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Juan Anastasio Rodriguez  
700 conley Lake Rd.  
Deer Lodge, MT 59722  
Petitioner Pro Se

DEC 16 2024

Bowen Greenwood  
Clerk of Supreme Court  
State of Montana

12/16/2024

Bowen Greenwood  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

Case Number: OP 24-0731

SUPREME COURT OF THE STATE OF MONTANA

JUAN ANASTASIO RODRIGUEZ,  
Petitioner,

v.

JAMES SALMONSEN, Warder, MSP,  
Respondent.

Cause No. OP 24-0731

PETITION FOR WRIT

OF

HABEAS CORPUS

COMES NOW, I, Juan Anastasio Rodriguez, Petitioner, Pro Se, and petitions this Honorable Court to GRANT this Writ of Habeas corpus pursuant to MCA 46-22-101.

Petitioner is restrained of liberty at the Montana State Prison (MSP) located in Deer Lodge, MT., in the custody of Warden James Salmonsens, Under an unlawful restraint pursuant to MCA 46-22-201(1)(A) through (C).

Petitioner hereby commands Warden James Salmonsens to have him in front of an Honorable Judge of the Supreme Court of the State of Montana, in Helena, MT., for this Writ of Habeas Corpus on or before the 1st of January, 2025, by 3:00 p.m. M.S.T.

INTRODUCTION

Rodriguez is challenging his facially illegal revocation sentence to the Montana Department of Corrections for 10-years, with 5-years suspended, on May 19, 2015, in Cause No. CDC-09-420, in the Montana Eighth Judicial District Court, Cascade County, Great Falls, Montana, Judge Kenneth R. Neill.

Absent the illegal sentence enhancement, with the length of deferred sentence properly calculated to 3-years, and 342 days of credit for pretrial incarceration properly applied, Rodriguez's deferred sentence expired over 26 months before the State filed its revocation petition. The State was, therefore, without jurisdiction and statutory authority to file a petition to revoke a non-existent sentence, MCA § 46-18-203(2)

The District Court lacked jurisdiction and statutory authority to revoke Rodriguez's deferred sentence and to resentence him to 10-years, with 5-years suspended, Montana Department of Corrections commitment because deferred sentence expired before the State filed a petition to revoke. The revocation sentence was and is, therefore, facially illegal.

Rodriguez requests that this Honorable Court GRANT this Writ of Habeas Corpus, Vacate the May 19, 2015, revocation sentence, dismiss this matter with prejudice, refund all restitution and administrative fee payment, expunge this criminal case from his record, and any other relief the Court deems equitable and just.

### STATEMENT OF FACTS

The procedural background of the case is extensive. In the interest of judicial economy, only facts relevant to the instant proceedings will be examined.

In November 2009, Rodriguez was charged with one count of burglary, in violation of MCA § 45-6-204 (2009), and one count of criminal mischief, in violation of MCA § 45-6-101 (2009). Cause No. CDG-09-420, in the Montana Eighth Judicial District Court, Cascade County, Great Falls, Montana.

On June 2, 2010, an amended information was filed adding one count of tampering with witnesses and informants, in violation of MCA § 45-2-302 (2009), and MCA § 45-7-207 (2009).

On August 31, 2010, the change of plea hearing was held.

On October 19, 2010, the sentencing hearing was held. At sentencing evidence was presented, (Exhibits, "A" and "B"), and Judge Neill acknowledged on the record, that the medical bills which made up the victim's basis for restitution were covered and paid for by Medicare in their entirety, Medicare did not ask for restitution, and that VanDyken, (the victim), had not sustained a pecuniary loss and was not entitled to restitution. (See Exhibit "C" Transcript 10/19/2010, pg4).

Judge Neill then proceeded to sentence Rodriguez to a 6-year deferred sentence, and stated "So, the Court, on Count I, I am deferring imposition of sentence for a period of six years, and on Count II, is a deferred sentence for a deferred imposition of sentence for six years. Those Counts running concurrently, and the length of the deferred sentence is because of the amount of restitution that needs to be paid is required, and you are given the full length of time to take care of this obligation." (See Exhibit "C" Transcript 10/19/2010, pg 13).

