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COUNSEL FOR RESPONDANTS

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. OP 24-0662

COLTER ALEXANDER McGUIGAN,

Petitioner,

v.

JAMES SALMONSEN, WARDEN,
Montana State Prison,

Respondent.

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

In compliance with the Court's order, OP 24-0662, issued on November 20, 2024, the Montana Department of Corrections (hereafter "DOC") responds to the Petition for a Writ of Habeas Corpus (hereafter "Petition") filed by Colter Alexander McGuigan, FKA John Wayne McGuigan (hereafter "Petitioner"). The Department agrees that under *Rowe v. Bragg*, 2023 Mont. LEXIS 346, Petitioner's Judgement in Cause No. DC-22-009C in should be amended to reflect the

concurrent nature of all his sentences. Once corrected, this will result in his immediate discharge to supervision.

PROCEDURAL HISTORY

Petitioner was convicted of the offense of Driving Under the Influence, 4th Offense on July 3, 2012, in the Montana Third Judicial District in Powell County, Cause No. DC-12-06. *Exhibit A*. Reflected in the judgment is a "... sentence[] to a thirteen (13) month commitment to the Department of Corrections for placement in an appropriate correctional facility or treatment program." *Id.* at 3. Moreover, Petitioner was "... also sentenced to a term of three (3) years, with all (3) years suspended, to the Department of Corrections to run consecutive to the 13-month commitment." *Id.*

On May 28, 2019, Petitioner was convicted of the offense of Driving Under the Influence, 4th Offense or Greater in the Third Judicial District in Powell County, Cause No. DC-2018-111. *Exhibit B*. Petitioner was "... sentenced to a five-year commitment to the Department of Corrections." *Id.* at 4. The Court also indicated "[t]he sentence in this matter shall run concurrently with the Defendant's sentences in Missoula County DC-15-318 and Powell County DC-12-06." *Id.*

Cause No. DC-15-318 involved the Petitioner being convicted of Driving Under the Influence of Alcohol 4th or Subsequent Offense, Habitual Offender

Operating a Motor Vehicle, and Failure to Provide Proof of Insurance in the Montana Fourth Judicial District. *Exhibit C*. On August 28, 2015, a judgment was entered to the aforementioned counts for a total sentence of 5 years commitment to the DOC with Count I to “... run consecutive to the sentence in Powell County.” *Id.* at 2.

Petitioner appeared before the Third Judicial District Court on February 15, 2022, for a revocation hearing regarding the suspended time imposed in Cause No. DC-12-06. *Exhibit D*. The Court held that “the suspended portions of the sentence ordered by the Court upon the Defendant’s conviction for Driving Under the Influence. . . shall be and are hereby revoked.” *Id.* at 2. The Court went on to note “this sentence shall run concurrent to the Defendant’s sentence in Powell County DC-2018-111.” *Id.* at 3.

On March 31, 2022, in the Eighth Judicial District Court in Cause No. DC-22-009C, Petitioner was convicted of Driving Under the Influence, 4th or Subsequent Offense and received a sentence of 5 years commitment to the Department of Corrections, with 3.5 years suspended. *Exhibit E*. This judgment was silent as to how it would run with any other pending matters. However, on June 15, 2022, an Amended Sentencing Order was issued in Cause No. DC-22-009C noting “[t]his sentence shall run concurrently with the sentence imposed in Powell County Cause No. DC-12-06.” *Exhibit F* at 4.

DISCUSSION

Petitioner filed the Petition with this Court on November 7, 2024, alleging “[t]he Department of Corrections has incorrectly calculated my sentence which illegally extends my parole eligibility or discharge date.” On November 20, 2024, this Court issued Order OP 24-0662 “deem[ing] it appropriate to require a response to his Petition.”

The DOC most recently calculated Petitioner’s time as of July 6, 2023. *Exhibit G*. Pursuant to DOC calculations, Petitioner is to be discharged from prison on June 19, 2025, and discharged from probation on December 20, 2028. As noted by Petitioner, to which DOC agrees, on June 15, 2022, the Amended Judgment (*see Exhibit F*) does indicate DC-22-009C is to run concurrent to DC-12-06, and DOC further acknowledges that DC-2018-111 is to run concurrent with DC-12-06 (*See Exhibit B*). However, the Amended Judgment in DC-22-009C was silent as to how that sentence is to run with DC-2018-111, even though that sentence was in effect at the time of the Amended Judgment.

On its face, “[s]eperate sentences for two or more offenses must run consecutively unless the court otherwise orders.” §46-18-401(4), MCA. Petitioner’s sentence was calculated based on the District Court’s silence as to how DC-22-009C and DC-2018-111 were to run, and the Department is required to

follow the facial judgement provided by a Court. Therefore, the silence of how the two aforementioned sentences were to run yielded the consecutive result based on the plain reading of §46-18-401(4), MCA, because “[b]y default, separate sentences for two or more offenses run consecutively unless the court otherwise orders.” *State v Youpee*, 2018 MT 102, ¶ 6. However, DOC is also cognizant of this Court’s rationale that “[u]nrelated sentences will merge if a sentencing court orders that one run concurrently with the other.” *State v. Spagnolo*, 2022 MT 228, ¶ 14 (citing *State v. Youpee*, 2018 MT 102, ¶ 8, 391 Mont. 246, 416 P.3d 1050 (citing *State v. Tracy*, 2005 MT 128, ¶ 27, 327 Mont. 220, 113 P.3d 297 (superseded by statute on other grounds))).

