

ORIGINAL

FILED

08/23/2024

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: OP 24-0505

Shawn Weller
Inmate Name

2034208
Inmate ID or AO#

MSP
Facility of Incarceration

700 Conley Lake Rd.
Address of Facility

Deerlodge Mt. 59722
City State Zip

FILED

AUG 23 2024

Bowen Greenwood
Clerk of Supreme Court
State of Montana

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. OP24-0505

[The Clerk of Court will assign a number]

SHAWN HOWARD WELLER
NAME

PETITIONER,

v.

JIM SALMONSEN
NAME OF WARDEN/FACILITY ADMINISTRATOR,

RESPONDENT.

Petition for a Writ
of

Habeas Corpus in Case

DC-23-176

I, Shawn Howard Weller, 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. Read EXHIBIT A first

In 2008 in Case # CDC-2007-207 MSP/IPP0 violated MCA 46-23-201(3) and My Due Process when I was sentenced on 4-20-08. I was already Parole eligible at sentencing. I came back to Prison that same day from Sentencing and was allowed to go back into general Population like I never left the Prison at all. MSP should of made me go to MDIU the intake unit. Where MSP would of made sure I would see the Parole board right away. I was already Scheduled to see the board for annual review in 4/2008. I was going to ask the board for treatment/Pre release. But two (2) days prior to seeing the board IPP0 took me off the list saying "You have a new charge. You cannot see the board until your new Parole eligible date." I was violated

My due Process Rights for over two (2) months after that. In June just before seeing the board I got a bogus write up. I assert I did not commit and was denied parole for two (2) years. If MSP would 'nt of violated my due Process I would 'nt of got the bogus write up.

My 2007 C.D. Eval said "In fact leaving Mr. Weller in prison any longer than to finish treatment would hurt him worse." The CD Eval was done by MSP. MSP is now violating Mont. Const. art II sec 9 by not giving me a copy of my own 2007 C.D. Eval, for legal purposes and for the board in the future.

On 5-20-23 I got another (F) DUI Plead guilty in Case # **DC-23-176** got **5 years DOC**. Went to Prison. On 4-2-24 seen the Parole board for my revocation hearing in Case # **CD-2007-207** "was told to re-appear in 4/25 Complete DOC risk and needs assessment and follow recommendations. Violations include: laws and conduct." MSP won't do nothing!! until a month before I go to the Parole hearing in 2025 and give the Parole board a CD Eval and recommendations then.

In the Process in Case # **DC-23-176** I am Parole eligible on 8-18-24 and MSP/IPPO are both refusing to let me see the board and violating **46-23-201(3) MCA** and my Due Process. Where Your allowed to see the board two (2) months before Your Parole eligible date. In case law of

[Use extra pages if necessary]

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McDermott V. McDonald, 2001 MT 899 10, 305 Mont 166, 24 P.3d 200 The Supreme Court found that Petitioner had a Protected liberty interest in Parole, and that Parole could not be denied without due Process. Mine and McDermott issue is the same. Were both Parole eligible and being denied to see the board. I'm being denied because I was revoked in case # CDC-2007-207 and McDermott for refusing S.O.P. treatment. But their still violating my Due Process in case # DC-23-176. Where I'm trying to seek treatment.

MSP/DOC/Board thinks time is the cure for my addiction and has never tried to rehabilitate me, in a non violent sentence, where I've never refused treatment before!! Everyone else with a (F) DUI has gone to the WATCH Program, Why am I being ~~to~~ denied WATCH? Why Am I being discriminated against? In fact in the 18 years I've been down. I've only been on Parole for 3.5 years in case # CDC-2007-207 ~~_____~~

~~_____~~ Time just irritates me and makes me more angry. Why not try something new and give me treatment. And for the first time try to rehabilitate me. Only had two (2) treatments in case # CPC-2007-207. First one 12-22-11 to 1-24-12. With all the holidays and counselor's missing days I was lucky to have had 14 days of treatment. And I pass ITU and anger mangment. No way is that

[Use extra pages if necessary]

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Possible!! A 90 day Program. The second and last treatment was 7-15-16 to 11-9-16 I pass but I'm held in prison for over three (3) more years. I forgot what I did learn by the time I got Paroled. Regardless in case # DC-23-176 MSP/IPPO is violating my Due Process Rights to see the board and McDermott v. McDonald supports my claim. This is the 2nd time in two (2) ~~and~~ different cases that my due process has been violated. And will violate my rights for over a year. ~~It take~~ I'll take 3 or 4 months to get into treatment.

The Parole Board doesn't realize I was in Silver Bow County jail violated ~~under~~ my right to a speedy trial. LC 0753 amends 46-13-401 MCA and spent 263+ days in jail. By the time I do WATCH and prerelease I'll have over two and half years down on a five year sentence. Clearly I've been punished for the revocation and sentence which both are clearly excise in time.

As You see Exhibit A is a more clearer in what I'm trying to say. But I had to go into detail.

It's also clear the Clerk did not read all of the writ before it was returned.

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EXHIBIT B is the judgment and order of commitment page 2 states 5yr. commitment and 263 days credit for time served at the Feb. 7, 2024 hearing. As you can see it was also filed Jul 30, 2024. I received it the same day this writ was returned to me. And why Exhibit B was not originally supplied.

EXHIBIT C is the sentence calculation spread sheet from the Mt. Dept. of Corrections and it says my

Parole eligibility date is 8-16-2024 in DC-23-176

EXHIBIT C States Second Sentence and third Sentence Clearly showing there two(2) different Sentences as I Stated in EXHIBIT A. so MSP/BOPP is violating my due process rights, by Violating MCA 46-23-201(3)

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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:

Asking to be put immediately into the WATCH program
and then Pre-release. With a DOC sentence I can
go to treatment without seeing the board. And I can see
the board in Prerelease where they can grant Parole or ex-
tend my stay

VERIFICATION

STATE OF MONTANA)
County of Powell) : 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 22 day of July, 2024.

Shawn Howard Weller
Inmate Signature

Shawn Howard Weller
Printed Name

CERTIFICATE OF MAILING (SERVICE)

I hereby certify that on July 22, 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]

Shawn Howard Weller
[Signature]

Shawn Howard Weller
[Print name]

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