

ORIGINAL

FILED

05/06/2025

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: OP 25-0254

IN THE SUPREME COURT OF THE STATE OF MONTANA

OP 25-0254

SHALAIN M. BOURNE,

Petitioner,

v.

COMMANDER JENNIFER ROOT,
FLATHEAD COUNTY DETENTION CENTER,

Respondent.

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MAY 06 2025

Bowen Greenwood
Clerk of Supreme Court
State of Montana

ORDER

Shalaine M. Bourne has filed a Petition for Writ of Habeas Corpus, alleging that the parole board's failure to allow her to have witnesses at her on-site hearing for alleged parole violations, pursuant to Admin. R. M. 20.25.801(6) (2012), violated her due process rights. She includes a copy of the February 11, 2025 Probation and Parole Report of Violation. Bourne has since filed a twenty-three-page single-spaced "Additional Appendix for Writ of Habeas Corpus."

Bourne argues that after her on-site hearing a Probation and Parole Officer stated that he "forgot" to allow witnesses or to have her fill out the form for requesting witnesses. She contends that she is not guilty of the four compliance violations listed in the attached Report. She contends that the Montana Incentives and Interventions Guide (MIIG) should apply to her situation, pursuant to § 46-23-1028, MCA. Bourne further argues that the non-compliance claim of absconding would have been disproven by witnesses because she was in treatment after her release from a hospital in January 2025. Bourne requests her immediate release to parole and release from jail.

We reviewed the attached Report and available electronic records. In January 2019, while on parole for a prior offense, Bourne was arrested for three Yellowstone County charges of felony criminal possession of dangerous drugs. On May 20, 2019, following Bourne's guilty plea, the District Court sentenced her on the drug charges to the

Department of Corrections (DOC) for a cumulative ten years with five years suspended. Bourne was later placed at the Montana Women's Prison for a parole revocation hearing.

In 2020, the State charged Bourne with felony solicitation to commit transferring illegal articles while incarcerated in prison. On March 2, 2020, following her guilty plea, the Yellowstone County District Court committed Bourne to the DOC for a suspended three-year term to run consecutively to any prior sentences.

On January 24, 2020, the Board of Pardons and Parole granted her release, and Bourne transferred her supervision to the State of Washington. Bourne returned to Montana in April of 2024. In the late summer of 2024, her Probation and Parole Officer alleged that Bourne had violated conditions of her parole, including illegal drug use, not complying with the law, failure to report, and not making her home open to a visit from the Probation and Parole Officer. On page two of the Report, Bourne's Probation and Parole Officer listed various interventions or case management responses, beginning on May 6, 2024. The report listed sixteen dates that Bourne tested positive for methamphetamine and/or fentanyl between May and September of 2024. The Report also provided the reasons why Bourne was labeled as an absconder and not appropriate for community placement.

We have carefully reviewed and considered Bourne's entire handwritten account of the events in her life that gave rise to her string of encounters with the court system. This Court also reviewed the sentencing judgments, dating back to 2004. Bourne entered guilty pleas to the offenses over the years, and the various District Courts awarded jail time credit in each of the sentencing judgments, along with elapsed time or street time credit for sentences upon revocation. Bourne points out that the law entitles her to credit for time served, but the judgments reflect no error in the sentencing courts' determinations of credit that would render her sentences facially invalid. Further, Bourne has not demonstrated legal error in the Yellowstone County District Court's persistent felony offender designation imposed in 2018.

Finally, parole is a privilege and not a right. *McDermott v. McDonald*, 2001 MT 89, ¶ 19, 305 Mont. 166, 169, 24 P.3d 200. This Court has recognized the broad authority of the Board and DOC’s supervision of parolees. *McDermott*, ¶ 20. Although she cites to the correct rules and statutes, Bourne is not entitled to her release from jail or to parole. Montana’s statutory scheme for supervision of parolees provides the process they are due in tandem with the Board’s rules. *See* Admin. R. M. 20.25.801 (2012) (rules for the on-site hearing and revocation of parole). The initial or on-site hearing is “to determine whether there is probable cause or reasonable grounds to believe that the arrested parolee has committed acts that would constitute a violation of parole conditions.” Section 46-23-1024(2), MCA (2023). Bourne acknowledges that the hearing occurred within five days as required by the statute but contends that testimony from witnesses—had it been allowed—would have changed the outcome here.

The attached Report of Violation shows otherwise. “A condition on *parole* is a limited grant of freedom to someone who would otherwise be incarcerated.” *McDermott*, ¶ 24 (emphasis in original). The reference to § 46-23-1028, MCA, applies only to compliance violations, and although Bourne disagrees that she absconded, it is considered a non-compliance violation. Sections 46-18-203(10)(a), 46-23-1001(1), and -1001(3)(a), MCA (2023). Her Probation and Parole Officer attempted interventions multiple times, pursuant to the MIIG. Bourne has violated her parole conditions too many times upon her return to Montana in 2024 after she was given multiple opportunities to comply with her conditions.

“There is no absolute standard for what constitutes due process.” *McDermott*, ¶ 10. We observe that Bourne received a copy of the Report of Violation, giving her notice of the reasons for her arrest after violating her parole conditions. Section 46-23-1023, MCA. “The parolee must be given notice of the hearing and must be allowed to appear and speak in the parolee’s own behalf and introduce relevant information to the hearings officer.” Section 46-23-1024(2), MCA (2023). Bourne appeared at the on-site hearing and does not allege that she was not given the opportunity to speak. The Montana Administrative Rules

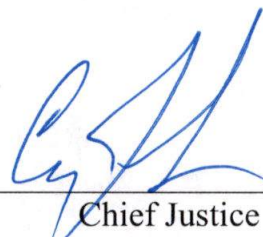
do provide that a parolee may have witnesses under specified conditions, but neither the Rules nor the applicable statute contain an affirmative mandate for such. Admin. R. M. 20.25.801(6) (2012); § 46-23-1024(2), MCA. Bourne has not shown a violation of the statutory procedure, and we conclude that she was afforded due process. See *Buehl v. Salmonsens*, No. OP 18-0495, 2018 Mont. LEXIS 390, Order at *3-*5 (Nov. 14, 2018) (noting that due process is satisfied by a timely on-site hearing if “some minimal inquiry [is] conducted at or reasonably near the place of the alleged parole violation or arrest and as promptly as convenient after arrest while information is fresh and sources are available” (quoting *Morrissey v. Brewer*, 408 U.S. 471, 485, 92 S. Ct. 2593, 2602 (1972))).

Bourne has not demonstrated that she is being held illegally. Section 46-22-101(1), MCA.

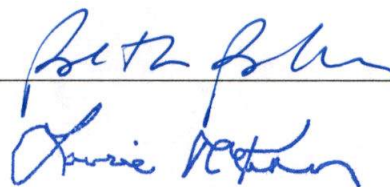
IT IS THEREFORE ORDERED that Bourne’s Petition for Writ of Habeas Corpus is DENIED and DISMISSED.

The Clerk is directed to provide a copy of this Order to counsel of record and to Shalaine Bourne personally.

DATED this 6th day of May, 2025.



Chief Justice





Justices