

FILED

10/04/2024

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: OP 24-0589

Timothy E. Peterson
#3017027
Montana State Prison
700 Conley Lake Road
Deer Lodge, MT 59722



ORIGINAL

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. OP 24-0589

FILED

OCT - 4 2024

Bowen Greenwood
Clerk of Supreme Court
State of Montana

Timothy Edward Peterson,
Petitioner,

V.

PETITION FOR WRIT OF HABEAS
CORPUS

Warden Jim Salmonsens,
Respondent.

I, Timothy Edward Peterson, am representing myself, and I believe that I am entitled to a Writ of Habeas Corpus under § 46-22-101 MCA for the following reasons:

My sentence is illegal because, (1) the Thirteenth Judicial District Court for the County of Yellowstone lacked Subject Matter Jurisdiction to pronounce judgment and sentence on Timothy Edward Peterson in Cause No. DC-13-0884 because; (2) the Thirteenth Judicial District Court did not have Subject Matter Jurisdiction to accept waiver of rights and plea, due to the court not granting the motion for Leave to File Amended Information.

Timothy Edward Peterson is incarcerated under a facially invalid sentence and has not been found guilty in a court of record that had Subject Matter Jurisdiction to adjudicate Cause No. DC-13-0884 which is a grievous wrong that should be addressed through a petition for Writ of Habeas Corpus.

Peterson has included with this petition the relevant documents from the record.

State V. Abe, 2001 MT 260

HN6 Lack of Subject Matter Jurisdiction can be raised at anytime. Rule 12 (h)(3) M.R.CIV.P.

In re Marriage of Lance, 213 Mont. 182

HN3 Subject Matter Jurisdiction, Jurisdiction over actions.

The issue of subject matter jurisdiction maybe invoked at anytime in the course of a proceeding.

Furthermore, once the issue is raised and a court determines that there is a lack of subject matter jurisdiction, it can take no further action in the case other than to dismiss it. Mont.R.CIV.P. 12 (h)(3).

Lee V. Lee, 2000 MT 67

[*P20] HN2 In order for a court to act within its jurisdiction, it must have: (1) Cognizance of the subject matter; (2) Presence of the proper parties; and (3) The courts action must be invoked by proper pleadings, and the judgment within the issues raised. State ex rel. Porter V. First Judicial Dist. (1950), 123 Mont. 447, 454, 215 P.2d 279, 283.

A court lacks or exceeds such jurisdiction by "any acts which exceed the defined power of a court in any instance, whether that power be defined by constitutional provision, express statutory declaration, or rules developed by the courts and followed under the doctrine of stare decisis."

The order granting Leave to File Amended Information was not validated by the court. The order is not signed and is not dated by

the court, (See Exhibit 1), Amended Affidavit and Motion for Leave to File Amended Information. The order not being granted by the court, renders the Amended Affidavit and Motion for Leave to File Amended Information denied.

The court did not have Subject Matter Jurisdiction to accept waiver of rights and plea, violating Peterson's Montana Constitutional Rights as well as Peterson's United States Constitutional Rights to Due Process of Law and Equal Protection of the Law, (See, Exhibits 1, 2, & 3).

The intention of the legislature is to be pursued, M.C.A. 1-2-101 and M.C.A. 1-2-102. M.C.A. 46-11-201, M.C.A. 46-11-205 Statutory Language is plain, unambiguous, direct and certain, the statute speaks for itself.

46-11-201 Leave to File Information

(1) The prosecutor may apply directly to the district court for permission to file an information against a named defendant. If the defendant named is a district court judge, the prosecutor shall apply directly to the supreme court for Leave to File the Information.

(2) An application must be by affidavit supported by evidence that the judge or chief justice may require. If it appears that there is probable cause to believe that an offense has been committed by the defendant, the judge or chief justice shall grant Leave to File the Information, otherwise the application is denied.

46-11-205 Amending information as to substance or form.

(1) The court may allow an information to be amended in matters of substance at anytime, but not less than 5 days before trial, provided that a motion is filed in a timely manner, states the nature of the proposed

amendment, and is accompanied by an affidavit stating facts that show the existence of probable cause to support the charge as amended. A copy of the proposed amended information must be included with the motion to amend the information.

(2) If the court grants leave to amend the information, the defendant must be arraigned on the amended information without unreasonable delay and must be given a reasonable period of time to prepare for trial on the amended information.

(3) The court may permit an information to be amended as to form at anytime before a verdict or finding is issued if no additional or different offense is charged and if the substantial rights of the defendant are not prejudiced.

State V. Cardwell, 187 Mont. 370

The above analysis illustrates HN6[] the clear and unambiguous meaning of Article II, Section 20, 1972 Montana Constitution. All criminal actions prosecuted initiated and carried forward--by information must be examined and committed by a magistrate or must be carried forward after leave granted by the court. Thus, all [***8] stages of proceeding by information including amendments to the information must be reviewed by the court. Any statute that allows for amendments without leave of court conflicts with this constitution provision and must fall. Section 46-11-403(1) allows for amendment of criminal informations without judicial supervision. The statute, therefore, conflicts with the Constitution and must be declared invalid. We now so hold.

