 Griffel, and Taylor) and Warden Salmonsens are in error in their
14 "Prioritize List". This is a DOC policy that was provided to inmates
15 on their tablets (MDOC SABER (SOP I-II) TO SO-ICPM CROSSWALK) on
16 November 2023.

17 1) MSP staff and Warden Salmonsens are in error when they
18 deprived Mr. Zindell of his 'Eligibility' through Neal v. Shimoda,
19 131 F.3d 818, 830-31 (9th Cir. 1997), 46-23-201 (3) MCA(2019) and
20 46-18-207 (1). Reconizing the "Due Process" 14th Amendment.

21 2) Under the "Equal Protection Act" MSP staff and Warden are
22 in violation of civil rights when let certain groups participate
23 in ICPM group so they can parole out, but if you have "sex offense"
24 an inmate will have to do 99% of his time in order to qualify for
25 group, which would make them 'parole eligible'. Patterson v.
26 Salmonsens, 2024 Mont. Lexis 390.

27 3) Montana State Prison and private contractor's (Nordstrom,

1 Griffel's and Taylor) do not have the authority to change DOC
2 policies. In 1.1.2 III. Definitions-Subject Matter Expert(SME)-
3 The administrator or designated staff member, representing a
4 division facility, or program to coordinate with the Policy Unit
5 to ensure accurate and timely policy review and revision. There
6 certainly was no "thirty day" notice of policy change.

7
8 1) FOURTEENTH AMENDMENT-DUE PROCESS

9 The Due process of the Fourteenth Amendment protects prisoners
10 from being deprived of life, liberty, or property without due
11 process of law. Wolff v. MacDonald, 418 U.S. 539, 556, 94 S.Ct. 2963,
12 41 L.Ed.2d 935(1974). To state a cause of action for deprivation
13 of procedural due process, a plaintiff must first establish the
14 existence of a protected liberty interest and then show that the
15 procedures attendant upon the deprivation were not constitutionally
16 sufficient. Kentucky Dep't of Corrections v. Thompson, 490 U.S. 454,
17 459-60, 109 S.Ct. 1904, 104 L.Ed.2d 506(1989). Only if the prisoner
18 alleges facts sufficient to show a protected liberty interest
19 most courts next consider "whether the procedures used to deprive
20 that liberty satisfied Due Process." Ramirez v. Galaza, 334 F.3d
21 850, 860 (9th Cir. 2003).

22 Regarding, Warner v. Hill 2021, if the procedure (parole vs.
23 discharge date) are to be seen through the lens of the Fourteenth
24 Amendments due process clause the threshold consideration is
25 whether the plaintiff has been deprived of a protected interest
26 created by state laws or policies. Wilkinsin v. Austin, 545 U.S. 209
27 221, 125 S.Ct. 2384, 2293, 162 L.Ed.2d 174(2005)(internal citations

omitted)."Only after finding the deprivation of a protected interest" does the court "look to see if the states procedures comport with due process." American Manufacturers, 526 U.S.at 59. To succeed on his procedural due process claims, Warner "must establish the existence of"(1) a liberty of property interest protected by the Constitution;(2) a deprivation of [*17] the interest by the government; [and] (3) lack of process.'" Shanks v. Dressel, 540 F.3d 1082,1090 (9th Cir.2008)

46-18-207 Sexual Offender Treatment-

(1) upon sentencing a person convicted of a sexual offense, as defined in 46-23-502, the court shall designate the offender as defined in 46-23-502, the court shall designate the offender as a level 1,2,or 3 offender pursuant to 46-23-509.

(3) A person who has been ordered to enroll in and successfully complete a phase of a state prison's sexual offender treatment program is not eligible for parole unless that phase of the program has been successfully completed as certified by a sexual offender evaluator to the board of pardons and parole.

46-23-201(3)MCA(2019) provides that "[a] prisoner serving a time sentence MAY NOT be paroled under this section until the prisoner has served at least one-fourth of the prisoner's full term."

Zindell has been required to complete SOP II by the BOPP in 2018 EX. A for a reappearance. With the new restrictions put in by MSP and group providers , Zindell will not be Parole 'eligible' until he has come to his "discharge date", which would be another seven to eight more years. Additional parole eligibility restriction

1 of SOP I and II. "A sentence, or condition included in that sentence
2 . is a limitation on liberty." McDermott v. McDonald, 2001 Mt. 89
3 17, 305 Mont. 166, 24 P.3d 200. HN7.