Judge Neil then Ordered Rodriguez to pay victim restitution to VanDyken in the amount of \$ 92,564.58, eventhough he had previously acknowledged that no restitution was owed to VanDyken just a few minutes prior. (See Exhibit "C" Transcripts 10/19/2010, pg 15, and Exhibit "D").

In his October 29, 2010, Sentencing Order, Judge Neill acknowledged Rodriguez's pretrial incarceration from November 11, 2009, to October 19, 2010, for 342 days. However, Judge Neill did not give Rodriguez credit for time served towards the deferred sentence. Judge Neill would only allow Rodriguez credit for the 342 days credit time served IF the deferred sentence was revoked. (See Exhibit "E," pg 2).

On January 14, 2015, the State filed its petition to revoke Rodriguez's deferred imposition of sentence.

On May 19, 2015, Rodriguez's deferred sentence was revoked by Judge Neill, and he was sentenced to 10-years, with 5-years suspended, to the Montana Department of Corrections, with 125 days credit time served from January 14, 2015, to May 19, 2015. Judge

Neill also Ordered that "The conditions of the original sentencing order dated October 29, 2010, are re-imposed," which included the \$ 92,564.58 in victim restitution ordered to be paid to VanDyken.

In August of 2015, Judge Neill retired and Judge John A. Kutzman took the bench.

On July 11, 2020, Rodriguez Pro Se filed his Motion for Credit Time Served in the amount of 342 days, which he served from November 11, 2009, to October 19, 2010.

On February 25, 2021, Judge Kutzman entered his Order granting Rodriguez's motion for 342 days credit time served. (See Exhibit "G").

On April 3, 2024, Rodriguez Pro Se filed his Motion for Waiver/Discharge of All Restitution and Administrative Fee's, Request for Hearing, and Brief in Support.

On August 19, 2024, Public Defender Weston Connally entered is appearance on behalf of Rodriguez in the matter.

On October 24, 2024, Judge Kuzman held a Restitution Hearing to address Rodriguez's restitution obligation. At this hearing Defense counsel Connally again presented the Court with proof and argument from the record that the medical bills which made up the victim's basis for restitution were covered and paid for by Medicare in their entirety, Medicare did not ask for restitution, and that VanDyken had not sustained a pecuniary loss and was never entitled to an order awarding restitution in the first place. Towards the end of the hearing Judge Kutzman asked Defense counsel Connally to submit a proposed order and supporting documentation granting Rodriguez's motion.

On October 25, 2024, Defense counsel Connally submitted the proposed order granting Rodriguez's Motion (See Exhibit "H").

On November 1, 2024, Judge Kutzman issued his Order Modifying Restitution. (See Exhibit "I").

To date Rodriguez has paid \$ 11,066.10 in wrongfully and illegally imposed victim restitution and administrative fee's. (See Exhibit "J").

Rodriguez's revocation sentence is not scheduled to expire until October 17, 2070. (See Exhibit "K").

#### STANDARD OF REVIEW

~~"When the issue presented is whether the district court had authority to take a specific action, the question is one of law and our review is de novo."~~ State v. Tippetts, 2022 MT 81, ¶ 9, 408 Mont. 249, 509 P.3d 1 (citing State v. Graves, 2015 MT 262, ¶ 12, 381 Mont. 37, 355 P.3d 769). "[W]e generally refuse to review an issue to which a party failed to object at the trial Court level, unless a criminal sentence is alleged to be illegal or in excess of statutory mandates." Tippetts, ¶ 9 (quoting State v. Kotwicki, 2007 MT 17, ¶ 8, 335 Mont. 344, 151 P.3d 892.); State v. Leniham, 184 Mont. at 343, 602 P.2d at 1000.

A criminal sentence is reviewed for legality. *State v. Patterson*, 2016 MT 289, ¶ 9, 385 Mont. 334, P.3d 92.

