

FILED

02/14/2025

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: OP 25-0132



ORIGINAL

Daniel Jay Dodson
AO# 300 7167
Montana State Prison
700 Conley Lake Road
Deer Lodge, MT 59722

FILED

FEB 14 2025

Bowen Greenwood
Clerk of Supreme Court
State of Montana

Petitioner Pro Se

- IN THE -

*** MONTANA STATE SUPREME COURT ***
*** ** *

Daniel Jay Dodson,
Petitioner

Cause No.: OP 25-0132

- vs -

Jim Salmonsen,
Warden of Montana
State Prison,
Respondent

Petition
for Writ of
Habeas Corpus

COMES NOW, the Petitioner,
Mr. Daniel Jay Dodson, and brings before
the Supreme Court for the State of
Montana, his Petition for a Writ of Habeas
Corpus delivering him from his Unconstitutional,
and therefore illegal conditions of confinement,
conviction, and sentence.

The Petitioner brings his request under the Montana Constitution Article VI, § 19, Montana Code Annotated § 46-22-101(1), and the United States Constitution, Article I., § 9, Clause 2.

- Jurisdiction -

The Montana Supreme Court has been given the Authority and Jurisdiction to "issue, hear, and determine writs of habeas corpus" by the Montana Constitution, Article VII, § 2, (1), and Montana Code Annotated § 3-2-202 (1), and is therefore the appropriate Venue and Jurisdiction to consider Mr. Dodson's Petition.

- Background Brief -

On the 2nd of September, 2016, the Petitioner, Mr. Daniel Jay Dodson, was Sentenced in the Fourth Judicial District Court of Montana, Missoula County; Cause No: DC-16-209

The Petitioner was given the following Sentence & Conviction:

Count I - Sexual Intercourse Without Consent - MCA § 45-5-503 - The Petitioner was sentenced to ten (10) years

in Montana's State Prison, and was given a 10 year Parole Restriction;
- Count II. - Incest - §45-5-507, MCA. - The Petitioner was Sentenced to thirty (30) years in Montana's State Prison. Twenty (20) years of Count II. were ordered suspended. Counts I and II were Ordered to run Consecutively to each other.

The Petitioner was on Parole when he was Sentenced & Convicted on Cause No.: DC-16-209. The Fourth Judicial District Court Ordered the Petitioner's Parole Revoked and Ordered the Petitioner to serve ten (10) years in the Montana Department of Corrections ("DOC") under this previous Cause; Cause No.: DC-10-302; Criminal Endangerment - MCA § 45-5-207. This 10 yr. sentence was Ordered to run Consecutively to Cause No.: DC-16-209.

- Argument -

When the Petitioner was Sentenced by the 4th Judicial District Court on September 2nd, 2016, the Court imposed restrictions on the Petitioner's ability to own, possess, access, and use multiple types of electronic

- 3 -

devices, particularly those with access to the internet. (See the Conditions of Supervision in the Petitioner's "Sentence & Judgment", pages 7, 8, and 9, items #37, #38, and #45 respectively)

The Petitioner's Defense Counsel failed to address or challenge these conditions at Sentencing. Regardless of any strategic or tactical decision the Petitioner's Counsel was exercising at the time, the increasing importance of the internet in today's rapidly evolving societal structure and the functional relevance of nearly every electronic device currently in use upon internet connectivity; these restrictions have extensive broad ramifications upon the Petitioner's rehabilitation, ability to act as an integral and productive member of his community thereby complying with the Court's and Parole Board's expectations for successful supervised release; and his ability to seek education and employment in today's ~~every~~ ever-increasing digital society.

