

FILED

12/12/2024

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: OP 24-0720

Dawn J Bailey
28th 2079994
Cascadia County Detention Center
3800 Wm N Frontage Rd
Great Falls mt 59404

IN The Supreme Court of The State of Montana

NO.

Dawn James Bailey

✓

Jesse Slaughter

FILED

DEC 12 2024

Bowen Greenwood
Clerk of Supreme Court
State of Montana

I, Dawn Bailey, 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:

my sentence is illegal because the court did not have statutory authority to impose a consecutive sentence upon revocation. I argue that the sentence imposed upon revocation was not within statutory parameters as set forth by 46-18-203.

on February 16, 2018 the Cascade County District Court sentenced me for Felony Escape (DC 18-022) to a 4 year DOC term with 4 years suspended or run consecutive. (I was later granted 153 days credit for time served.) On April 1, 2020 the district court revoked my 4 year sentence and imposed a 4 year term with 3 suspended credit for 160 days time served. The court stated it was to run consecutively.

my argument is the court did not have statutory authority to impose a consecutive sentence upon revocation, my revocation sentence is not within statutory parameters as set forth in 46-18-203 MCA, the state vs Wolfblack this court states "a sentencing provision is illegal when the sentencing provision is not authorized by statute, or that otherwise

exceeds the statutory authorized range for that type of sentence or condition. Here, like in *St. v. Wolfblack* the illegal sentence provision was that the revocation sentence was run consecutively. "Accordingly we modify the judgment and sentence by striking the provision ordering that it run consecutively. Wolfblack thus began serving his sentence the day it was imposed." In the same ruling this court goes on to say "The revocation court did not change the sentence to make it consecutive" because the sentence was already required to run consecutive as a matter of law. The revocation court's reference to the consecutive sentences was thus harmless. because it merely reflected the law governing the sentences under 46-18-401 nor was the revocation an illegal increased sentence." The court's ruling goes on to explain now a revocation court isn't authorized to impose a new consecutive sentence likewise not authorized to change a sentence that was made to run consecutively as a matter of law. That authority lies only with the original sentencing court. Lastly it says "The court's ruling refuses consecutive sentences be switched to concurrent sentences upon revocation, in contradiction to 46-18-46(b). While 46-18-401, MCA, governs the designation of a sentence to run concurrently or consecutively it is not within the particulars of the revocation statute and is not an issue that can be addressed during a revocation proceeding because the revocation sentence is expressly governed by 46-18-203 and not 46-18-401.

As a relief, I request the following
[X] reduction of my sentence or that this court remand this cause to the District Court directing the court to resentence me.
[X] that the Department of Corrections recalculate my sentence as this court directs
[X] Also I request the this court reverse and vacate the District Court's judgment modifying the judgment and sentence by striking the provision that it run consecutively. Thus starting my 4 year sentence on April 1, 2020 less 166 days credit for time served

verification

State of Montana)

(County of Cascade) ss.

I believe That 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 9 day of December, 2024.

Dawn Bailey

Dawn Bailey

Certificate of mailing (service)

I hereby Certify That, on December 9, 2024
I have mailed The petition for writ of Habeas Corpus, as
noted by check mark to the following attorney by placing a
copy in the United States mail, postage pre paid.

✓ State of Montana
Office of The Attorney General
PO Box 201401

✓ Cascade County Attorney
Joshua Racki
121 4th ST N #2A
Great Falls MT 59401

Dawn Bailey
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