ROBERT MATTHEW WITTAL
Inmate Name

3020193
Inmate ID or AO#

CROSSROADS CORRECTIONAL CENTER
Facility of Incarceration

56 CROSSROADS DRIVE
Address of Facility

SHELBY, MT 59474
City State Zip

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. _____
[The Clerk of Court will assign a number]

ROBERT MATTHEW WITTAL,
NAME

PETITIONER,

v.

D.J. GODFREY,
NAME OF WARDEN/FACILITY ADMINISTRATOR,

RESPONDENT.

Petition for Writ of Habeas Corpus

I, ROBERT MATTHEW WITTAL, 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.

WITTAL ARGUES THAT HABEAS CORPUS IS THE CORRECT REMEDY HERE TO ADDRESS THE ILLEGAL PORTION OF HIS SENTENCE, SECTION 46-22-101(1), MCA. PURSUANT TO THIS COURTS 2019 ORDER AND CASELAW, WITTAL HIGHLIGHTS THAT HIS TEN-YEAR SENTENCE FOR COUNT II, ASSAULT WITH A WEAPON, IS ILLEGAL BECAUSE WITTAL HAS THE CONVICTION OF DELIBERATE HOMICIDE UNDER § 45-5-102(1), MCA, THE FELONY MURDER RULE. SEE KILLS ON TOP V. GUYER, NO. OP 18-0656, 2019 MONT. LEXIS 292, ORDER (JULY 31 2019) AND STATE V. RUSSELL, 2008 MT 417, 347 MONT. 301, 198 P.3d 271. WITTAL EXPLAINS THAT HE QUALIFIES FOR RELIEF BECAUSE HIS CONVICTION FOR DELIBERATE HOMICIDE ARISES

FROM "THE UNIQUE CONTEXT OF FELONY HOMICIDE [WHEN], THE PREDICATE OFFENSE IS, OF NECESSITY, AN INCLUDED OFFENSE, AS WELL AS AN ELEMENT OF THE FELONY HOMICIDE ITSELF." RUSSELL, ¶24. WITTAL ARGUES THE STATUTORY DOUBLE JEOPARDY BAR IN §46-11-410(2)(a), MCA, AND ITS APPLICATION IN KILLS ON TOP, REQUIRING THIS COURT GRANT HIS WRIT TO REMAND HIS CASE TO THE DISTRICT COURT TO VACATE THE WEAPON CONVICTION AND RESENTANCE WITTAL TO THE DELIBERATE HOMICIDE, ONLY. STATE V. BRANDT, 2020 MT 79 ¶ 31, MAGWOOD V. PATTERSON, 561 U.S. 320, 342, 130 S. CT. 2788. (SEE ATTACHED FILING OF INFORMATION) (JURY INSTRUCTION #16) WITTAL CANNOT BE SENTENCED FOR BOTH OFFENSES BECAUSE COUNT II CONSTITUTES THE PREDICATE FELONY FOR WITTAL'S FELONY MURDER CONVICTION AND SENTENCE. IN PAGE 2 LINE 1 AND 2 OF WITTALS JUDGEMENT IT IS WRITTEN "THE MOTIVATION BEHIND THIS HEINOUS CRIME TO ENHANCE HIS REPUTATION AS AN ENFORCER IN THE LOCAL DRUG COMMUNITY." THIS WAS NEVER STATED IN OPEN COURT." THE COURTS ORAL PRONOUNCEMENT CONTROLS OVER THE WRITTEN JUDGEMENT WHEN A DISCREPANCY ARISES BETWEEN THE TWO. STATE V. LANE, 1998 MT 76, ¶¶ 40, 48., IT IS WITTALS POSITION THAT THIS STATEMENT BY THE DISTRICT

COURT IS PURELY SPECULATIVE AND IS IMPROPER IN THE SENTANCING ORDER. BLAKELY V. WASHINGTON, 542 U.S. 296, 303, 124 S. CT. 2531, 2537.

