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IN THE SUPREME COURT OF THE STATE OF MONTANA

No. OP 24-0616

CHAD WILLIAMS,

Petitioner,

v.

TOM GREEN, Warden,
Dawson County Correctional Facility,

Respondent.

**STATE'S RESPONSE TO PETITION
FOR WRIT OF HABEAS CORPUS**

In compliance with this Court's order of November 6, 2024, the Attorney General's Office (State) responds to the Petition for Writ of Habeas Corpus filed by Chad Williams (Williams). As part of its response, the State submits, and

incorporates by reference, relevant documents from the district court proceeding and records from the Department of Corrections (DOC) in the State's exhibits. (*See* State's Exs. 1-14.) The State requests that this Court take judicial notice of the documents and the facts presented in its exhibits pursuant to Mont. R. Evid. 202(b)(6) (Court may take judicial notice of records from any Montana court) and Mont. R. Evid. 201(b)(2) (Court may take judicial notice of facts "not subject to reasonable dispute," as they are "capable of accurate and ready determination by resort to sources whose accuracy cannot be reasonably questioned").

PROCEDURAL HISTORY

The State filed an Information on March 8, 1996, charging Williams with Attempted Deliberate Homicide for purposely or knowingly attempting to cause the death of Louis Craighead by shooting him with a .22 caliber pistol on or about January 9, 1996. (Ex. 3 at 1.) Craighead had been walking along a street in Missoula, Montana, when a car stopped next to him and two males, later identified as Williams and co-defendant David Thompson, exited and confronted him. (Ex. 2 at 1.) Craighead did not know either male, but saw that one was carrying a pistol. The males approached Craighead and one demanded, "Give me all your money." (*Id.* at 2.) When Craighead told them he had no money, the one with the pistol pulled the trigger but it did not fire. (*Id.*) Craighead heard the trigger being pulled

several more times without firing, and, when it finally fired, Craighead was shot in the stomach and fell to the ground. (*Id.*) Craighead and a witness, who had come outside his house to investigate the noise and crouched behind a vehicle to hide, heard the trigger being pulled several more times without firing. (*Id.* at 2.) The witness saw the attackers move toward their car and then heard more clicking noises coming from the gun. (*Id.*) After a couple of minutes, both attackers returned and bent over Craighead, who was pretending to be dead, and one of them shot him in the back of the head. (*Id.*) One or both attackers kicked Craighead repeatedly and then got back in the car. (*Id.* at 1-2.) As they started to drive away, the passenger leaned out his window and shot Craighead again, striking his arm and face. (*Id.* at 1.) Despite being shot three times, Craighead survived the attack. (*Id.*) He told detectives that both attackers had shot him at different times. (*Id.* at 7.)

Williams pled guilty to the original charge of Attempted Deliberate Homicide, a felony, in violation of Mont. Code Ann. §§ 45-4-103 (attempt) and 45-5-102(1)(a) (deliberate homicide). (Ex. 4 at 2.) The court sentenced him to 50 years in the Montana State Prison (MSP), with 25 years suspended, and, for the use of a dangerous weapon pursuant to Mont. Code Ann. § 46-18-221(1), the court additionally imposed 10 years in MSP, to run consecutively. (*Id.*)

Williams was first released on parole on May 30, 2007. (Ex. 5 at 4.) His parole was then revoked several times before he discharged the nonsuspended portion of his sentence. (*Id.*) On November 25, 2013, he began serving the suspended portion of his sentence. (*Id.*)

The State filed a petition to revoke (PTR) on April 5, 2016. (Ex. 5.) The State thereafter filed four supplemental PTRs between May 11, 2016, and August 24, 2016. (Exs. 6-9.) A report of violation (ROV) by Williams' probation officers was attached to each supplemental PTR, describing the probation violations, which included, but were not limited to: testing positive multiple times for methamphetamine (meth) and its active metabolite amphetamine; failing to attend chemical dependency and mental health counseling; refusing to surrender to law enforcement in Bozeman during an hours-long stand-off that ended only after law enforcement agreed to not file new charges against him; and, ultimately, absconding after cutting off the court-ordered GPS monitoring device that had been attached to his ankle and leaving it on his grandmother's wood pile. (*Id.*)