4 The district court did not err in concluding that, because Brown
5 had not yet been denied parole for failure to complete sex offense
6 treatment, his retaliation claim was not cognizable in the instant
7 habeas petition-Brown v. Mahoney, 338 Fed. Appx. 688 (9th Cir. 2009)

8 Unlike, Brown, Zindell was denied parole until he completes
9 SOP II. Mr. Zindell will have six years in on November of 2024, on
10 a chance to become compliant with the B.O.P.P. EX. B.

11 HN4 Constitutional Law, Substantive Due Process-
12 A liberty interest may arise from the U.S.
13 Constitution itself or it may rise from an
14 expectation or interest created by state
15 laws or policies. The Constitution does not
16 give rise to a liberty interest in avoiding
17 transfer to more adverse conditions of confinement,
18 but such an interest may rise from "state policies
19 or regulations."

20 Johnson v. Ryan, 55, F.4th 1167 (9th Cir. 2022).

21 Warden Salmonsens, MSP staff, and Group Providers Nordstrom,
22 Griffel, and Taylor are all in violation of Mr. Zindell's liberty
23 interest and 46-23-201(3) which entitles Mr. Zindell to "eligibility"
24 of his parole hearing in November 2024. The law refers to one-fourth
25 of Mr. Zindell's incarceration, not ninety-nine percent of his
26 confinement. Patterson v. Salmonsens, 2024 Mont. Lexis 390-2 "The
27 Department adds that Patterson has been placed on the waitlist
for sex offender treatment in the SO-ICPM and that he will likely
have to wait until he is within one year of discharge before he
begins this programming." Under these new regulations and the
percentage of Sex Offenders in the prison system, DOC, MSP, and

1 | legislation will have to build multiple new prison's to accommodate
2 | all the Sex Offender's that will have to do almost 99% of there
3 | sentence.

4 | 2) FOURTEENTH AMENDANT-EQUAL PROTECTION CLAUSE

5 | "The Equal Protection Clause of the Fourteenth Amendment
6 | provides that no state shall 'deny to any persons within its
7 | jurisdiction the equal protection of the laws" Kulken v. Cnty of
8 | Hamilton, 669 F.Supp.3d 119,125 CN.D.N.Y.2023 (quoting U.S. Cont.
9 | amend. XIV,§1.)

10 | To prove a violation of the Equal Protection Clause, a plaintiff
11 | must show (1) adverse treatment of individuals compared with other
12 | similarly situated individuals; and (2) that such [*38] selective
13 | treatment was based on impermissible considerations such as race,
14 | religion, intent to inhibit or punish the exercise of constitutional
15 | rights, or malicious or bad faith intent to injure a person. Miner v.
16 | Clinton Cnty. N.Y. 541 F.3d 464,474(2nd Cir.2008)(citing Bizzarro v.
17 | Miranda, 394 F.3d 82,86 (2nd Cir.2005).

18 | The complaint here is that all other offenders are able to
19 | recieve the new ICPM group and recieve their parole or have been
20 | paroled. A "Reasonable Accommodation" can not be made when a Sex
21 | Offender can not beparole 'eligible' unless they take the new SO-
22 | IPCP program. These are the names of inmates who were allowed to
23 | take the ICPM group with five or more years to their discharge
24 | date-Terry Slater, Dakota McCarty, Chris Henderson, and Michael
25 | Lofftus. The difference between them and Mr. Zindell is that they
26 | do not have a 'sex offense'. It has been long understood that a law
27 | maybe fair on it's face but grossly unfair in its enforcement. HN6

1 Yoshikikawa v. Sequirant, 41 F.4th 1109-2022. Page v. Wylie, 3 Fed.
2 Appx.638 HN1-The District Court erred, however, by failing to
3 construe liberally Page's complaint as also alleging on equal
4 protection violation concerning the release of parole release funds
5 to civilly-confined persons. See Fraley v. United States Bureau
6 of Prisons, 1 F.3d, 924, 926 (9th Cir.1993) (per curiam) (concluding
7 that equal protection [*640] rights are violated where petitioner show
8 that she was being treated from "similarly situated" (prisoners).

9 [41] He also explained that the prison must make the programs
10 accessible to him through a "reason accommodation" as required by
11 the Rehabilitation Act and the Americans with Disabilities [*10] Act.

