

ORIGINAL

FILED

04/15/2025

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: OP 25-0049

IN THE SUPREME COURT OF THE STATE OF MONTANA

OP 25-0049

ANTHONY RICHARD GONZALO,

Petitioner,

v.

TOM GREEN, WARDEN,
DAWSON COUNTY CORRECTIONAL
FACILITY,

Respondent.

ORDER

FILED

APR 15 2025

Bowen Greenwood
Clerk of Supreme Court
State of Montana

Anthony Richard Gonzalo has filed a Petition for Writ of Habeas Corpus, indicating that his sentence calculation is incorrect and alleging that he is due additional credit for time served as well as elapsed time. The State of Montana has filed a response, explaining that Gonzalo is not due any additional credit because he has not met his burden.

The State provides more details that we summarize. In October 2020, the State and Gonzalo entered into a global plea agreement for his three pending criminal cases in the Fourth Judicial District Court, Missoula County. In open court on October 14, 2021, the District Court held a sentencing hearing and committed Gonzalo to the Department of Corrections (DOC) for a suspended five-year term for felony criminal possession of dangerous drugs and awarded “credit for time served in the amount of 170 days at the rate of \$100.00 per day toward Defendant’s fine” (DC-19-0392) (possession conviction).

On the same day, the District Court sentenced Gonzalo for two misdemeanors and two felonies: misdemeanor partner or family member assault (PFMA, 2nd offense) to a twelve-month jail term; misdemeanor resisting arrest to a six-month jail term; felony PFMA, 3rd offense, to a suspended five-year DOC term; and felony tampering with a

witness/informant to a suspended ten-year DOC term (DC-19-0428). The court ran all sentences concurrently with each other and with the sentence for the possession conviction. Pursuant to the plea agreement, the District Court dismissed his third case.

On November 24, 2021, the State filed Petitions to Revoke in both cases on the ground that Gonzalo had absconded. The District Court issued an arrest warrant five days later. The warrants were served on Gonzalo in Nevada on June 15, 2022. On December 21, 2022, Gonzalo admitted to the absconding violations, and the District Court released him on his own recognizance. In March 2023, the State filed a supplemental pleading to its Petition to Revoke after the Probation Officer issued an authorization to pick up and hold Gonzalo for suspected probation violations.

On July 26, 2023, the District Court held a disposition hearing on the revocation petitions in both cases and revoked his suspended sentences. The court committed him to the DOC for a five-year term with three years suspended for the possession conviction, a ten-year term with seven years suspended for the tampering with witness/informant conviction, and a five-year term with two years suspended for the PFMA conviction.¹ The court ran all sentences concurrently with each other and awarded credit for time served of 500 days.

The State provides that Gonzalo completed his custodial term for the possession conviction on March 12, 2024, and that he completed the custodial term for his other sentences on March 12, 2025. He is serving his suspended sentences.

Gonzalo asserts that he served 174 days in jail between his arrest on July 8, 2019, and December 28, 2019. After that, he was placed in the Veterans Administration facility in Sheridan, Wyoming, from December 29, 2019, to April 16, 2020, for which he claims credit of 109 days. Gonzalo considers this time in treatment as incarceration because he

¹ The court's original written judgment in DC-19-0428 had only one sentence of ten years and did not specify the conviction to which the ten-year sentence applied. Upon the State's Motion to clarify the Judgment, the District Court issued a Second Order Amending Judgment on May 1, 2024, to reflect the sentence outlined in the paragraph above.

was told “to stay on campus under threat of returning to jail if [he] did not successfully complete or left campus[,]” which he successfully completed. Gonzalo seeks credit for additional jail time served and elapsed time: (1) 109 days in the treatment facility; (2) forty-one days (April 11, 2022, to May 20, 2022) of incarceration in California; (3) thirty-seven days of street time credit from October 18, 2021, to November 23, 2021; and (4) ninety-eight days from December 22, 2022, to March 29, 2023. He argues that he is entitled to 285 days of credit for time served along with the 500 days that the court awarded him. Gonzalo attaches copies of timelines, including when he was in another jail in another state.²

The State maintains that Gonzalo has not shown that he is due any additional credit because he has not met his burden of proof or persuasion. *Miller v. Eleventh Judicial District Ct.*, 2007 MT 58, ¶ 14, 336 Mont. 207, 154 P.3d 1186. The State thoroughly addresses each of his four claims. First, the State puts forth that Gonzalo’s time on GPS monitoring while in inpatient treatment does not qualify as time served in a detention center or as home arrest. Sections 46-18-203(7)(b), and 46-18-1001(2), MCA. *See also State v. Tippetts*, 2022 MT 81, ¶¶ 18-19, 408 Mont. 249, 509 P.3d 1, and *State v. Makarchuk*, 2009 MT 82, ¶¶ 33-37, 349 Mont. 507, 204 P.3d 1213. For his second claim, the State points out that Gonzalo’s incarceration in California was not related to his two Montana criminal cases.

The State provides a table of how the District Court reached 500 days of credit for time served in a detention center, which we duplicate here. The State points out that, applicable to Gonzalo’s 2023 sentences upon revocation, the District Court was required to award only 479 days of jail time credit:

² Gonzalo provides that he was incarcerated from June 10, 2022, to July 12, 2022 in Reno, Nevada, seeking an additional thirty-three days. According to the State’s response, he was awarded jail time credit from June 15, 2022, to December 28, 2022.

Dates	Description	Days
June 11-12, 2019	Arrest on first case	1
July 12, 2019-December 29, 2019	Arrest on second case, followed by revocation of his release in the first case	170
June 15, 2022-December 28, 2022	Arrest on both Petitions to Revoke	190
March 30, 2023-July 26, 2023	Pick up and Hold issued until hearing	118
Total		479

Turning to the last two claims of elapsed time credit, the State explains that Gonzalo is not entitled to his claimed credit of thirty-seven days from October 18, 2021, to November 23, 2021, because he admittedly absconded immediately after sentencing, the court found no substantial grounds tending to excuse or justify the violations, and Gonzalo has not asserted credible claims otherwise. Lastly, the State contends that Gonzalo is not due any elapsed time credit beginning December 22, 2022, because he committed numerous violations after he was released from jail, as documented in the probation officer's affidavit and established by his testimony at the hearing. The State concludes that Gonzalo's Petition should be denied.

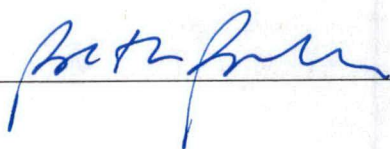
We find the State's arguments persuasive. Gonzalo has not demonstrated a facially invalid sentence. Section 46-22-101(1), MCA. He is not due any additional credit for either time served or elapsed time.

IT IS THEREFORE ORDERED that Gonzalo's Petition for Writ of Habeas Corpus is DENIED and DISMISSED.

IT IS FURTHER ORDERED that this matter is CLOSED as of this Order's date.

The Clerk is directed to provide a copy of this Order to counsel of record and to Richard Anthony Gonzalo personally.

DATED this 15th day of April, 2025.



James Jeremiah Green

Katherine M. D'Agostino

David H. Kim

Angela J. Smith

Justices