In declaring the substantive amendment without leave of court statute unconstitutional, we do not intend to totally preclude substantive amendments to criminal informations. It has long been held that HN7[] an information can be amended both as to form and substance. United States V. Smith, (D.C.Pa. 1952), 107 F.Supp. 839. On amendment of an information, however, certain procedural safeguards must be imposed. The above discussion indicates amendments of substance can only be filed with leave of court. This safeguard is necessary not only to comply with Montana's constitutional requirements, but also to ensure a defendant receives a neutral determination of probable cause for detention under the amended charges. See, Gerstein V. Pugh (1975), 420 U.S. 103 [***9] 95 S.Ct. 854, 43 L.Ed. 2d 54. Another procedural safeguard involves notice to the defendant. One function of an information is to notify a defendant

of the offense charged, thereby giving the defendant an opportunity to defend. State V. Tropf (1975), 166 Mont. 79, 88, [*376] 530 P.2d 1158, 1163; State V. Heiser (1965), 146 Mont. 413, 416, 407 P.2d 370, 371. This function of the information cannot be dispensed with when the information is amended as to substance. The defendant must be notified of the change and afforded a reasonable time after the amendment to prepare a defense. Further, when an amended information is filed substantively changing the charges against a defendant, the defendant should be arraigned under the new charges. State V. Butler (1969) 9 Ariz.App. 162, 450 P.2d 128, 131; Hanley V. Zenoff (1965), 81 Nev. 9, 398 P. 2d 241, 242. See, also State V. Dewolfe, (1904), 29 Mont. 415, 417-19, 74 P. 1084, 1085. We see no [**1234] bar to substantively amending criminal informations if these procedures are followed.

Having found the amendment without leave of court statute unconstitutional, we are constrained to dismiss the amended information [***10] filed here.

State V. Cardwell, 187 Mont. 370, has not been over ruled and is controlling.

Yellowstone County Chief Deputy Attorney, Juli M. Pierce filed the invalid Amended Information charging Peterson by inserting in the record what has been omitted from the record.

Confederated Salish & Kootenai Tribes V. Roberts, 1996 Mont. Salish & Kootenai Tribe, Lex 23.
Our role in construing statutes is clear, we must "ascertain and declare what is in terms or in substance contained therein," we may not insert what has been omitted or omit what has been inserted, Section 1-2-101 M.C.A.. The intention of the legislature is to be pursued, Section 1-2-102 M.C.A., If that intention can be determined from the plain meaning of the words used, a court may not go further and apply other means of interpretation. State V. Hubbard, (1982) 200 Mont. 106, 111, 649 P.2d 1331, 1333 (citation omitted).
Where the statutory language is plain, unambiguous, direct and certain, the statute speaks for itself and there is nothing left for the court to construe: Hubbard 649 P.2d at 1333.

Am. Trucking & Transp. Ins. Co. V. Travelers Prop. Co.
of Am. 2015 U.S. Dist. Lexis 99864, Opinion by
Dana L. Cristensen.
Under Montana Law the court may not "insert what has been
omitted" [15] Mont. Code Ann. § 1-2-101.

State V. Roberts, 194 Mont. 189 (1981) and
Dumphy V. Anaconda Co., 151 Mont. 76 (1968).

The State of Montana cannot dispute Peterson's claims of error
which is supported by the record. The record speaks for itself.

The Thirteenth Judicial District Court did not have Subject
Matter Jurisdiction to pronounce judgment and sentence on Timothy
Edward Peterson.

Jeopardy attached at the filing of Information and continued
to the filing of the Amended Information to conviction.

Serfass V. United States, 420 U.S. 377 (1975).
In a nonjury trial, jeopardy attaches when the court
begins to hear evidence [388].
Also see, McCarth V. Zerbst, 85 F.2d 640, 642 (CA10 1936).

If the State of Montana claims that Peterson's claims are now
procedurally barred because Peterson was adjudged guilty of an
offense in a court of record and has exhausted the remedy of appeal
(46-22-101(2) MCA), Timothy Edward Peterson has shown, by the court
docket record, that Timothy Edward Peterson was not adjudged guilty
of an offense in a court of record having Subject Matter Jurisdiction
to pronounce judgment and sentence on Timothy Edward Peterson in
Cause No. DC-13-0884.

Petition for Writ of Habeas Corpus, therefore is proper.

Timothy Edward Peterson's sentence is illegal.

As relief, Timothy Edward Peterson request the following:

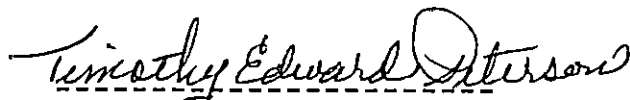
Vacate the judgment of the State of Montana with prejudice and my immediate release from prison.

VERIFICATION

State of Montana)
 :SS.
County of Powell)

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 1st day of October, 2024.

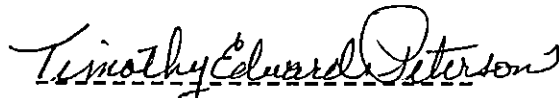


Timothy Edward Peterson

CERTIFICATE OF MAILING (SERVICE)

I hereby certify that on October 1st, 2024, I have mailed the Petition for Writ of Habeas Corpus to the following Attorney by placing a copy in the United States Mail, postage prepaid:

Office of the Attorney General
P.O. Box 201401
Helena, MT 59620-1401


Timothy Edward Peterson