2016 MT 289, 385 Mont. 334, 384 P.3d 92. "we review the imposition of criminal sentences to determine if they are statutorily authorized." *Patterson*, ¶ 9 (citing omitted) Montana's statutes for habeas corpus relief provides that a court may inquire into the cause or restraint or incarceration and, if illegal, correct the wrongful imprisonment or restraint. Section 46-22-101(1) MCA, Incarceration of an individual pursuant to an invalid sentence represents a grievous wrong and miscarriage of justice warranting habeas corpus relief. *Lott v. State*, 2006 MT 279, ¶ 22, 334 Mont. 270, 150 P.3d 337.

The very purpose of habeas corpus is to remedy illegal imprisonment, including remedying a sentence which exceeds statutory or constitutional limits. *Lott v. State*, 2006 MT 279, ¶ 20, 334 Mont. 270, 150 P.3d 337. Confinement beyond the expiration of a sentence is an unlawful imprisonment or restraint, and habeas corpus actions are a proper means of challenging the proper crediting of time served. *Killam v. Salmonsens*, 2021 MT 196, ¶ 12, 405 Mont. 143, 492 P.3d 512.

Procedural bars such as time bars are not applicable to facially invalid sentences. See *Lott v. State*, 2006 MT 279, ¶ 22, 334 Mont. 270, 150 P.3d 337.

#### ARGUMENT

Rodriguez asserts that his revocation sentence is facially illegal. Absent the illegal sentence enhancement, with the length of his deferred sentence accurately calculated to 3-years pursuant to MCA § 46-18-201(1)(a)(i), and 342 days of pretrial incarceration properly credited at sentencing on October 19, 2010, he legally discharged his sentence on November 10, 2012. The State was, therefore, without jurisdiction and statutory authority to file a petition to revoke a non-existent sentence, MCA § 46-18-203(2). On January 14, 2015, because Rodriguez's deferred sentence expired over 26 months before the State filed its revocation petition. Thus, the District Court on May 19, 2015, lacked jurisdiction and statutory authority to revoke Rodriguez's deferred sentence and to resentence him to 10-years, with 5-years suspended, Montana Department of Corrections commitment because the deferred sentence expired before the State filed its petition to revoke. The revocation sentence was and is, therefore, facially illegal.

"It is well established that a district court's authority to impose sentences in criminal cases is defined and constrained by statute." *State v. Beam*, 2020 MT, 156, ¶ 9, 400 Mont. 278, 465 P.3d 1178 (citing *State v. Wilson*, 279 Mont. 34, 37, 926 P.2d 712, 714 (1996)). "A district court has no power to impose a sentence in the absence of specific statutory authority." *Beam*, ¶ 9, (quoting *State v. Hatfield*, 256 Mont. 340, 346, 846 P.2d 1025, 1029 (1993)).

The Courts imposition of restitution is subject to the detailed procedures and qualification found in MCA § 46-18-241 to 249, State v. Pritchett, 200 MT 261, ¶ 7. District Courts are not authorized to impose a sentence of restitution until all these additional statutory requirements are satisfied. See State v. Hilgers, 1999 284, P8, 279 Mont. 23, P8, 989 P.2d 866, P8.

Particularly relevant to the case at hand is the provision designed to ensure that restitution orders are based on documented evidence of the victim's loss. Section 46-18-242 (1)(b) provides; Documentation of the victim's pecuniary loss....

Judge Neill completely disregarded and deliberately failed to comply with Montana's statutes governing the imposition of victim restitution MCA § 46-18-241 to 249, because there is NO MCA statute which allows a district court judge to impose a sentence of restitution on a defendant to compensate a victim who did NOT sustain a pecuniary loss. In the absence of a statute specifically authorizing him to do so ordering a sentence of restitution to compensate a victim who did NOT sustain a pecuniary loss is facially illegal

"A condition is illegal when there is not statutory authority to impose it, where the condition exceeds the limits of the relevant sentencing statute, or where the court fails to adhere to the affirmative mandates of the applicable sentencing statutes." State v. Hotchkiss, 2020 MT 269, ¶ 11, 402 Mont. 1, 474 P.3d 1273.