On August 18, 2016, Williams appeared in court and entered admissions to 3 of the 18 violations alleged. (Ex. 10 at 1.) The State dismissed Count V of the original PTR. (*Id.*) After the admissions were entered by the court, the parties proceeded to an evidentiary hearing on the remaining violations. (Ex. 10 at 1-2.) The State presented the sworn testimony from the two probation officers, who

submitted the ROVs attached to the original PTR and the supplemental PTRs. (Ex. 10 at 2.) Williams presented the sworn testimony of one witness, after which the State called one of the probation officers in rebuttal. (*Id.*) At the conclusion of the hearing, the district court found that, based on the testimony presented, the State had proven all the remaining allegations. (*Id.*) The district court did not proceed immediately to revocation and resentencing, but set a hearing to do so on August 24, 2016. (*Id.*)

When Williams failed to appear for the scheduled dispositional hearing, the district court issued a bench warrant for his arrest and imposed a \$1,000,000 bail amount. (Ex. 11.)

More than 8 months later, after he was arrested in Arizona and extradited back to Montana (Ex. 14 at 1), on May 4, 2017, the district court revoked Williams' original sentence and imposed a new sentence of 25 years in MSP. (Ex. 13 at 2.) The court gave Williams credit for 41 days served in jail and ordered him to pay the \$1,556 extradition fee. (*Id.*) Williams did not appeal the sentence upon revocation.

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PETITIONER’S REQUEST

Williams requests credit for some or all of 1,003 days of elapsed time he spent on probation from November 16, 2013, to August 16, 2016, claiming he was compliant with probation during that time. (Petition at 3.)

STANDARD OF REVIEW

This Court reviews a criminal sentence de novo for legality and compliance with statutory mandates. *State v. Youpee*, 2018 MT 102, 391 Mont. 246, 416 P.3d 1050 (citing *State v. Seals*, 2007 MT 71, ¶ 7, 336 Mont. 416, 156 P.3d 15; *State v. Lenihan*, 184 Mont. 338, 343, 602 P.2d 997, 1000 (1979)). Because Mont. Code Ann. § 1-2-102 provides that a particular statutory provision is paramount to a general provision, sentencing upon the revocation of a suspended or deferred sentence is expressly governed by Mont. Code Ann. § 46-18-203, and not, for example, by Mont. Code Ann. §§ 46-18-401, -402, and -403, which are general provisions governing sentencing. *Seals*, ¶ 15; *Gundrum v. Mahoney*, 2001 MT 246, ¶¶ 19-20, 307 Mont. 96, 36 P.3d 890.

In the seminal decision *Lott v. State*, 2006 MT 279, ¶ 22, 334 Mont. 270, 150 P.3d 337, this Court held that “an individual incarcerated pursuant to a facially invalid sentence—for example, a sentence which either exceeds the statutory maximum for the crime charged or which violates the constitutional right to be free

from double jeopardy—ha[s] the ability to challenge its legality[,]” by petitioning for a writ of habeas corpus.

The petitioner in a habeas corpus proceeding bears the burden of proof or the burden of persuasion. *Miller v. Eleventh Jud. Dist. Ct.*, 2007 MT 58, ¶ 14, 336 Mont. 207, 154 P.3d 1186; *In re Hart*, 178 Mont. 235, 249, 583 P.2d 411, 419 (1978) (citing 39A C.J.S. Habeas Corpus § 194). The burden rests on the petitioner “to sustain the allegations of his petition, to make out a prima facie case, to prove the facts or establish grounds entitling him to relief, to overcome the presumption of validity and regularity of proceedings, and to show the invalidity of the judgment or sentence which he attacks.” *In re Hart*, 178 Mont. at 250, 583 P.2d at 419. The petitioner has the burden of proving the violation, deprivation, infringement, or denial of his constitutional, statutory, or legal rights generally, or the denial of due process of law. *Id.*

DISCUSSION

The linchpin to the outcome of this case is a single date: May 19, 2017, the effective date of the Montana Legislature’s revisions to Mont. Code Ann. § 46-18-203(7)(b). 2017 Mont. Laws, Ch. 391, § 1. In *State v. Jardee*, 2020 MT 81, ¶ 7, 399 Mont. 459, 461 P.3d 108, this Court explained that the effective date of legislative revisions created a bright line between revocation proceedings *before*

the effective date and revocation proceedings *on or after* the effective date, and stated:

Examination of the plain language of the statute reveals that the prior version granted discretion to a sentencing court to either grant or deny credit for street time: “the judge shall consider any elapsed time and *either expressly allow* all or part of the time as a credit against the sentence *or reject* all or part of the time as a credit.” However, the 2017 version of the statute eliminates this discretion, requiring credit if there have been no violations: “the judge *shall . . . allow* all of the elapsed time served without any record or recollection of violations as a credit against the sentence.”

