

FILED

10/10/2024

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: OP 24-0603

DAVID ALLEN PEIN

Inmate Name



ORIGINAL

3022430

Inmate ID or AO#

Crossroads Correctional Center

Facility of Incarceration

50 Crossroads Drive

Address of Facility

Shelby

City

MT

State

59474

Zip

FILED

OCT 10 2024

Bowen Greenwood
Clerk of Supreme Court
State of Montana

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. OP 24-0603
[The Clerk of Court will assign a number]

DAVID ALLEN PEIN

NAME

PETITIONER,

v.

Petition for Writ of
Habeas Corpus

Demetric Godfrey

NAME OF WARDEN/FACILITY/ADMINISTRATOR,

RESPONDENT.

I, DAVID ALLEN PEIN, 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.

(1) DC 16-66 I have been sentenced (2) twice, with a DOC (4) years
and an MSP of (7) years same case No. The double jeopardy, and
Credit for Jail time and Street time are not correct.

(2) Other Reason incarceration is illegal on,
DC 16-66

DC 20-79

DC 23-15 ; It is as follows on the rest of this
petition for Writ of Habeas Corpus on pages included
numbered (1, 2, 3) in this filing as attached
document.

DAVID ALLEN PEIN

AO# 3022430

50 Crossroads Drive

Shelby, MT 59474

In The Montana Supreme Court Of Montana

No. _____

DAVID ALLEN PEIN

Petitioner,

Cause Nos. DM 16-66; DC20-79

DC 23-15

v.

Petition For Writ of Habeas Corpus

State of Montana,

Warden DEMETRIC GODFREY

Respondent.

Comes now DAVID ALLEN PEIN, the Petitioner, pro-se counsel in this Petition for Writ of Habeas Corpus. It has recently come to the Petitioner's attention that he was improperly prosecuted for felony charges in the above stated cause number(s), when the State failed to indict by grand jury. The Petitioner had previously failed to attempt any remedies to this issue due to the fact that he had not been aware that his rights were violated. The Petitioner is aware that the Ninth Circuit Court of Appeals has ORDERED that Montana's failure to indict by grand jury warrants dismissal of all cases whereupon a defendant whom has been convicted of a felony in Montana without an indictment must have their cases dismissed and be released from custody [(Complaints of Judicial Misconduct, Campbell, Cause No. 22 900.59; and Haithcox, Cause No. 22 900 60)SEALED]. Montana's continued failure to abide by the order of Ninth Circuit Court and The Constitution of United States under the Fifth Amendement and USCS Const. Art. VI, Cl 2 is a gross violation of his civil rights afforded by the Constitution of the United Sates, to which the Petitioner submits:

"This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

The Petitioner contends that he is entitled to be prosecuted by a grand jury indictment because the Legislature of the State of Montana has failed to specifically provide by statute, that an information could be used to prosecute a felony; and that the Montana Supreme Court has ruled that Montana is a Common Law State, and in Common Law States, without specific statute, the use of an Information is restricted to misdemeanors. Since his case(s) was filed as a felony, the Montana 10th Judicial District Court - and all courts in the State of Montana - is without jurisdiction, and this case must be dismissed. Even if such statute

exists, no state statute can overrule a Federal Constitutional right.

The Petitioner further submits the following case laws in support of this petition:

"Supremacy clause of Federal Constitution (Art VI, cl 2) is not source of any federal rights, but rather accords all federal rights, whether created by treaty, statute, or regulation, priority whenever they come in conflict with state law." Chapman v. Houston Welfare Rights Organization, 441 U.S. 600, 99 S. Ct. 1905, 60 L. Ed. 2d 508, 1979 U.S. LEXIS 101 (1979).

"Valid federal laws are part of supreme law of land, and state may not discriminate against rights created by or arising under such laws." Caldwell v. Alabama Dry Dock & Shipbuilding Co., 161 F.2d 83, 12 Lab. Cas. (CCH) ¶ 63715, 6 Wage & Hour Cas. (BNA) 835, 1947 U.S. App. LEXIS 3083 (5th Cir.)