As the Petitioner's Defense Counsel did not address this issue at Sentencing, the Petitioner respectfully requests that the Montana Supreme Court

- 4 -

invoke the "Plain-Error Review" doctrine, as he contends that his "fundamental rights are at stake." State v. Strizich, 2021 MT 306 at ¶ 19, 406 Mont. 391, 399, 499 P.3d 575, 582. Also: United States v. Lacoste, 821 F.3d 1187 at 1190 (9th Cir. CA 2016)

The Petitioner argues that this is an appropriate application of the plain-error review doctrine and the Montana Supreme Court's Jurisdiction, as the Court: "[R]eview[s] a condition imposed in a criminal sentence for legality — whether the sentence is within statutory parameters." State v. Johnson, 2023 MT 143 at ¶ 6, 413 Mont. 114, 117, 533 P.3d 335, 338 citing City of Billings v. Barth, 2017 MT 56, ¶ 8, 387 Mont. 32, 390 P.3d 951.

Further, the Court "review[s] the reasonableness of conditions or restrictions imposed on the sentence for an abuse of discretion. State v. Nauman, 2014 MT 248, ¶ 8, 376 Mont. 326, 334 P.3d 368 (citing State v. Ashby, 2008 MT 83, ¶ 8, 342 Mont. 187, 179 P.3d 1164). An abuse of discretion occurs when a district court acts arbitrarily without conscientious judgment or exceeds the bounds of reason." State v. Johnson, *ibid.*; quoting State v. Hernandez

2009 MT 341, ¶ 7, 353 Mont. 111, 220 P.3d 25.

The Montana Supreme Court considered this type of circumstance, and these same restrictions in the case of State v. Johnson, 2023 MT 143, 413 Mont. 114, 533 P.3d 335. (as well as several others since this ruling.)

The Court found review of these same conditions appropriate, as the language used to define these restrictions was suggestively "overly broad" and "unduly punitive". (Johnson, *supra*, at ¶ 7). The Montana Supreme Court decided that: "[o]verly broad or unduly punitive conditions are not reasonable restrictions or conditions authorized by § 46-18-201, MCA. State v. Coleman, 2018 MT 290, ¶ 6, 393 Mont. 375, 431 P.3d 26. ... 'If the restriction or condition at issue is overly broad or unduly punitive, or if the required nexus is absent or exceedingly tenuous, we will reverse.'" Johnson, *supra*, at ¶ 7 citing State v. Melton, 2012 MT 84, ¶ 18, 364 Mont. 482, 276 P.3d 900.

The Montana Supreme Court's inclusion of the "requirement [of a] nexus" between the restriction or condition and the

commission of the Petitioner's crime or the factors leading to the commission of a crime is especially relevant in this context, as the internet and internet connected electronic devices played no role in the Petitioner's case, and therefore the "required nexus is absent." Johnson, *supra* at ¶ 7.

The Montana Supreme Court's holdings in Johnson are further supported by the United States Supreme Court's consideration of sexual offender's access to social media websites, and thereby the access to the internet and internet connected electronic devices in the case of Packingham v. North Carolina, 582 U.S. 98, 137 S.Ct. 1930, 198 L.Ed 2d 273 (2017).

The language used in Petitioner's Conditions of Supervision, numbers 38, 37, and 45, is just as overly broad and far reaching as the State of North Carolina's law banning sexual offenders from accessing the internet and social media:

- #37: "The Defendant shall not have access to the internet without prior permission from the Probation & Parole Officer and sexual offender therapist..."

- #38: "The Defendant shall not possess or use any computer or other device with access to any on-line computer service including, but not limited to "Cloud" data storage, without the prior written approval of the Probation & Parole Officer..."
- #45: "The Defendant shall not have a cell phone, or such other technology / device with photo, video, or Internet capabilities, unless approved by the Probation & Parole Officer..."

