

FILED

10/31/2024

Bowen Greenwood  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

Case Number: OP 24-0649

Joseph Denny Nezperce V

Inmate Name



ORIGINAL

190963

Inmate ID or AO#

Yellowstone County Detention Facility

Facility of Incarceration

3165 King Ave East

Address of Facility

Billings

City

Montana

State

59101

Zip

FILED

OCT 31 2024

Bowen Greenwood  
Clerk of Supreme Court  
State of Montana

**IN THE SUPREME COURT OF THE STATE OF MONTANA**

No. OP 24-0649

[The Clerk of Court will assign a number]

Joseph Denny Nezperce V

NAME

**PETITIONER,**

**v.**

Captain Robert Lester

NAME OF WARDEN/FACILITY ADMINISTRATOR,

**RESPONDENT.**

**Petition for a Writ  
of  
Habeas Corpus**

I, Joseph Denny Nezperce V

[Name of Inmate]

, am representing myself, and I  
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 *either* good time or street 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.

I am to be given 42 months of credit for time served toward the  
5 years DOC sentence (Cause No. DC-12-0386), Not just 21 months  
awarded which created an illegally imposed 3 years, 136 days to  
the DOC. for the following reason: Nezperce ~~was~~ sentence hearing  
on February 3, 2014 the District Court committed Nezperce to the  
Department of Corrections (DOC) for a suspended, 5 year term, which  
was to run consecutively to two other prior sentences (Cause No. DC-12-  
0386) The District Court specifically ordered: The Defendant will receive  
credit for time spent in pre-trial incarceration from June 20, 2012 to February  
3, 2014. Then at a later District Court Revocation hearing July 15,  
2024 the District Court awarded elapsed time credit of August 14,

2022 through May 15, 2023 as well as May 5, 2023 through September 8, 2023. Lastly, the Court awarded credit for pretrial incarceration or detention before the revocation hearing: September 8, 2023 through September 13, 2023; October 18, 2023 through January 18, 2024 and March 27, 2024 through July 15, 2024. The total amount of credit for time served awarded for both District Court hearings; 1. Feb. 3, 2014 total time awarded 21 months then on 2. July 15, 2024 another total time awarded is 21 months.

The problem or illegal matter at hand is each sentence hearing the District Court Judges award 21 months which are being confused of only 21 months total rather than that. Both ~~these~~ hearings must add up to 42 months therefore the Judge on July 15, 2024 sentencing hearing illegally ordered and resenteded Neperce to the DOC for 3 years and 136 days. The dates differ and the sentence calculation is incorrect, the sentence that should be calculated as 18 months remaining. Neither the prosecutor nor the defendant's attorney knew of the proper credit for the time served therefore the overall credit for time served was improperly explained creating an illegal 39 month sentence to serve in excess of actually of that <sup>which</sup> remains 18 months till full discharge of entire sentence. This violates my civil rights.

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:

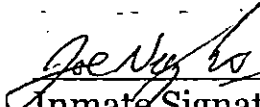
At both sentencing hearings the dates differ for credit for  
time served therefore the 21 months applied at  
each sentence hearing must be added consecutively  
not <sup>concurrently,</sup> ~~concurrently~~ revealing that I owe 18 months to serve

#### VERIFICATION

STATE OF MONTANA )  
 )  
County of Yellowstone ) 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 28 day of October, 2024.

  
Inmate Signature

Joseph Denny Nezperce  
Printed Name

## CERTIFICATE OF MAILING (SERVICE)

I hereby certify that on October 28, 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

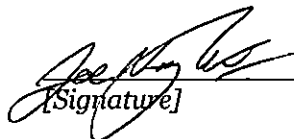
or

☐ \_\_\_\_\_ County Attorney (see *INSTRUCTIONS* #9)  
[Write name of County]

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

  
[Signature]

Joseph Denny Nezperce  
[Print name]