"Federal statute cannot be invalidated under state constitution." Walker v. San Francisco Unified Sch. Dist., 46 F.3d 1449, 95 Cal. Daily Op. Service 737, 95 D.A.R. 1288, 1995 U.S. App. LEXIS 1685 (9th Cir.)

"State constitutions and amendments thereto are subject to applicable prohibitions and limitations of Federal Constitution." Gray v. Moss, 156 So. 262, 1934 Fla. LEXIS 1672 (Fla. 1934); Gray v. Winthrop, 156 So. 270, 1934 Fla. LEXIS 1673 (Fla. 1934).


"Constitution of West Virginia is subject to Constitution and laws of the United States which shall be made in pursuance thereof, and all treaties made under authority of United States, all of which constitute supreme law of land." Harbert v. County Court, 129 W. Va. 54, 39 S.E.2d 177, 1946 W. Va. LEXIS 39 (W. Va. 1946).

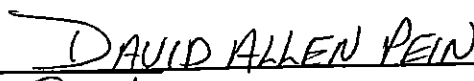
The Petitioner invites this Court to make the following considerations before making a judgment on this petition, and for future cases in Montana:

1. Whether or not Montana law supercedes common law doctrine when a Montana law disparages a person of certain rights and protections retained by the people of the United States.
2. Whether or not Montana law violates the Constitution of the United States of America when Mont. Const., Art. II § 20 allows a court to prosecute felony charges either by information, or by indictment, at a judge's discretion.
3. Whether or not when Montana law allows felony prosecutions against a defendant to proceed only after a complaint or information qualifies as equal protection under the law.
4. Whether or not ANY judge has license to forego grand jury proceedings based on a file of information before proceeding to prosecute felony charges against a defendant, without that defendant having first waived his right to a grand jury indictment.
5. Whether or not a citizen of the Constitutional Federal Republic of the United States of America must enjoy the same rights and protections afforded by the Constitution of the united States of America while being held to answer for an infamous crime in a Montana judicial district court.
6. Whether or not the provision regarding a presentment or indictment by a grand jury in the Fifth Amendment is a right retained by the People of the United States of America.

7. Whether or not Montana's constitution in Mont. Const., Art. II § 4 regarding equal protection of the laws should only refer to Montana's laws.
8. Whether or not a judicial district within Montana that allows felony prosecutions by information or indictment ever receives funding meant for the expenses of grand jury proceedings.
9. Whether or not a judicial district within Montana that allows felony prosecutions by information or indictment that does receive funding meant for the expenses of grand jury proceedings is allowed to redistribute that funding as that district sees fit, if that funding has not been spent on indictments.
10. Whether or not such funding mentioned in questions 8 and 9 can be construed as a motive and incentive to deny a person's individual right to a grand jury indictment.
11. Whether or not the United States Constitution is satisfied when a defendant is prosecuted for a felony without an indictment or waiver thereof.
12. Whether or not USCS Const. Art. VI, Cl 2 provides the fifth amendment priority over Montana law.
13. Whether or not the Fourteenth Amendment's omission of a right to a presentment or indictment by a grand jury supercedes the Fifth Amendment's provision for a grand jury.
14. Whether or not ANY court has subject matter jurisdiction to prosecute felonies on an information without an indictment, or waiver thereof.

The Petitioner begs that this Court seeks answers to the preceding questions and upon determining the truth of the petitioner's claims, dismiss all of the charges in this case, order his immediate release, and expunge the above cases from his record.


Petitioner's signature


Print

Dated this 3rd day of October, 2024

cc: Clerk of The Supreme Court of Montana
Attorney General of Montana
File

CERTIFICATE OF MAILING (SERVICE)

I hereby certify that on 3rd October, 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]

David A. Pein
[Signature]

DAVID ALLEN PEIN
[Print name]