

Joseph Denny Nezperce V 190963
316 S King ave E.
Billings, MT 59101
Petitioner / Inmate
Pro Se



ORIGINAL

FILED

09/09/2024

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: OP 24-0536

FILED

SEP 09 2024

Bowen Greenwood
Clerk of Supreme Court
State of Montana

In The Supreme Court of the State of Montana

Joseph Denny Nezperce V,
Petitioner,

V.

Undersheriff, Lester,
Respondent.

Civil Action:

OP 24-0536

Petition for Writ of Habeas Corpus

Comes now Joseph Denny Nezperce V, Petitioner, Pro Se, an inmate who will be unlawfully imprisoned if credit for time served is not given, which will be and is a Due Process Violation under Montana Constitution Article II Section 17 and United States Constitution Amend. 5th and 14 Due Process clause. I'm Entitled to credit for time served under MCA 46-18-403

History

The Petitioner was sentenced Feb. 14, 2014, for DC-12-386 for a Crime of (Felony) Burglary. On June 16th, 2012 the ~~Petit~~ Petitioner was arrested for the crime of Burglary, Bail was set for an amount of \$50,000 on June 18th, 2012. Then the Petitioner was later revoked on July 15, 2024 by the by the Montana 13th Judicial District Court, Yellowstone County Judge Rod Souza.

The Previous Judge is Honorable Judge Gregory Todd Baugh who awarded the 21 month credit for time served from June 16th, 2012 to Feb. 14th, 2014 at 02/14/2014 Sentencing hearing. Hon. Judge Baugh made a decision if my sentence were to be revoked during the sentenced suspended sentence I am to be given the allotted 21 months to be applied, there after (this violated caselaw St. V. McCaslin, 2011 MT 221, 362 Mont. 47, 260 P.3d 403) the Judge then needed to apply credit for time served yet

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Some how forgot. But since that sentencing order by Hon. Judge G. T. Baugh some how in the midst of that time the current Judge, County Atty. Office of Yellowstone have neglected to incorporate the previous sentencing order.

under the authority of MCA 46-18-402 and 46-18-403 I'm entitled to credit for incarceration prior to conviction (1) A person incarcerated on a bailable offense against whom a judgment of imprisonment is rendered must be allowed ~~for~~ credit for each of incarceration prior to or after conviction.

Jurisdiction of Matter

Habeas Corpus relief is available to one illegally imprisoned or otherwise restrained of his liberty MCA 46-22-101.

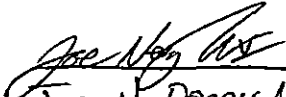
Montana law regarding credit for time served states in part that a person incarcerated on a bailable offense against whom a judgment of imprisonment is rendered must be allowed credit for each of incarceration prior to or after conviction, except... MCA Section 46-18-403 calculating credit for time served is not a discretionary act but a legal mandate. A district court may not decide to withhold credit in anticipation that credit may be given in a subsequent sentencing. Once a judgment of imprisonment has been entered for a bailable offense, a person is entitled to credit for each day of incarceration prior to and after the conviction.

The Montana Supreme Court has jurisdiction and is proper venue to address this matter, see case law Lott v. State 2006 MT 279, 20 334 Mont. 270 150 P.3d 337 and also see Johnston v. Kirkgord, 16 OP 12-0741, 369 Mont. 540 P.3d 1098, 2013 Mont. LEXIS 74

Relief to be Sought

1. Respectfully asks the Court for 21 months to be applied from Dates 06/16/2012 to 02/14/2014 of credit for time served prior to or after conviction.

Dated: 09/04/2024


Joseph Denny Nezperce
Petitioner / Pro Se

I, Joseph Denny Nezperce V, Petitioner, Declare under penalty of perjury that the foregoing is true and correct.

Dated 09/04/2024



Joseph Denny Nezperce V
Petitioner / Pro Se

CERTIFICATE OF SERVICE

I certify that I filed this

☒ Petition writ of habeas Corpus

☐ Motion

☐ Other _____

[Name of document]

with the Clerk of the Montana Supreme Court and that I have mailed or hand delivered a copy to each attorney of record and any other party not represented by counsel as follows:

State of Montana, office of the Attorney General.

[Name of opposing counsel]

P.O. Box 201401,

Helena, MT 59620-1401

[Address]

Counsel for the State of Montana

Joseph Denny Nezperce IV

[Other party representing himself or herself]

3165 King Ave E.

Billings MT 59101

[Address]

DATED this 04 day of September, 2024.

[Signature]

Joseph Denny Nezperce IV

[Print name]