THE DISTRICT COURT ALSO INFERRED THAT WITTAL "REFUSES TO ACCEPT ACCOUNTIBILITY FOR HIS HEINOUS CRIME AND CLAIMS INNOCENCE...". IN STATE V. DUNCAN, 2008 MT 148, ¶ 53, "LACK OF REMORSE MAY NOT BE INFERRED FROM A DEFENDANTS SILANCE OR FAILURE TO ACKNOWLEDGE HIS CONVICTION." "CANNOT UPHOLD A SENTANCE THAT IS BASED ON A REFUSAL TO ADMIT GUILT." SEE STATE V. SHREVES, 2002 MT 333, ¶ 20 (SEE LINE NUMBER 4 AND 5 OF JUDGEMENT)

IN ADDITION THE DISTRICT COURT IMPOSED THAT WITTAL WOULD NOT BE ELIGIBLE FOR PAROLE FOR A PERIOD OF 45 YEARS, HOWEVER THE JUDGE DID NOT STATE THE REASONS FOR THE PAROLE RESTRICTION, AS STATUTORILY REQUIRED SEE 46-18-202 (2) "STATEMENT OF THE REASONS FOR THE RESTRICTION," AND THE DISTRICT COURT DID NOT STATE "THE RESTRICTION IS NECESSARY FOR THE PROTECTION OF SOCIETY" STATE V. GARRYMORE, 2006 MT 245.

(1) WITH THE SAME CONCEPT AS HELD IN STATE V. HANNA, 2014, MT 346 ¶ 20, WITTALS PROSECUTOR CHARGED HIM IN THE FILING OF INFORMATION WITHOUT REFERANCING EITHER (a), OR (b) OF 45-5-102. WITTAL WAS PROVIDED REASONABLE NOTICE OF EITHER OF (1)(a),(2)(b), SUB-ELEMENTS, THE PROSECUTOR DID NOT CITE ANY PARTICULAR SUBSECTION, ONLY THE GENERAL STATUTE OF DELIBERATE HOMICIDE (SEE FILING OF INFORMATION).

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:

(1) RESENTANCE WITTAL TO THE CONVICTION AND SENTANCE TO DELIBERATE HOMICIDE ONLY, AN AMEND THE JUDGEMENT. (2) THE WRITTEN JUDGEMENT MUST REFLECT THE ORAL PRONOUNCEMENT. (3) STATE THE REASONS FOR PAROLE RESTRICTIONS IN OPEN COURT.

VERIFICATION

STATE OF MONTANA)
: ss.
County of Toole)

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 2 day of November, 2024.

Inmate Signature

ROBERT MATTHEW WITTAL
Printed Name

CERTIFICATE OF MAILING (SERVICE)

I hereby certify that on 2 November, 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]

ROBERT MATTHEW WITTOR
[Print name]

Judge Robert B Allison
Department 2
Eleventh Judicial District
Flathead County Justice Center
920 South Main Street, Suite 310
Kalispell, MT 59901
406-758-5906

ATTORNEY CLIENT COMMUNICATION

MONTANA 11TH JUDICIAL DISTRICT COURT, FLATHEAD COUNTY

State of Montana, Plaintiff, vs. **Robert Matthew Wittal,** Defendant.	Case No.: **DC-16-280B** **JUDGMENT & SENTENCE**

On October 20, 2016, Defendant, accompanied by counsel, Steven Scott, was found guilty by jury verdict to the offense of **Deliberate Homicide, a felony**.

A hearing in aggravation and mitigation of sentence was held on January 17, 2017, where Defendant was accompanied by counsel, Steven Scott.

In fashioning the sentence to be imposed in this matter, the Court is guided by the correctional and sentencing policy and principles of the State of Montana, §46-18-101, MCA, which require the Court to: (a) Punish each offender commensurate with the nature and degree of harm caused by the offense and to hold an offender accountable; (b) protect the public, reduce crime, and increase the public sense of safety by incarcerating violent offenders and serious repeat offenders; (c) provide restitution, reparation, and restoration to the victim of the offense; and (d) encourage and provide opportunities for the offender's self-improvement, rehabilitation, and reintegration back into the community.

In consideration of the nature of the offense, testimony presented to the court, the recommendations of the parties and the Pre-Sentence Investigation prepared by Rae Baker of the Adult Probation and Parole Office, the Court determined that Defendant presents a serious threat to the community. He committed homicide by a process approaching torture where he chased the victim about the woods at night with a large knife, slowly hacking and stabbing him to death

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while others looked on. The motivation behind this heinous crime was to enhance his reputation as an enforcer in the local drug community. He committed his crime while under the influence of methamphetamines and had immersed himself deeply into the local drug culture over a lengthy period of time. He refuses to accept accountability for his heinous crime and claims innocence, but in the face of overwhelming evidence of guilt beyond a reasonable doubt. In consideration of these facts, Defendant is a dangerous and violent offender who cannot safely be allowed to be at large in the community.

No Evidence to support this

IT IS THE JUDGMENT OF THE COURT that for the offense of **Deliberate Homicide, a felony** Defendant is sentenced to the **Montana State Prison** for a term of **one hundred (100) years;** and a *consecutive* **ten (10) year** sentence to the **Montana State Prison** for the weapons enhancement.