Id. ¶ 10 (emphasis original) (*comparing* Mont. Code Ann. §§ 46-18-203(7)(b) (2015) and 46-18-203(7)(b) (2017); *see Gundrum* at ¶¶ 19-20.

In *Walker v. Guyer*, No. OP 18-0649, 2018 Mont. LEXIS 416 (Nov. 27, 2018), this Court addressed the 2017 revisions and held that “[t]he statutory language’s intent is not retroactive” and that, because Walker’s sentence upon revocation occurred prior May 19, 2017, the amendments did “not apply to . . . his 2015 sentence upon revocation[.]” *Walker*, at 1. Williams’ petition challenges the district court’s determination to allow or reject credit for elapsed time in his sentence upon revocation, but, because it was imposed prior to May 19, 2017, William’s sentence upon revocation, like Walker’s, is controlled by the 2015 version of Mont. Code Ann. § 46-18-203(7)(b).

In *Walker*, at 2, this Court held that a district court did “not have to credit an offender with any time on probation[.]” which was consistent with the Court’s

longstanding holding, before the 2017 revisions, that “a judge has complete discretion to consider the elapsed time that an offender is on probation, and . . . may either expressly allow or reject the time as credit on the offender’s sentence.” *Gundrum*, ¶ 19; *Vickery v. Salmonsens*, No. OP 21-0608, 2021 Mont. LEXIS 1022 (Dec. 14, 2021). Unlike sentences upon revocation after May 19, 2017, where an offender is entitled to credit for elapsed time on probation, *see Bokma v. Olson*, 2025 MT 57, ¶ 12, 420 Mont. 387, 563 P.3d 768, offenders sentenced upon revocation prior to that date are not entitled to credit for elapsed time because the determination to allow or reject credit for elapsed time was purely discretionary. *Gundrum*, ¶ 19.

This Court’s resolution of Williams’ petition should be identical to the resolutions reached in both *Walker* and *Vickery*. In *Vickery*, the petitioner relied on *Rood v. Laughlin*, No. OP 20-0553, 2021 Mont. LEXIS 418 (May 4, 2021), to challenge his sentence upon revocation on the grounds the district court failed to credit him 1,361 days of elapsed time on probation. This Court denied Vickery’s petition, pointing out that his reliance on *Rood* was misplaced because the sentence upon revocation in Rood’s case was imposed in August 2017, after the May 19, 2017 revisions to Mont. Code Ann. § 46-18-203(7)(b), whereas Vickery’s July 2016 sentence upon revocation was imposed before the revised statute went into effect. (*Id.*)

Quoting the language of Mont. Code Ann. § 46-18-203(7)(b) (2015), the Court in *Walker* and *Vickery* held that a district court shall state the reasons for its determination to allow or reject credit for elapsed time in its order. (*Walker*, at 2; *Vickery*, at 2.) In Williams’ case, the district court succinctly provided the reasons for its sentence upon revocation, as set forth both in the minute entry of the oral pronouncement (Ex. 10) and in the written judgment (Ex. 13 at 2)¹: “Any leniency was given in the original sentence and the Defendant did not take advantage of it.”

Williams’ revocation proceedings are substantially similar to the revocation proceedings in *Vickery*, which this Court found were sufficient to support the district court’s rejection of credit for elapsed time. The petitioner in *Vickery* “did not admit his violations, and the court took testimony about whether Vickery had violated his probationary terms and conditions[,]” afterward finding Vickery was in violation. *Vickery*, at 2. Similarly, Williams only admitted to 3 of the 18 alleged violations, after which the court proceeded with an evidentiary hearing. (Ex. 10.)