When the United States Supreme Court ~~considered~~ North Carolina's Unconstitutional law banning sexual offenders from accessing the internet and social media it found that:

"By prohibiting sex offenders from using those websites, North Carolina with one broad stroke bars access to what for many are the principal sources for knowing current events, checking ads for employment, speaking and listening in the modern public square, and otherwise exploring the vast realms of human thought and knowledge... In sum, to foreclose access to social media altogether is to prevent the user from engaging in the legitimate exercise of First Amendment rights. It is

unsettling to suggest that only a limited set of websites can be used even by persons who have completed their sentences. Even convicted criminals - and in some instances especially convicted criminals - might receive legitimate benefits from these means for access to the world of ideas, in particular if they seek to reform and to pursue lawful and rewarding lives." Packingham v. North Carolina, 582 U.S. 98 (at 107-108, 137 S. Ct. 1730, 1737, 198 L. Ed. 2d 273, 282 (2017))

Indeed, the Petitioner is already being affected by the far reaching ramifications of the language used in his Supervisory Conditions/Restrictions while still incarcerated at Montana State Prison. For example, though he meets the criteria and is an excellent candidate for the Governor's "Last Mile" computer coding education class, he is being denied consideration and access because of the overly broad language in his Conditions of Supervision.

The State may argue that the Supervisory Conditions are not a true

- 9 -

"total ban" on the Petitioner's Internet access and electronic devices, as the conditions all provide "prior permission from the Probation & Parole Officer." However, this argument has been addressed and refuted by the Ninth Circuit Court of Appeals in United States v. Lacoste, 821 F.3d 1187 (9th Cir. 2016).

"When a total ban on Internet access cannot be justified, as is the case here, we have held that a proviso for probation-officer approval does not cure the problem.

See [United States v. Sales 476 F.3d [732] at 737. And for good reason: If a total ban on Internet use is improper but a more narrowly tailored restriction would be justified, the solution is to have the district court itself fashion the terms of that narrower restriction. Imposing a total ban and transferring open-ended discretion to the probation officer to authorize needed exceptions is not a permissible alternative. See United States v. Scott, 316 F.3d 733, 736 (7th Cir. 2003)."

- Lacoste, *supra* at 1192

- Conclusion -

It is clear from the holdings of the United States Supreme Court, the Ninth

Circuit Court of Appeals, and the Montana Supreme Court that the language used in the Petitioner's Conditions of Supervision is overly broad, needlessly restrictive, affects Mr. Dodson's substantial rights, the perceived fairness of his judicial proceedings, and in its current form, may not lawfully be imposed.

The Petitioner, Mr. Daniel Jay Dodson, respectfully requests that the Montana Supreme Court issue him a Writ of Habeas Corpus whereby he can return to the Fourth Judicial District Court of Montana, Missoula County, and have these conditions altered, or if the Court deems it appropriate to the case at hand, stricken altogether.

Date : 01 / 23 / 25

Signature of the Petitioner :



Daniel Jay Dodson
AO# 3007167

700 Conley Lake Road, Deer Lodge, MT 59722

- Certificate of Service -

The Petitioner, Mr. Daniel Jay Dodson, hereby swears and certifies that a true and correct copy of the foregoing "Petition for Writ of Habeas Corpus" was placed in the prison mailbox at Montana State Prison on the 23rd day of January, 2025 and sent by mail to the following parties:

1.) Clerk of the Montana Supreme Court

Attn: Mr. Bowen Greenwood

P.O. Box # 203003

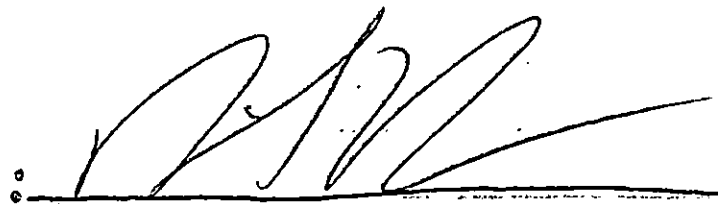
Helena, MT 59620-3003

2.) Office of the Montana Attorney General

P.O. Box # 201401

Helena, MT 59620-1401

signature of Petitioner



Daniel Jay Dodson
AO # 300-7167