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IN THE SUPREME COURT OF THE STATE OF MONTANA

No. OP 24-0698

HENRY MARTYN HALL, IV

Petitioner,

v.

JEREMIAH PETERSEN, MISSOULA COUNTY
SHERIFF, BRIAN M. GOOTKIN, DIRECTOR
DEPT. OF CORRECTIONS

Respondents.

REPLY TO REPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

In compliance with the Court's order, OP-24-0698, issued on January 13, 2025, Petitioner Henry Martyn Hall, IV (hereafter "Hall") replies to the Montana Department of Corrections' (hereafter DOC) Response To Petition For Writ of Habeas Corpus, filed by Henry Martyn Hall, via Counsel.

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REPLY

Hall received a suspended sentence and was ordered to complete treatment within the year following sentencing. After sentencing he was remanded. He then spent 82 days in the Missoula County Detention Center while awaiting placement for treatment. There was no set time as to how long he could be incarcerated at the detention center. Given the lengthy time of incarceration without placement, he filed his Petition for Writ of Habeas Corpus.

I. Mootness

In its response, the DOC asserts that the issue is now moot because Hall was transferred to treatment. However, the DOC concedes that “the exception to mootness for those actions that are capable of repetition, yet evading review, usually is applied to situations involving governmental action where it is feared that the challenged action will be repeated.” *Wier v. Lincoln County Sheriff's Dep't*, 278 Mont. 473, 476 (quoting *Butte-Silver Bow Local Gov't v. Olsen*, 228 Mont. 77; 743 P.2d at 567). *Respondent's Response*, p. 4.

Contrary to the DOC's assertions, the present situation produced by the DOC's actions, is indeed capable of repetition for Hall and other defendants sentenced under Mont. Code Ann. §46-18-201(4)(i), and the DOC has not clarified their policy regarding the incarceration of defendants sentenced under this statute.

Therefore, this situation and the DOC's actions is not moot, but should be reviewed by the court.

As part of the review, the Court should address how much jail time can an inmate serve on a suspended sentence at the DOC's discretion? It appears there is no limit because there is no stated DOC policy.

II. Ripeness

Hall was held in detention for 82 days before he was transported to the Gallatin County Re-Entry Program over two days, and when he got to the program, was on black-out for 7 days, as per their policy. While there, he must and has abided by the conditions of his probation and the rules of the correctional facility. He is now engaged in treatment.

During this time, Hall is not getting credit for time served by the DOC. Hall believes he should get credit for every day, and the credit should come as he completes each day.

The DOC argues that Hall gets no credit for time served because "There is no "custodial sentence" to "apply" any "active time" credits towards, only the condition that Petitioner is to be placed with DOC for up to one year for treatment. *Respondent's Response*, p. 7. Despite there not being a custodial sentence, Hall has been incarcerated since he was sentenced.

In fact, this sentence is the equivalent of a suspended sentence that is front-loaded and embedded with an active sentence that could present and resolve differently across different courts.

Even though the DOC argues that the issue is not ripe because Hall is serving a suspended sentence so there is no custodial sentence to apply credit for time served to, they concede “Ripeness can be viewed as a time dimension of standing, asking ‘whether an injury that has not yet happened is sufficiently likely to happen or, instead, is too contingent or remote to support present adjudication.’” 350 Mont. v. State, 2023 MT 87 ¶ 22 (quoting *Reichert v. State*, 2012 MT 111 ¶ 55). *Respondent’s Response*. p. 7.

However, the issue is ripe because the injury is currently happening: Hall is in a correctional facility, but not being given credit for time he is there. The injury is present and active, and is increasing with each day.

The DOC has stated contradictory positions about the possibilities for credit for time served in this case. Their personnel stated to counsel *Exhibit 5*, ¶ 9, that Hall would not get credit for the time he served in the Re-Entry Program. But, in their Response to the Petition in this matter, it was stated Hall “could” be given credit. *Respondent’s Response*. p. 8, but they do not say he would, nor do they state what their policy is. Those convicted under the statute therefore cannot know if the time they serve will be credited against their sentence.

Respectfully submitted this 27th day of January, 2025.

/s/ Robin Ammons
Robin Ammons
Attorney for Petitioner

CERTIFICATE OF SERVICE

I, Robin Ammons, hereby certify that I have served true and accurate copies of the foregoing Petition for a Writ of Habeas Corpus to the following on January 27th, 2025:

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/s/ Robin Ammons
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CERTIFICATE OF COMPLIANCE

Pursuant to Rules 11 and 14(7) of the Montana Rules of Appellate Procedure, I certify this Petition is double spaced (except for point headings, footnotes and quotes), printed with proportionately spaced Times New Roman Typeface, 14 point, and contains not more than 1989 words as calculated by MSWord excluding any table of contents, table of citations, certificate of service, certificate of compliance, and appendix or exhibits.

Dated January 27th, 2025.

/s/ Robin Ammons

CERTIFICATE OF SERVICE

I, Robin Ammons, hereby certify that I have served true and accurate copies of the foregoing Brief - Other to the following on 01-27-2025:

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