The State called Williams’ two probation officers to testify and verify the evidence contained in their ROVs that were attached to the original PTR and the four supplemental PTRs. (*Id.*) Williams was represented by counsel, was given an

¹ An oral pronouncement of a sentence is a “legally effective and valid final judgment,” and controls in situations in which a conflict exists between the oral and written judgments. *State v. Kroll*, 2004 MT 203, ¶ 18, 322 Mont. 294, 95 P.3d 717. Williams does not allege a conflict.

opportunity to cross-examine the State's witnesses, and called his own witness to testify on his behalf. (*Id.*) The State then recalled one of the probation officers to rebut the testimony of the witness Williams had called. (*Id.*)

At the conclusion of the evidentiary hearing, the district court found that Williams had committed 17 violations (*id.*)—the three that he admitted to and the 14 that the State proved:

- Four separate incidents of testing positive for meth and amphetamines in March 2016, as confirmed by laboratory testing;
- The discovery of two large hunting knives by probation officers when they search his bedroom at the time of arrest;
- Failing to update his address with the Sexual or Violent Offender Registry more than two weeks after he moved from one residence to another;
- Testing positive in April 2016 for meth and amphetamine at extremely high levels, well beyond the testing cutoff levels;
- Failing to comply with the instruction of the Intensive Supervision Program (ISP) Officer to report to the probation and parole office in Missoula every weekday, and telling the officer she did not have the authority to make him report as instructed;
- Testing positive in June 2016 for meth and amphetamines;
- Failing to stay at the residence approved by probation and parole and staying at a place where he had been specifically told he could not stay;
- Associating with an individual who probation and parole had expressly prohibited him from contacting;
- Refusing to comply with directions of law enforcement officers in Gallatin County, Montana, to surrender himself, resulting in a Special Response Team having to seal off the area and spend several hours negotiating his surrender;
- Failing to register as a violent offender after departing a known residence and not reporting a new address;

- Possessing a knife with a blade 10 inches long and 5 inches wide;
- Refusing to provide a urine sample for drug testing at the request of his probation officer;
- Continuing to fail to report to his probation officer after being instructed to do so by ISP; and
- Absconding from supervision by cutting his GPS monitoring device from his ankle and fleeing.

After the evidentiary hearing, the district court did not proceed directly to sentencing, and instead set a dispositional hearing for sentencing upon revocation six days later. (*Id.*) Williams failed to appear for the dispositional hearing, absconded yet again from supervision, and eventually fled to Arizona where he was arrested on the \$1,000,000 warrant the district court had issued when he failed to appear for sentencing upon revocation. (Exs. 11, 14).

In the written judgment issued on May 4, 2017, the district court did not list every violation admitted to and proven at the evidentiary hearing more than 8 months earlier, but the minute entry from the August 2016 hearing clearly states, “Thereafter [the evidentiary hearing], based on the testimony, the Court found that the remaining allegations were proven.” (Ex. 10.) In the written judgment, the district court did not allow Williams credit for any elapsed time but did give him credit for the 41 days he served in jail between December 9, 2015, and the date of sentencing upon revocation, May 4, 2017. (Ex. 14.) Given Williams’ 17 violations and utter disregard, not only of the instructions of law enforcement and probation and parole officers, but of the conditions of release imposed by the court in one

arrest after another after the original PTR was filed, the district court properly exercised its discretion to reject any credit for elapsed time on probation.

Even though Williams may assert that the district court's succinct reasons for its sentence upon revocation are insufficient regarding its determination to allow or reject credit for elapsed time, this Court rejected such an assertion in *Youpee*. Youpee, at the time of his sentencing upon revocation, did not object to the district court's rejection of credit for elapsed time, but he argued to this Court on appeal that the district court's failure to state its reasons for its rejection "is a non-waivable statutory defect subject to review regardless of his failure to timely object." *Youpee*, ¶ 11.

This Court disagreed, holding that a "district court's failure to state the reason for the discretionary decision to grant or deny credit for [elapsed] time under § 46-18-203(7)(b), MCA (2015), is a waivable statutory defect if the sentence imposed was facially legal and did not exceed statutory mandates." *Id.* The Court concluded that, in Youpee's case, because the sentence was facially legal and did not exceed statutory mandates, the district court's "mere failure to state the reason" for rejecting credit for elapsed time did not render the otherwise valid sentence facially illegal. *Id.* The Court further held "that, by failing to contemporaneously object, Youpee waived his objection to the court's failure to

state the reason for not granting credit for [elapsed] time as required by § 46-18-203(7)(b), MCA (2015).”

