

ORIGINAL

FILED

04/22/2025

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: OP 25-0032

IN THE SUPREME COURT OF THE STATE OF MONTANA

OP 25-0032

DEANA THOMAS,

Petitioner,

v.

DEPARTMENT OF CORRECTIONS, and
SHERIFF MIKE LINDER, Yellowstone County
Detention Center,

Respondents.

ORDER

FILED

APR 22 2025

Bowen Greenwood
Clerk of Supreme Court
State of Montana

Overview

In a January 22, 2025 Order, this Court ordered the Attorney General's Office (State) to respond to self-represented Petitioner Deana Thomas's Petition for Writ of Habeas Corpus, alleging that the length of her sentence was longer than the law allows. The State has responded and concedes that the Yellowstone County District Court imposed facially invalid sentences upon revocation.

Procedural Background

The State provides more details about Thomas's sentencing history. In December 2014, the State charged Thomas with three felonies and a misdemeanor—assault with a weapon, endangering the welfare of children, possession of dangerous drugs, and possession of drug paraphernalia—in the Yellowstone County District Court. On January 28, 2016, Thomas entered guilty pleas to two felonies, endangering the welfare of children and drug possession, pursuant to a plea agreement, where the parties jointly agreed to recommend suspended terms of eight years to run consecutively to a sentence that she receives in Missoula County.

During the pendency of the case in Yellowstone County, the State had charged Thomas with felony drug possession, misdemeanor possession of drug paraphernalia, and

misdemeanor theft in the Missoula County District Court. Thomas pleaded guilty to the offenses a week before entering the plea agreement in Yellowstone County.

On March 28, 2016, in open court, the Yellowstone County District Court committed Thomas to the DOC for a suspended, eight-year term for endangering the welfare of children, ordering it to run consecutively to her Missoula County case. The court also imposed a concurrent term of eight years suspended for the other felony.

On April 7, 2016, the Missoula County District Court imposed a suspended DOC commitment of two years for the drug possession conviction and two concurrent terms of six months in jail. The Missoula County District Court ordered that the sentence should run consecutively to the sentence from the Yellowstone County District Court.

Both of Thomas's sentences were later revoked. On December 12, 2017, the Yellowstone County District Court revoked her two suspended sentences, imposing concurrent, unsuspended terms of seven years and 321 days for the felonies. The District Court awarded credit for elapsed time from April 7, 2016, through October 24, 2016, and credit for time served from November 16, 2017, through December 12, 2017.

On January 11, 2018, the Missoula County District Court revoked Thomas's suspended sentence and recommitted her to the DOC for unsuspended, two-year term, to run consecutively to her prior sentence upon revocation.

Discussion

Thomas argues that she received an illegal sentence in 2014 in her case of endangering the welfare of children and drug possession in the Yellowstone County District Court. She states that she received an eight-year sentence when the maximum penalty is five years. Thomas does not include a copy of a judgment.

In the January 22, 2025 Order, this Court put forth five issues for the State to consider:

First, did the Yellowstone County District Court impose a facially invalid sentence by imposing an eight-year term to the DOC for [endangering the welfare of children], contrary to Montana's sentencing statute? Second, did

the Yellowstone County District Court impose a facially invalid sentence when the court ran Thomas's DOC sentence consecutively to a sentence that had not been imposed? Third, was the second error cured when the Missoula County District Court imposed a consecutive sentence after the original sentence imposed in Yellowstone County? Fourth, what sentence did Thomas begin serving on March 28, 2016—the suspended sentence from the Yellowstone County District Court or from the Missoula County District Court? Lastly, what is Thomas's remedy or redressability to correct the alleged facially invalid sentence?

The State correctly points out that Thomas's sentences upon revocation are the current sentences subjecting her to the custody of the State, pursuant to § 46-22-101(1), MCA; however, the State must address Thomas's original sentencing judgments even though neither of these judgments provides Thomas with relief here. The State points out that a sentencing court does not have lawful authority to impose a sentence consecutively to one not yet imposed. *See State v. McGuire*, 260 Mont. 386, 388, 860 P.2d 148, 149-50 (1993). The State provides that the Yellowstone County District Court incorrectly ordered Thomas's original sentence to run consecutively to the sentence not yet imposed in the Missoula County District Court. The State adds, nevertheless, Thomas began serving her original sentence from the Yellowstone County District Court on March 28, 2016, upon the imposition of sentence. The State points out that when the Missoula County District Court imposed its sentence to run consecutively to Thomas's prior sentences, the incorrect designation of the sentence running from the Yellowstone County District Court had no legal effect.

The State concedes that the Yellowstone County District Court imposed facially invalid sentences for Thomas's convictions of endangering the welfare of children and drug possession as the statutory maximum was five years. *See* §§ 45-5-622(5)(b), MCA (2013) and 45-9-102(5)(a)(ii), MCA (2013).¹ The State puts forth that in revocation matters, the District Court is constrained by the particulars of § 46-18-203(7)(a)(iii), MCA. *See State*

¹ The correct maximum punishments were also included in the Information and the Plea Agreement. We observe that the maximum punishment for drug possession of methamphetamine is found in § 45-9-102(5), MCA (2013), not § 45-9-102(2), MCA (2013).

v. Seals, 2007 MT 71, ¶ 15, 336 Mont. 416, 156 P.3d 15 (“[S]entencing upon the revocation of a suspended or deferred sentence is particularly and expressly governed by § 46-18-203, MCA, and not § 46-18-401, MCA, which is a general provision governing sentencing.”). The State requests that this Court order the Yellowstone County District Court to amend its Order of Revocation and Imposition of Sentence to reflect a lawful sentence.

Conclusion

Given the State’s concession about Thomas’s illegal sentences upon revocation, we conclude that it is appropriate to remand the matter to the Yellowstone County District Court for amendment of its Order of Revocation and Imposition of Sentence to impose a sentence that comports with Montana law—a four-year and 321 days’ commitment to the DOC along with the credits for time served and elapsed time, as mentioned above. *State v. Heafner*, 2010 MT 87, ¶ 11, 356 Mont. 128, 231 P.3d 1087. Accordingly,

IT IS ORDERED that:

1. Thomas’s Petition for Writ of Habeas Corpus is GRANTED in part and Thomas’s underlying criminal matter, Cause No. DC-14-0976, is REMANDED to the Thirteenth Judicial District Court, Yellowstone County, for amendment; and
2. this matter is CLOSED as of this Order’s date.

The Clerk is directed to provide a copy to: the Honorable Brett D. Linneweber, District Court Judge; Terry Halpin, Clerk of District Court, under Cause No. DC-14-0976; Scott Twito, Yellowstone County Attorney; Cammi Woodward, former Defense Counsel; counsel of record, and Deana Thomas personally.

DATED this 22nd day of April, 2025.



Chief Justice

Katherine M. Bidegaray

James M. Hahn

Angel G. Smith

Jean Rice

Justices