IT IS THE FURTHER JUDGMENT OF THE COURT that: Defendant shall not be eligible for parole for a period of forty-five (45) years.

As recommended conditions of parole, Defendant must comply with the following:

1. The Defendant shall be placed under the supervision of the Department of Corrections, subject to all rules and regulations of Adult Probation & Parole.
2. The Defendant must obtain prior written approval from his/her supervising officer before taking up residence in any location. The Defendant shall not change his/her place of residence without first obtaining written permission from his/her supervising officer or the officer's designee. The Defendant must make the residence open and available to an officer for a home visit or for a search upon reasonable suspicion. The Defendant will not own dangerous or vicious animals and will not use any device that would hinder an officer from visiting or searching the residence.
3. The Defendant must obtain permission from his/her supervising officer or the officer's designee before leaving his/her assigned district.
4. The Defendant must seek and maintain employment or maintain a program approved by the Board of Pardons and Parole or the supervising officer. Unless otherwise directed by his/her supervising officer, the Defendant must inform his/her employer and any other person or entity, as determined by the supervising officer, of his/her status on probation, parole, or other community supervision.
5. Unless otherwise directed, the Defendant must submit written monthly reports to his/her supervising officer on forms provided by the probation and parole bureau. The Defendant must personally contact his/her supervising officer or designee when directed by the officer.

6. The Defendant is prohibited from using, owning, possessing, transferring, or controlling any firearm, ammunition (including black powder), weapon, or chemical agent such as oleoresin capsicum or pepper spray.

7. The Defendant must obtain permission from his/her supervising officer before engaging in a business, purchasing real property, purchasing an automobile, or incurring a debt.

8. Upon reasonable suspicion that the Defendant has violated the conditions of supervision, a probation and parole officer may search the person, vehicle, residence of the Defendant, and the Defendant must submit to such search. A probation and parole officer may authorize a law enforcement agency to conduct a search, provided the probation and parole officer determines reasonable suspicion exists that the Defendant has violated the conditions of supervision.

9. The Defendant must comply with all municipal, county, state, and federal laws and ordinances and shall conduct himself/herself as a good citizen. The Defendant is required, within 72 hours, to report any arrest or contact with law enforcement to his/her supervising officer or designee. The Defendant must be cooperative and truthful in all communications and dealings with any probation and parole officer and with any law enforcement agency.

10. The Defendant is prohibited from using or possessing alcoholic beverages and illegal drugs. The Defendant is required to submit to bodily fluid testing for drugs or alcohol on a random or routine basis and without reasonable suspicion.

11. The Defendant is prohibited from gambling.

12. The Defendant shall pay all fines, fees, and restitution ordered by the sentencing court.

13. The Defendant shall pay the following fees and/or charges which are statutorily mandated. **Payment is to be made to the Eleventh Judicial District, Flathead County, Montana, Clerk of Court, 920 South Main, Suite 300, Kalispell, MT 59901.**

    a. Defendant shall pay a surcharge of $15 for each misdemeanor. [§46-18-236(1)(a), MCA] **Defendant to pay: $0**

    b. Defendant shall pay a surcharge of the greater of $20 or 10% of the fine for each felony offense. [§46-18-236(1)(b), MCA] **Defendant to pay: $100 waived**

    c. Surcharge for victim and witness advocate programs of $50 for each misdemeanor or felony charge under Title 45, Crimes; §61-8-401 (DUI); §61-8-406 (DUI-alcohol); or §61-8-411 (DUI-delta-9-tetrahydrocannabinol). [§46-18-236(1)(c), MCA] **Defendant to pay: $50 waived**

    d. Defendant shall pay a $10.00 per count for court information technology fee. (§3-1-317, MCA) **Defendant to pay: $10 waived**

    e. Costs of assigned counsel, paid to clerk of court: (§46-8-113, MCA)

i. $250 for one or more misdemeanor charges and no felony charges or $800 for one or more felony charges.

ii. offender shall pay costs incurred by the Office of Public Defender for providing counsel in the criminal trial.
Defendant to pay Public Defender Fees of $800 waived

f. The Defendant shall pay fine(s) over and above any amount credited for pre-conviction incarceration as ordered and directed by the court. (§46-18-231, MCA)
Defendant to pay net fine of $1,000 waived

g. The Defendant shall pay costs of legal fees and expenses defined in §25-10-201, MCA, plus costs of jury service, prosecution, and pretrial, probation, or community service supervision or $100 per felony or $50 per misdemeanor, whichever is greater. (§46-18-232, MCA).
Court orders Defendant to pay: $100, waived

h. The Defendant shall pay Prosecution Fees associated with bad checks issued as ordered and directed by the court. Defendant to pay fees of $0. **This offense is not related to bad checks.**

14. The Defendant shall pay Court Ordered supervision fees. The Probation & Parole Officer shall determine the amount of supervision fees (§46-23-1031, MCA) to be paid each month in the form of money order or cashier's check to the Department of Corrections Collection Unit, P.O. Box 201350, Helena, MT 59620 ($50 per month if the Defendant is sentenced under §45-9-202, MCA, dangerous drug felony offense and placed on ISP). The DOC shall take a portion of the Defendant's inmate account if the Defendant is incarcerated.

