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COUNSEL FOR RESPONDENTS

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. OP 25-0085

DALE D. NEWBURY,

Petitioner,

v.

STATE OF MONTANA, and
DEMETRIC (D.J.) GODFREY,
Warden,

Respondents.

**ATTORNEY GENERAL'S RESPONSE TO PETITION
FOR WRIT OF HABEAS CORPUS**

In compliance with this Court's February 19, 2025 order, the State of Montana responds to Dale Newbury's petition for writ of habeas corpus.

The State first informs this Court that it has already rejected all of Newbury's arguments related to the same credit for time served in a previous

petition. *Newbury v. Bludworth*, OP 23-0434 (Or. Aug. 29, 2023) *attached as* App. 0.5. And, in his current petition, Newbury has alleged no specific error in his calculation at all, nor does he explain his attribution of 806 days of credit in BDC-16-280, which appears to be a random number unrelated and fully unmoored to any possible calculation regarding the time he actually served incarcerated presentencing in that matter. Nor has Newbury identified any basis for this Court to reconsider its prior order dismissing his credit for time served habeas petition.

Nonetheless, the State has identified possibly seven days for which Newbury could be entitled to additional credit in BDC-16-280. Otherwise, this Court should deny and dismiss Newbury's second credit for time served habeas petition in full.

BACKGROUND

I. BDC-16-280

On June 6, 2016, Newbury was arrested pursuant to the criminal distribution of dangerous drugs charges in BDC-16-280. His bond was set at \$15,000. (App. 1 at 1, 4.) He remained incarcerated. Defense counsel filed an unopposed motion to release Newbury on his own recognizance, which the court granted on February 10, 2017. (Apps. 2-3.) This resulted in **249 days** of incarceration.

On January 19, 2018, the district court revoked Newbury's bond because he violated conditions related to possessing firearms and illegal drug possession.

(App. 4.) Newbury was arrested pursuant to a warrant on January 23, 2018 and his bail was fixed at \$25,000. (App. 5.) Newbury posted bond on the same day.

(App. 6.)

On January 31, 2018, Newbury's bond was revoked again after he obtained a new charge in DDC-18-050, and a warrant was issued for his arrest. (App. 7.) The warrant was returned upon Newbury's rearrest on February 2, 2018. (App. 8.) Newbury posted the reset \$25,000 bond on March 3, 2018, and was released from custody. (App. 9.) This resulted in **29 days** of incarceration.

After Newbury was found in violation of his conditions related to drugs and probationer associations, the district court revoked his bond again on April 5, 2018 and fixed bond at \$35,000. (Apps. 10, 11.) Newbury was rearrested on April 9, 2018, and would remain incarcerated until the October 22, 2018 sentencing hearing. (App. 12.) This resulted in **196 days** of incarceration.

After a jury trial on May 15 and 16, 2018, the jury found Newbury guilty of criminal distribution of dangerous drugs. (App. 13.) Newbury was remanded to the Cascade County Detention Center pending sentencing. (App 14.)

On October 17, 2018, the parties filed a global plea agreement under Mont. Code Ann. § 46-12-211(1)(b) in this matter, BDC-16-280, and Newbury's other matters, BDC-18-324 and DDC-18-050. (App. 15.) The parties acknowledged that all sentences would run concurrently. (*Id.* at 4-5.)

On October 22, 2018, Newbury was sentenced by the Honorable Elizabeth Best in BDC-16-280 to 10 years at the Montana State Prison with 5 years suspended, concurrent to his other sentences. (App 16.) At this time, Newbury was awarded **468 days** of credit for time served by the district court. (*Id.*) But based on the State’s calculation, Newbury is instead entitled to **475 days** of credit, thus he is now entitled to an additional **7 days**.

II. BDC-18-234

In May 2018, in BDC-18-324, Newbury was charged with aggravated kidnapping and criminal distribution of dangerous drugs. (*See* App 26.) Newbury was arrested on the charges on June 1, 2018, and held on a \$100,000 bond. (*Id.*) On October 17, 2018, Newbury signed the global plea agreement. (App. 15.) A few days later, Newbury pleaded guilty to aggravated kidnapping.¹ (App. 27.) Newbury never posted bond and remained incarcerated until his December 3, 2018 sentencing. At that time, Judge Best sentenced Newbury to 40 years at the Montana State Prison, with 25 years suspended, “concurrent to any other sentence[,]” thus the sentence was ordered to run concurrently to BDC-16-280. The district court granted credit for time served for **186 days**, thus the court

¹ It appears the criminal distribution charge was dropped.

accurately incorporated the credit stemming from Newbury's incarceration in this matter from June 1, 2018 to December 3, 2018. (App. 28 at 2.)

III. DDC-18-050

In January 2018, Newbury was charged with three counts of criminal distribution of dangerous drugs in DDC-18-050. (*See* App. 29 at 1.) He was arrested on the charges on January 29, 2018, and his bond was fixed at \$100,000. (*Id.* at 4.) On March 3, 2018, Newbury posted bond and was released. (App. 30.) This resulted in **34 days** of incarceration.