Judge Neill, solely and specifically, illegally enhanced Rodriguez's deferred sentence because he based the length of Rodriguez's 6-year deferred sentence on the amount of restitution that was wrongfully and illegally imposed and how much time it would take to pay it. Absent the wrongful and illegal imposition of victim restitution by Judge Neill, the trial court exceeded its jurisdiction and statutory authority by extending the total time of deferment beyond the 3-year limitation provided by § 46-18-201 (1)(a)(i). Thus, illegally enhancing Rodriguez's deferred sentence to a length of 6-years.

Eventhough the trial courts 6-year deferral ran afoul of the 3-year limit set forth in MCA § 46-18-201(1)(a)(i), the trial courts decision did not render the entire sentence void, and only the final three years of the deferred sentence exceeded the statutory authority, and the first three years of the deferred sentence remained valid and in full force. (See DeShields v. State, 2006 MT 58, 331 Mont. 329, 132 P.3d 540, 2006 Mont. LEXIS 64 (Mont. 2006).

Rodriguez was, therefore legally, only required to complete the first 3-years of the deferred sentence.

"A deferred sentence, just like a suspended sentence constitutes a 'judgment of imprisonment' within the meaning of the statute which requires the crediting of time served to the deferred sentence." (See State v. Ellsworth, 2023 MT 8, ¶ 11).

When a sentence of a deferred imposition of sentence is entered, the time served is applied to reduce the length of the deferred sentence.

In situations of a deferred imposition of sentence, credit for time served is applied to reduce time remaining on the deferral period in an identical manner as to any other sentence. "A person incarcerated on a bailable offense against whom a judgment of imprisonment is rendered must be allowed credit for each day of incarceration prior to or after conviction, except that the time allowed as credit may not exceed the term of the prison sentence rendered." Section MCA 46-18-403(1), MCA.

Thus, Rodriguez was and is legally entitled to 342 days credit for time served to be applied as of sentencing on October 19, 2010, to the deferred sentence.

Absent the illegal sentence enhancement, with the deferred sentence properly calculated to 3-years, and 342 days of pretrial incarceration credit properly applied at sentencing as of October 19, 2010, Rodriguez completed the first 3-years of the deferred sentence on November 10, 2012, and his sentence legally expired, was properly discharged, and dismissed as of that date, which was over 26 months before the State filed its revocation petition on January 14, 2015.

The State lacked jurisdiction and statutory authority to file its petition to revoke deferred sentence on January 14, 2015, because "the petition for a revocation must be filed with the sentencing court either before the period of suspension or deferral has begun or during the period of suspension or deferral but not after the period has expired." Section § 46-18-203(2) MCA. (See State v. Ellsworth, 2023 MT 8, ¶ 11).

Thus, the District Court on May 19, 2015, lacked jurisdiction and statutory authority to revoke Rodriguez's deferred sentence and to resentence him to a 10-year, with 5-years suspended, Montana Department of Corrections commitment because his deferred sentence expired before the state filed its petition to revoke, MCA § 46-18-203(2). The revocation sentence was and still is, therefore, facially illegal. (See State v. Ellsworth, 23 MT 8, ¶ 13).

Judge Neill violated Rodriguez's rights under the Fourth, Fifth, Eighth and Fourteenth Amendments to the U.S. Constitution, and under Art. II, § 10, 11, 17, and 22 of the Montana Constitution, when he wrongfully and illegally imposed and ordered Rodriguez to pay restitution to a victim who did not sustain a pecuniary loss, and illegally enhanced Rodriguez's deferred sentence to a 6-year deferred sentence, with the length of the deferred sentence wrongfully and illegally based on the wrongfully and illegally imposed victim restitution, without the jurisdiction and statutory authority to do so on October 19, 2010.

Thus, for over 26 months from November 10, 2012, to December 23, 2014, Rodriguez was wrongfully and illegally restrained of liberty, because he was serving the facially invalid portion of the deferred sentence, under the custody, control, and supervision of the Montana Department of Corrections, Probation and Parol Division, Great Falls, Montana, office.