12 [47] After plaintiff was apparently not placed in that next
13 group, Plaintiff filed an inmate grievance, No.686639, in July 2017,
14 grieving that:

15 i (1) he was in receipt of a memo from the PBPP warning
16 him that he would not be considered for parole unless and until he
17 completed the SOP. (2) through several Request Slips he was told to
18 be patient; (3) this Request Slip situation has continued for four
19 (4) months he cannot help but surmise that this SOP course [*11]
20 was not offered to him during the 2016 calendar year either
21 because he was housed in the Infirmary or because of the nature of
22 his offense; (5) he was being singled out as an individual with a
23 sex offense; (6) he was being singled out for discrimination regarding
24 admittance into the SOP; and (7) he felt that by not having a parole
25 consideration hearing before the PBPP, SCI-MAH has circumvented
26 his opportunity to rejoin his family and society.

27 [88] The court has already dismissed the other individual
defendants, due to their lack of personal involvement, and thus
need now only consider whether Plaintiff can state a substantive
due process claim against Defendant McGee. Notably, Defendant
McGee has already conceded that Plaintiff can allege an equal
protection claim against her; it would stand to reason under this

1 Defendant's own argument that Plaintiff can also state a substantive
2 due process claim against her, Smith v. Pa. Dep't of Corr., 2020 U.S.
3 Dist. Lexis 44835.

4 EX. C demonstrates Zindell following the same procedures as
5 Smith. OSR (Offender/Staff Request Form) were sent to multiple Staffers,
6 which put forth Zindell's 'due diligence' in trying to be compliant
7 with BOPP's recommendation. Mr. Zindell is being discriminated
8 for being a convicted Sex Offender.

9
10 DOC POLICY AND PROCEDURE

11 POLICY NO. DOC. 1.1.2. Chapter 1:
12 Administration and Management
13 Subject Policy Management System

14 II Applicability

15 All divisions, facilities, and programs
16 Department-owned and contracted, as specified in contract

17 D Review and Revision Process

18 2. SME's will coordinate with the Policy Unit to ensure:
19 a. accurate and timely policy development, review,
20 revision, and distribution; and
21 b. compliance of procedures with Department policy
22 directives.

23 G. Procedures

24 2. Administrations and designated staff responsible for
25 procedure management will:
26 d. inform the Department's Policy Unit of all intended
27 substantial modifications or additions to procedure
e. ensure procedures are reviewed, approved, and
signed by the authorizing administrator,
h. complete necessary revisions to corresponding
procedures within 30 days of policy revision

24 These policies were put into place for collective, pooled reasons.
25 MSP/staff violated these procedure, especially 1.1.2. G. h., where
26 no 30 day notice was given for the change of parole eligibility to
27 discharge date. There was no way to even contest this change, because

1 | there was no notice given to staff or inmates. The DOC's Policy for
2 | Offender Discrimination, now found as DOC Policy No. 3.3.20(2020)
3 | provides the following:

4 | The Department does not tolerate employees
5 | committing any forms of discrimination,
6 | harassment, or retaliation against offenders
7 | based upon the offender's race, color,
8 | religion, creed, political ideas, sex, age,
9 | marital status, physical or mental disability,
10 | or national origin, or in retaliation against
11 | an offender because the offender has opposed
12 | any discriminatory practices or because the
13 | offender has filed a complaint, testified,
14 | assisted, or participated in any manner in
15 | a discrimination investigation or proceeding.
16 | The Department is committed to resolving
17 | discrimination and harassment complaints in
18 | a fair and timely matter.

13 | Bloodstone v. Gootkin, 408 Mont.541- DOC Policy No. 3.3.20,1., at

14 | 1. While this current version of nondiscrimination does not explicitly
15 | include gender identity or expression as the older, it still
16 | contains the remedy for an offender, such as Bloodstone. Mr. Zindell
17 | believes that this DOC Policy also supports his argument in that
18 | sex offender's are being targeted and discriminated against by
19 | staff at MSP.