After violating his bail conditions, the district court issued a warrant for Newbury's arrest and set bond again at \$100,000. (*See* App. 31.) The warrant was served on April 5, 2018. (*Id.*) On October 17, 2018, the parties filed the global plea agreement. (App. 15.) On October 31, 2018, Newbury pleaded guilty to Counts I and II, and the court later dismissed Count III per the plea agreement. (Apps. 32-33.) On December 3, 2018, Newbury was sentenced by the Honorable John Parker to two, 10-year commitments with 5 years suspended on each sentence, "concurrent to any other sentence the Defendant is currently serving." (App. 34.) This resulted in **243 days** of incarceration from April 5, 2018 to December 3, 2018. Resultingly, the district court accurately credited Newbury with **277 days** (243+ 34) of credit for time served in the judgment. (*Id.* at 3.)

IV. Newbury's post judgment motions

On April 5, 2019, Newbury filed in BDC-16-280 a pro se “Motion for Order to Apply Credit for Time served.” (App. 17.) Newbury explained that he should get 949 days of credit considering his credit as an amalgam from BDC-16-280, BDC-18-234 and DDC-18-050 as applied to each individual case. (*Id.*)

The State responded that the “Defendant is not entitled to 949 days credit, because the Defendant was not in custody on this case for 949 days. The Defendant mistakenly adds all of the credit for time served together in each of his separate sentences that are to run concurrent.” (App. 18 at 1.) The State explained that Newbury was properly awarded credit for his incarceration in all his separate cases. (*Id.* at 3.) The State explained that Newbury’s logic was flawed because if the court followed Newbury’s recommendation and amalgamated the credit from the three separate cases into BDC-16-280, he would be “given credit for 3 days time served while being in custody for one day.” (*Id.* at 3.)

The district court denied Newbury’s motion, explaining that Newbury negotiated a plea agreement that “all sentences in each of the cases run concurrent to each other[.]” and Newbury “was given credit for time served in each of the cases.” (App. 19 at 2.) The Court explained that Newbury was wrongly “requesting that his credits for time served be applied consecutively while his sentences are running concurrently.” The court explained that “the result would be

that Newbury would be receiving three days credit for every one day served[.]” which was “not consistent with the law or the plea agreement[.]” (*Id.*)

But in 2022, Newbury filed a new motion, alleging that the credit was improperly applied by the DOC. (App. 20.) The State exhaustively consulted the DOC records and concluded that all Newbury’s sentences were appropriately calculated. (App. 21.) The district court rejected Newbury’s argument, finding his argument wholly without merit. (App. 22.)

In 2023, Newbury filed another motion repeating his claim that he should get triple credit in each case. (App. 23 at 5.) The State again laid out the specific credit for each proceeding and how it was correctly applied. (App. 24.) The district court again denied the motion. (App. 25.)

STANDARD OF REVIEW AND APPLICABLE LAW

Montana Code Annotated § 46-22-101(1) allows a person who is incarcerated or restrained of liberty to apply for a “writ of habeas corpus to inquire into the cause of imprisonment or restraint and, if illegal, to be delivered from the imprisonment or restraint.” The fundamental purpose of habeas corpus is to remedy “illegal” restraints or imprisonments. *Lott v. State*, 2006 MT 279, 334 Mont. 270, 150 P.3d 337.

Newbury bears the burden of demonstrating sufficient legal cause to persuade this Court to grant the writ of habeas corpus. *Miller v. Dist. Court*, 2007 MT 58, ¶ 14, 336 Mont. 207, 154 P.3d 1186. This Court reviews a criminal sentence for legality de novo to determine whether the sentence is within statutory parameters. *State v. Seals*, 2007 MT 71, ¶ 7, 336 Mont. 416, 156 P.3d 15.

DISCUSSION

I. This Court should remand BDC-16-280 for judgment correction.

Newbury is not entitled to 806 days credit in BDC-16-280, as he alleges without any further explanation. At most, Newbury may be entitled to 7 additional days of credit based on the State's calculation in BDC-16-280.

Newbury should not otherwise be given any additional credit in DDC-18-050 and BDC-18-234 as the record shows that in those cases the credit was properly and accurately awarded.

II. Newbury's argument for triple credit in BDC-16-280 should be rejected.

While Newbury does not sufficiently explain his challenge to BDC-16-280 nor how he arrived at "806 days" for credit, the State assumes that the challenge is based on Newbury's longstanding argument that he should get triple credit in each of his matters because they were ordered to run concurrently. But this Court

already rejected that argument in its 2023 order related to Newbury's prior credit for time served habeas petition in *Newbury v. Bloodworth*:

This Court has held that the concurrent running of felony sentences merge under Montana law. *See* § 46-18-401, MCA; *State v. Tracy*, 2005 MT 128, ¶ 27, 327 Mont. 220, 113 P.3d 297 (*superseded by statute*, as recognized in *Barnacascel v. Kirkegard*, No. OP 15-0552, 382 Mont. 409, 363 P.3d 1146 (Nov. 17, 2015)). Contrary to Newbury's contentions, however, the credit for time served does not aggregate across all sentences.