"Confinement beyond the expiration of a sentence is an unlawful imprisonment or restraint..." Killam v. Salmonsens, 2021 MT 196, ¶ 12, 405 Mont. 143, 492 P.3d 512.

The State of Montana violated Rodriguez's rights under the Fourth, Fifth, Eighth, and Fourteenth Amendments to the U.S. Constitution, and under Art. II, § 10, 11, 17, and 22 of the Montana Constitution when it filed its petition to revoke Rodriguez's deferred imposition of sentence over 26 months after the sentence legally expired, was discharged, and dismissed, without jurisdiction and statutory authority to do so on January 14, 2015.

Judge Neill, again, violated Rodriguez's rights under the Fourth, Fifth, Eighth, and Fourteenth Amendments to the U.S. Constitution, and under Art. II, § 10, 11, 17, and 22 of the Montana Constitution when he revoked Rodriguez's non-existent deferred sentence and resented him to 10-years, with 5-years suspended to the Montana Department of Corrections, and re-imposing the illegal restitution to a victim who did not sustain a pecuniary loss on May 19, 2015, without jurisdiction and statutory authority to do so, because deferred sentence expired before the state filed a petition to revoke.

#### CONCLUSION

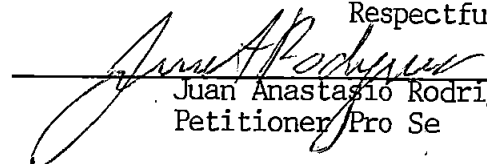
To uphold the disposition on a revocation petition that would have been untimely had Rodriguez's deferred sentence not been illegally enhanced, with the length of the deferred sentence properly calculated, and time served properly applied, would be a grievous wrong and miscarriage of justice. (See State v. Coyote, 2023 MT 243, ¶ 10).

#### PRAYER FOR RELIEF

THEREFORE, with GOOD cause showing, Rodriguez prays that this Honorable Court GRANT this Writ of Habeas Corpus, Vacate the May 19, 2015, revocation sentence, dismiss this matter with prejudice, refund all restitution and administrative fee payment, expunge this criminal case from his record, and any other relief the Court deems equitable and just.

Dated this 11<sup>th</sup> day of December, 2024.

Respectfully,

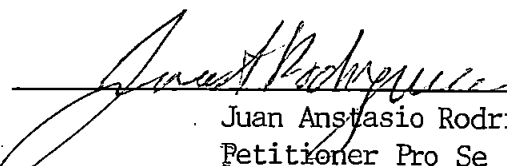
  
Juan Anastasio Rodriguez  
Petitioner Pro Se

#### VERIFICATION

I, Juan Anastasio Rodriguez, Petitioner, Pro Se, declare under penalty of perjury that the foregoing stated in this writ of habeas corpus is accurate, true, and correct to the best of my knowledge and belief pursuant to MCA § 45-7-201 and MCA § 45-7-202.

Executed at Deer Lodge, MT,

Dated this 11<sup>th</sup> day of December, 2024.

  
Juan Anastasio Rodriguez  
Petitioner Pro Se

CERTIFICATE OF SERVICE

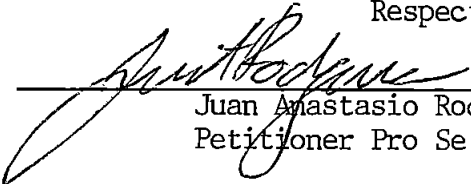
I, Juan Anastasio Rodriguez, Petitioner, Pro Se, hereby certify that I have served true and accurate copies of the foregoing documents:

- Petition for Writ of Habeas Corpus
- Exhibits: A, B, C, D, E, F, G, H, I, AND J.

To the following party on this 11<sup>th</sup> day of December, 2024, through U.S. first class mail, postage pre-paid.

Montana Attorney General's Office  
P.O. Box 201401  
Helena, MT 59620

Respectfully,

  
\_\_\_\_\_  
Juan Anastasio Rodriguez  
Petitioner Pro Se