21 | HN18 Prison Litigation Reform Act, Prospective Relief

22 | For purposes of 18 U.S.C. § 3626(a)(1), in many cases it will not
23 | be possible for a district court to produce meaningful need-
24 | narrowness-intrusiveness findings concerning each isolated provision
25 | of a remedial order. Prospective relief for institutions as complex
26 | as prisons is a necessarily aggregate endeavor, composed of multiple
27 | elements that work together to redress violations of the law. This
is all the more true when relief must be narrow and minimally
intrusive: courts often must order defendants to make changes in
several different areas of policy and procedure in order to avoid
interjecting themselves too far into any one particular area of

1 prison administration. In such circumstances, the necessity of any
2 individual provision cannot be evaluated in isolation. What is
3 important, and what the Prison Litigation Reform Act requires, is a
4 finding that the set of reforms being ordered-the "relief-corrects
5 the violations of prisoners' rights with the minimal impact possible
6 on defendants' discretion over their policies and procedures.
7 Armstrong v. Schwarzenegger, 622 F.3d 1058 2010. EX. D

8 SENTENCE ENHANCEMENT

9 HN2 Imposition of Sentence, Evidence
10 The U.S. Supreme Court requires that any fact that increases the
11 penalty for a crime beyond the prescribed statutory maximum must
12 be proven a reasonable doubt. As such, the Court has invalidated
13 as an "unacceptable departure from the jury tradition," a sentencing
14 scheme allowing a sentence enhancement upon the sentencing judge
15 finding, by a preponderance of the evidence, that the underlying
16 crime was committed for a specified purpose. State v. Parisian
17 2021 Mt. 202N.

18 II. Chadwell's Claims and Analysis
19 [*3] Brandon Robinson), failed to object to the criminal history
20 and a sentence enhancement that was not proved to a jury beyond
21 a reasonable doubt....) United States v. Chadwell, 2016 U.S. Dist.
22 Lexis 176181.

23 United States v. Whiteman, 2016 U.S. Dist. Lexis 104, 396
24 A. Sentence Enhancement

25 "Since Allegne, the Ninth Circuit Court of
26 appeals has maintained its rule that facts
27 having an extremely disproportionate effect"
on the guideline calculation must be proved
by clear and convincing evidence with the
notable exception of drug quantity calculations),
but facts having more moderate impact on the
sentence may be found by a judge on a
preponderance of the evidence standard.

28 Mr. Zindell was convicted on January of 2013. This "sentence
29 enhancement" was not part of his conviction, nor was any of these
30 Policies brought to Mr. Zindell's attention prior to trial. The
31 requirement for Mr. Zindell's parole was to 1) do one-fourth of
32 his time and 2) follow the provider's recommendations for groups.

33 Mr. Zindell's sentence has been illegally enhanced, due to
34 changes at MSP, thru staff, providers, and possibly DOC staff

1 members. It does not matter WHO made these changes to MSP procdures,
2 what does matter is that the program is put back in place, as it
3 was in November of 2023. "Program-track placement is prioritized
4 based on parole eligibility and discharge date."

5
6 CONCLUSION

7 Mr. Zindell has met the three prongs of the 'Due Process'
8 Clause, the State MCA in agreement (46-23-201(3)). Mr. Zindell
9 shall be parole eligible at one-fourth of his sentence. MSP is
10 discriminating against sex offenders, when violate offenders or
11 other offenders can participate in the ICPM groups well before their
12 discharge date. Finally, MSP and private contractors (group providers)
13 cannot change DOC policies and/or Montana laws at a stroke of their
14 pen. Mr. Zindell is requesting to be placed in the ICPM group ASAP,
15 so he can be parole "eligible" for his hearing in November of 2024.
16 Mr. Zindell has maintained good conduct and employment during his
17 incarceration. Mr. Zindell has also participated in Hebrew classes
18 in Shelby and has completed many courses in the Edovo classes on
19 the tablets, ranging from all the culinary arts courses, marketing,
20 reading psychology courses and ect. Mr. Zindell has taken advantage
21 of what the prison system has to offer. EX. E.

22 If Mr. Zindell is made to wait for another six to eight years
23 to be parole eligible, he will not be able to participate in some
24 kind of retirement that would not only benefit him, but would relieve
25 a burden on the State. Mr. Zindell has done everything within his
26 power to improve himself.

27


GREGG ALLEN ZINDELL

7-16-2024
DATE

CERTIFICATE OF SERVICE

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I, The undersigned, Hereby certify that on this 7 day of July,
2024. I served a true and correct copy of the foregoing above.



SINCERELY, GREGG ZINDELL

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