15. There is a $50 fee at the time a PSI report is completed, unless the court determines the Defendant is not able to pay the fee within a reasonable time (§46-18-111, MCA). The Defendant shall submit this payment to the Department of Corrections Collection Unit, P.O. Box 201350, Helena, MT 59620.

Defendant to pay $50 waived

16. If the Defendant is convicted of a crime listed in §46-23-502(13), MCA, he/she shall register as a violent offender. [§46-18-201(7), MCA]

17. The Defendant, convicted of a felony offense, shall submit to DNA testing. (§44-6-103, MCA)

18. The Defendant shall obtain a chemical dependency evaluation by a state-approved evaluator. The Defendant shall pay for the evaluation and follow all of the evaluator's treatment recommendations.

19. The Defendant shall obtain a mental health evaluation/assessment by a state-approved evaluator. The Defendant shall pay for the evaluation and follow all of the evaluator's treatment recommendations.

20. The Defendant shall successfully complete Cognitive Principles & Restructuring (CP&R) or similar cognitive and behavioral modification program.

21. The Defendant shall not possess or use any electronic device or scanner capable of listening to law enforcement communications.

22. The Defendant shall abide by a curfew as determined necessary and appropriate by the Probation & Parole Officer.

23. The Defendant shall complete any community service ordered by the court or the Probation & Parole Officer.

24. The Defendant shall not enter any bars.

25. The Defendant shall not enter any casinos.

26. The Defendant shall not knowingly associate with probationers, parolees, prison inmates, or persons in the custody of any law enforcement agency without prior approval from the Probation & Parole Officer. The Defendant shall not associate with persons as ordered by the court or BOPP.

27. The Defendant shall not knowingly have any contact, oral, written, electronic or through a third party, with the victim(s) unless such contact is voluntarily initiated by the victim(s) through the Department of Corrections. DOC staff may notify victims about the availability of opportunities for facilitated contact with their offenders without being considered "third parties." **The secondary victims in this offense are the family members of Wade Allen Rautio.**

28. The Defendant shall not have any contact with his Co-Defendants. **The Co-Defendants are Melisa Ann Crone, Christopher Michael Hansen, and David Vincent Toman.**

29. The Defendant shall attend self-help meetings at the direction of the Probation & Parole Officer.

30. The Defendant shall advise all medical personnel of addiction history/conviction, including all prescribed narcotics and/or medical marijuana.

31. The Defendant shall inform the Probation & Parole Officer of all prescriptions obtained from medical personnel prior to filling them. The Defendant shall take all prescription medications as prescribed and in the manner in which they were prescribed.

32. The Defendant may not be a registered card holder and may not obtain or possess a registry identification card under the Montana Medical Marijuana Act while in the custody or under the supervision of the Department of Corrections or a youth court. [§50-46-307(4), MCA]

33. The Defendant shall comply with all sanctions given as a result of an intervention, on-site (preliminary), or disciplinary hearing.

34. The Defendant shall enter and complete an Anger Management Program to assist in dealing with his/her violent criminal behaviors.

35. The PSI report shall be released by the Department to certain persons, such as treatment providers, mental health providers, and/or medical providers, as needed for the Defendant's rehabilitation.

Defendant is to be given credit for two hundred eighteen (218) days served in custody pending final disposition in this matter (6/14/16 to 1/17/17).

Defendant is hereby advised that he has 120 days from the date of filing this Judgment and Sentence to contest any perceived differences between this written Judgment and the Court's oral pronouncement of sentence.

Any bond posted in this matter is hereby exonerated and is to be released to Defendant or his posting surety.

PRONOUNCED IN OPEN COURT on January 17, 2017.

February 8, 2017.

Robert B Allison, Judge

cc: John Donovan, Deputy County Attorney
Steven Scott, Defense Counsel
Robert Matthew Wittal, Defendant
Flathead County Sheriff's Office
Adult Probation and Parole
Department of Corrections
Department of Justice
Montana State Prison
Board of Pardons

emailed 2/8/17
SS