The language of the revocation judgment of DC-12-06 on February 15, 2022, noted “...this sentence shall run concurrent to the Defendant’s sentence in Powell County DC-2018-111.” *Exhibit D* at p.3. Also, the DC-2018-111 judgment expressed that sentence to run “concurrently with the Defendant’s sentences in ...Powell County DC-12-06. *Exhibit B* at p.4. Therefore, it appears both DC-2018-111 and DC-12-06 were effectively merged by said judgment. The language of the Amended Sentencing Order in DC-2022-009C issued on June 15, 2022, ran that sentence concurrent to DC-12-06. Although silent with regard to DC-2018-111, this appears to require DC-2022-09C to run concurrent to both DC-12-06 and DC-2018-111, given they were effectively merged. As a result, it appears Petitioner’s

sentence in DC-22-009C should have commenced on March 31, 2022, rather than on December 22, 2023.

The facts of this case are similar to *Rowe v. Bragg*, 2023 Mont. LEXIS 234; 411 Mont. 391; OP 22-0751. In that cause, Petitioner Rowe was sentenced on a revocation of his deferred sentence of six years with three suspended, along with being sentenced for a separate conviction of criminal possession of dangerous drugs and received a five-year sentence with two years suspended. The District Court ordered those sentences to run concurrently. Subsequently, Rowe was sentenced on a separate case in Yellowstone County for three years to the DOC and the District Court specifically stated this Yellowstone sentence was to run concurrently to the possession sentence; however, the District Court was silent as to the revocation sentence. In a fashion similar to the current Petition, DOC calculated Rowe's time with the Yellowstone County case as being consecutive to his previous sentence upon revocation based on the silence of the judgment and applicability of §46-18-401(4), MCA requiring "[s]eparate sentences for two or more offenses must run consecutively unless the court otherwise orders." Ultimately this Court dismissed Rowe's Petition.

However, on March 28, 2023, this Court issued an opinion which addressed a Petition for Rehearing of the previous *Rowe* decision, filed by the Appellate Defender Division of the Office of the Public Defender. *See Rowe v. Bragg*, 2023

Mont. LEXIS 346; OP 22-0751. “In the previous Order, this Court concluded that the DOC had calculated Rowe's sentences correctly according to the written judgments. This conclusion was in error.” *Id.* Upon review of the Petition for Rehearing, this Court held “Rowe's sentences could not have been calculated correctly because Rowe's most recent sentencing Judgment was not clear. Rowe's three sentences should all run concurrently as put forth in the Petition for Rehearing...” *Id.* As this Court has stated, “[t]he Records Department at the Montana State Prison calculates sentences based upon what is stated in the written judgment.” *Id.* This Court identified the language necessary to amend the underlying judgment to reflect the concurrent nature of Rowe’s sentences and remanded to the District Court to impose the new judgment. *Id.*

As Respondents at DOC reiterate, the written judgments before it in Petitioner’s matter are silent as to how DC-22-009C and DC-2018-111 are to run. The Records Department calculated Petitioner’s sentence based on what was stated in the written judgment. Pursuant to *Rowe* this Court should correct the underlying judgment in Cause No. DC-22-009C to reflect the concurrent nature of Petitioner’s sentence.

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CONCLUSION

For the reasons previously stated, DOC concedes Petitioner should be entitled to Habeas relief and that the Amended Judgment in DC-22-009C once again be amended to reflect the concurrent and merged nature of Petitioner's sentences in DC-12-06 and DC-2018-111. This amendment would result in Petitioner's immediate discharge from custody and he would be placed on probation for the remainder of his term in DC-22-009C, consistent with the terms of said judgment, and with a probation discharge date of November 4, 2026.

Respectfully submitted this the 12th day of December, 2024.

/s/ Benjamin Rowe

BENJAMIN ROWE
Legal Counsel
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CERTIFICATE OF COMPLIANCE

Pursuant to Rules 11 and 14, Mont. R. App. P., I hereby certify that this RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS is prepared with a proportionately spaced Times New Roman text typeface of 14 points; is double spaced except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word for Windows is 1,475 words, excluding certificate of service, appendix, and certificate of compliance.

/s/ Benjamin Rowe
Benjamin Rowe

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APPENDIX

Judgment, DC-12-06, July 3, 2012.....Ex. A

Judgment, DC-2018-111, May 30, 2019.....Ex. B

Judgment, DC-15-318, August 28, 2015.....Ex. C

Revocation Judgment, DC-12-06, February 15, 2022.....Ex. D

Sentencing Order, DC-22-009C, March 31, 2022.....Ex. E

Amended Sentencing Order, DC-22-009C, June 15, 2022.....Ex. F

DOC Jail Calculation Sheet, July 6, 2023.....Ex. G

CERTIFICATE OF SERVICE

I, Benjamin Rowe, hereby certify that I have served true and accurate copies of the foregoing Response – Petition for Writ of Habeas Corpus to the following on, December 12, 2024.

Colter Alexander McGuigan
DOC # 3009799
Montana State Prison
700 Conley Lake Road
Deer Lodge, Montana 59722
Service Method: Conventional

CERTIFICATE OF SERVICE

I, Robert Benjamin Rowe, hereby certify that I have served true and accurate copies of the foregoing Response/Objection - Response to Motion to the following on 12-12-2024:

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Electronically Signed By: Robert Benjamin Rowe
Dated: 12-12-2024