

Christopher Ian Toulouse
Inmate Name

 ORIGINAL

FILED

01/24/2025

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: OP 25-0062

AO #42741

Inmate ID or AO#

Montana State Prison
Facility of Incarceration

700 Conley Lake Road
Address of Facility

Deer Lodge
City

MT
State

59722
Zip

FILED

JAN 24 2025

Bowen Greenwood
Clerk of Supreme Court
State of Montana

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. OP 25-0062

[The Clerk of Court will assign a number]

Christopher Ian Toulouse
NAME

PETITIONER,

v.

Jim Salmonsen
NAME OF WARDEN/FACILITY ADMINISTRATOR,

RESPONDENT.

Petition for a Writ
of
Habeas Corpus

I, Christopher Ian Toulouse, 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 *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.

See attached.

A. The record shows that Mr. Toulouse's convictions for felony stalking and intimidation violated his double jeopardy protections under the United States and Montana Constitutions and § 46-11-410, MCA. The Fifth Amendment to the United States Constitution and Article II, Section 25 of the Montana Constitution prohibit multiple punishment for the same offense. Article II, Section 25 specifically provides that "no person shall be again put in jeopardy for the same offense previously tried in any jurisdiction." This clause was adopted with the intent to provide more protection under the state provision than under the then-existing interpretations of the double jeopardy clause of the Fifth Amendment. Therefore, regarding multiple punishments, this Court has held that the double jeopardy prohibition contained in the Montana Constitution provides greater protection against multiple punishments for the same offense than contained in the Fifth Amendment. Further, Montana's statutes reflect a legislative intent to accord Montana's citizens greater protection against being twice placed in jeopardy than is available under the federal constitutional provision. Section 46-11-410, MCA, provides that: 46-11-410. Multiple charges. (1) When the same transaction may establish the commission of more than one offense, a person charged with the conduct may be prosecuted for each offense. (2) A defendant may not, however, be convicted of more than one offense if: (a) one offense is included in the other; (b) one offense consists only of a conspiracy or other form of preparation to commit the other; (c) inconsistent findings of fact are

required to establish the commission of the offenses; (d) the offenses differ only in that one is defined to prohibit a specific instance of the conduct; or (e) the offense is defined to prohibit a continuing course of conduct and the defendant's course of conduct was interrupted, unless the law provides that the specific periods of the conduct constitute separate offenses. A person may not be convicted of more than one offense if any of five statutory conditions are satisfied.

- B. Stalking is included in the offense of intimidation. One of the conditions that preclude multiple convictions is established when "one offense is included in the other." § 46-11-410(2)(a), MCA. The definition of "included offense" is found in § 46-1-202 MCA: (9) "Included offense" means an offense that: (a) is established by proof of the same or less than all the facts required to establish the commission of the offense charged; (b) consists of an attempt to commit the offense charged or to commit an offense otherwise included in the offense charged; or (c) differs from the offense charged only in the respect that a less serious injury or risk to the same person, property, or public interest or a lesser kind of culpability suffices to establish its commission. When this definition is read in conjunction with § 46-11-410(2)(a), MCA, Mr. Toulouse should not have been convicted of both offenses because intimidation is essentially established by proof of the same or less than all the facts of stalking. Mr. Toulouse did not object on double jeopardy grounds to being charged with both intimidation and stalking. Nonetheless, this Court may review these issues, based on the

Fundamental nature of the constitutional right at stake. In *State v. Newman*, 2005 MT 348, ¶ 18, 330 Mont. 160, 127 P. 3d 374, this Court explained it will review claimed errors that implicate a criminal defendant's fundamental constitutional rights under the plain error rule where failing to do so may result in a manifest miscarriage of justice, leave the question of the fundamental fairness of the proceedings unsettled, or compromise the integrity of the judicial process. This standard is satisfied here. The constitutional guarantee against double jeopardy is a fundamental constitutional right. See, *Wladsworth v. State*, 275 Mont. 287, 299, 911 P.2d 1165, 1172 (1996) ("a right may be 'fundamental' under Montana's constitution if the right is either found in the Declaration of Rights or is a right 'without which other constitutionally guaranteed rights would have little meaning.'") Indeed, the guarantee against double jeopardy is so fundamental that a violation of this right may be reviewed despite entry of a guilty plea. This Court in *Whitehorn* reiterated the importance of the double jeopardy protection in Montana. *Whitehorn*, ¶ 39. "Whether multiple punishments have been imposed in violation of a defendant's fundamental right to be free from double jeopardy brings into question the fundamental fairness of the proceedings and the integrity of the judicial process." *Whitehorn*, ¶ 39 quoting *State v. Weitzel*, 2000 MT 86, ¶ 43, 299 Mont. 192, 998 P. 2d 1154 (citing *State v. Brown*, 1999 MT 31, 293 Mont. 268, 975 P. 2d 321 (plain error review invoked to address unpreserved claim of double jeopardy). The stalking charge was essentially a lesser included offense of

the intimidation. The stalking occurred within the same time frame as the intimidation. The court sentenced Mr. Toulouse to consecutive sentences for both convictions, thus implicating Mr. Toulouse's fundamental constitutional right against double jeopardy. Multiple punishment, in contravention of this right, would result in a manifest miscarriage of justice, render the proceedings fundamentally unfair, and compromise the integrity of the process. Therefore, Mr. Toulouse argues his stalking conviction should be reversed, and the matter remanded for a new sentencing order.

[illegible]

[Use extra pages if necessary]

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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:

VERIFICATION

STATE OF MONTANA)
: ss.
County of Powell)

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 8th day of January, 2025.


Inmate Signature

Christopher Ian Toulouse
Printed Name

CERTIFICATE OF MAILING (SERVICE)

I hereby certify that on January 8th, 2025, 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]

Christopher Ian Toulouse
[Print name]