(App. 0.5 at 3.) This Court correctly applied the law in 2023. Newbury's undeveloped argument now does not change that. *See Katka v. Guyer*, OP 20-365 (Or. Aug. 4, 2020) (explaining that, although two cases were ordered to run concurrently, the DOC correctly applied the individual periods of credit for time served to each corresponding sentence, and further referencing Mont. Code Ann. § 46-18-403 for the proposition that a defendant may receive credit only for time served that was "directly related to the offense for which the sentence [was] imposed."); *see also Dooling v. Olson*, OP 23-0362 (Or. Aug. 22, 2023) (rejecting similar arguments to amalgamate credit from different proceedings to be applied to each individual case).

CONCLUSION

This Court should remand BDC-16-280 to the district court to amend its judgment to grant Newbury seven days of credit for time served. This Court should otherwise deny the petition.

Respectfully submitted this 15th day of April 2025.

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By: /s/ Roy Brown
ROY BROWN
Assistant Attorney General

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 1,837 words, excluding caption, signatures, certificate of compliance, certificate of service, and any exhibits.

/s/ Roy Brown

ROY BROWN

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APPENDICES

Newbury v. Bludworth, OP 23-0434 (Or. Aug. 29, 2023).....App. 0.5

Cause No. BDC-16-280:

Warrant Return.....App. 1
(Doc. 4; filed 6/6/16)

Unopposed Motion to Release Defendant on his own RecognizanceApp. 2
(Doc. 34; filed 2/10/17)

Order Releasing Defendant on his Own Recognizance.....App. 3
(Doc. 35; filed 2/10/17)

Order to Revoke BondApp. 4
(Doc. 51; filed 1/19/18)

Warrant Return.....App. 5
(Doc. 54; filed 1/22/18)

Bond PostingApp. 6
(Doc. 55; filed 1/23/18)

Order to Revoke Bond	App. 7
(Doc. 60.1; filed 1/31/18)	
Warrant Return.....	App. 8
(Doc. 62; filed 2/2/18)	
Bond Posting	App. 9
(Doc. 63; filed 3/3/18)	
Order to Revoke Bond	App. 10
(Doc. 63.1; filed 4/9/18)	
Warrant of Arrest	App. 11
(Doc. 63.2; filed 4/9/18)	
Warrant Return.....	App. 12
(Doc. 65; filed 4/9/18)	
Jury Verdict.....	App. 13
(Doc. 87; filed 5/16/18)	
Order of Incarceration.....	App. 14
(Doc. 88; filed 5/16/18)	
Notice of Filing Plea Agreement	App. 15
(Doc. 106; filed 10/17/18)	
Sentencing Order and Judgment	App. 16
(Doc. 110; filed 10/24/18)	
Motion for Order to Apply Credit for Time Served	App. 17
(Doc. 115; filed 4/5/19)	
Response to Defendant’s Motion to Apply Credit for Time Served	App. 18
(Doc. 123; filed 10/7/19)	
Order Denying Defendant’s Motion for Credit for Time Served.....	App. 19
(Doc. 125; filed 10/15/19)	

Motion for Sentence Correction and Clarification	App. 20
(Doc. 148; filed 5/3/22)	
Response to Motion for Sentence Correction and Clarification.....	App. 21
(Doc. 149; filed 5/3/22)	
Order Denying Defendant’s Motion for Sentence Correction.....	App. 22
(Doc. 150; filed 5/9/22)	
Motion for Sentence Correction	App. 23
(Doc. 152; filed 2/7/23)	
State’s Response to Defendant’s Motion for Sentence Correction	App. 24
(Doc. 158; filed 3/17/23)	
Order Denying Defendant’s Motion for Sentence Correction.....	App. 25
(Doc. 159; filed 4/5/23)	

Cause No. BDC-18-324:

Warrant Return.....	App. 26
(Doc. 5; filed 6/1/18)	
Minute Entry, Change of Plea Hearing.....	App. 27
(Doc. 32; filed 10/22/18)	
Sentencing Order and Judgment.....	App. 28
(Doc. 38; filed 12/4/18)	

Cause No. DDC-18-050:

Warrant Return.....	App. 29
(Doc. 5; filed 1/29/18)	
Bond Posting	App. 30
(Doc. 11; filed 3/3/18)	

Warrant Return.....	App. 31
(Doc. 15; filed 4/5/18)	
Minute Entry, Change of Plea Hearing.....	App. 32
(Doc. 34; filed 10/31/18)	
Minute Entry, Sentencing Hearing	App. 33
(Doc. 36; filed 12/3/18)	
Judgment of Conviction and Sentencing Order	App. 34
(Doc. 39; filed 12/4/18)	

CERTIFICATE OF SERVICE

I, Roy Lindsay Brown, hereby certify that I have served true and accurate copies of the foregoing Response/Objection - Petition for Writ to the following on 04-15-2025:

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Electronically signed by Wendi Waterman on behalf of Roy Lindsay Brown
Dated: 04-15-2025