Here, as in *Youpee*, *Walker*, and *Vickery*, Williams’ sentence upon revocation was imposed prior to May 19, 2017, and is therefore controlled by the 2015 version of Mont. Code Ann. § 46-18-203(7)(b). The single case Williams cites in his petition, *Hendrickson v. Salmonsens*, No. OP 24-0213, 2024 Mont. LEXIS 766 (July 16, 2024), addressed a sentence upon revocation imposed in 2021, *after* the 2017 revisions to the statute, and is not inapplicable here.

As fully discussed above, prior to the 2017 statutory revisions, a district court’s discretion to allow or reject credit for all or part of an offender’s elapsed time on probation was plenary. Moreover, at the time of sentencing upon revocation, Williams failed to contemporaneously object to the district court’s reasons for rejecting credit for elapsed time, and, pursuant to *Youpee*, thereby waived his objection.

Williams has failed to show that he is serving a facially invalid sentence, which this Court has defined as “a sentence which, as a matter of law, the court had no authority to impose,” or “which either exceeds the statutory maximum for the crime charged or which violates the constitutional right to be free from double jeopardy.” *Lott v. State*, ¶ 22. Other than credit for elapsed time, Williams does not

assert that his sentence upon revocation is facially illegal or that it violates double jeopardy.

Furthermore, Williams does not assert that his sentence upon revocation exceeds the statutory maximum for the crime he is convicted of, which in his case is governed by the 1996 versions of Mont. Code Ann. §§ 45-5-102(1)(a) (penalty for deliberate homicide), 46-18-221(1) (penalty for use of dangerous weapon), and the 2015 version of Mont. Code Ann. § 46-18-203(7)(b) (court discretion to grant or deny street time credit). Williams' sentence upon revocation—25 years in MSP—does not exceed the maximum sentence possible: death, life imprisonment, or prison not less than 10 years or more than 100 years.

CONCLUSION

Having failed to establish that his sentence upon revocation is facially illegal or in excess of statutory mandates, Williams has failed to meet his burden of proof. The State requests that the Court deny his petition.

Respectfully submitted this 31st day of March, 2025.

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By: /s/ Carrie Garber
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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this response is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double-spaced except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word for Windows is 3,380 words, excluding caption, signatures, certificate of compliance, certificate of service, and any exhibits.

/s/ Carrie Garber
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IN THE SUPREME COURT OF THE STATE OF MONTANA

No. OP 24-0616

CHAD WILLIAMS,

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Respondent.

EXHIBITS

Ex. 1	00		Case Register, <i>State v. Williams</i> , Missoula County District Court Cause No. DC-1996-12022
Ex. 2	--	January 11, 1996	Complaint and Affidavit
Ex. 3	02	March 8, 1996	Information
Ex. 4	32	November 7, 1996	Original Judgment
Ex. 5	41	April 5, 2016	Petition to Revoke (PTR) with attachments: Affidavit in Support of PTR Report of Violation (ROV)
Ex. 6	47	May 11, 2016	(First) Supplemental PTR with attachments: Affidavit in Support of PTR Addendum to ROV
Ex. 7	53	June 16, 2016	Second Supplemental PTR with attachments: Affidavit in Support of PTR 2nd Addendum to ROV

Ex. 8	60	July 12, 2016	Third Supplemental PTR with attachments: Affidavit in Support of PTR 2nd Addendum to ROV
Ex. 9	69	August 24, 2016	Fourth Supplemental PTR with attachments: Affidavit in Support of PTR 4th Addendum to ROV
Ex. 10	68	August 18, 2016	Minutes and Note of Ruling
Ex. 11	71	August 24, 2016	Minute Entry
Ex. 12	74	May 4, 2017	Minute Entry
Ex. 13	76	May 4, 2017	Revocation Judgment
Ex. 14	--	Downloaded February 20, 2025	Montana Department of Corrections Location Term Listing Report

CERTIFICATE OF SERVICE

I, Carrie L. Garber, hereby certify that I have served true and accurate copies of the foregoing Response/Objection - Petition for Writ to the following on 03-31-2025:

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Electronically signed by Janet Sanderson on behalf of Carrie L. Garber
Dated: 03-31-2025