

Jeremy P. Opie #
Sagevaco Correctional Center
1252 East Arica Road
Eloy Az 85131

ORIGINAL

Petitioner, pro se

FILED

JUL 22 2025

Bowen Greenwood
Clerk of Supreme Court
State of Montana

IN THE SUPREME COURT OF THE STATE OF MONTANA

Jeremy Patrick Opie,
Petitioner,

Case No. OP 25-0523

vs.

Sean Weed, Warden,
Sagevaco Correctional Center;
Brian Gootkin, Director,
Montana Department of Corrections,
Respondents.

PETITION FOR WRIT
OF HABEAS CORPUS

COMES NOW, Jeremy P. Opie, Petitioner pro se, and submits this petition for writ of habeas corpus, pursuant to Mont. Code Ann Title 46, Chapter 29, et al. Opie asserts he is unlawfully imprisoned or restrained of liberty pursuant to a facially invalid sentence, as enumerated herew, and he is entitled to relief.

SUMMARY

This petition presents a single question for the Court to decide upon - Did the Thirteenth Judicial District Court possess the

Statutory authority to impose restitution in cause no. DC 23-0779?

The sentencing court erred when imposing a restitution obligation absent an affidavit or sworn testimony of a victim establishing pecuniary loss in accordance with § 46-18-442, MCA.

DISCLAIMER

Opie is indigent, pro se, and incarcerated. He has no legal training or education, and very limited access to legal resources. He is currently housed at Saguaro Correctional Center, a private prison under contract with the Montana Department of Corrections to house Montana prisoners on a per diem basis. Facility policy allows Opie access to the law library a total of six hours (if he foregoes eating a meal) one day a week. This time must be requested the month prior and is available on a first come, first served basis.

Legal research is also provided through Lexis/Nexis software on facility issued tablets. The current ratio of prisoner to tablet is greater than 2 to 1 and the tablets are available on a first come, first served basis.

Consequently, Opie relies on the courts' practice of pleadings filed pro se being liberally construed and held to less stringent standards than formal pleadings drafted by lawyers. See Reilly v. Schrim, 554 F.3d 780. See also § 1-3-219, MCA.

JURISDICTION

"A writ of habeas corpus may be granted by any Justice of the supreme court or by any district court judge upon petition by or on behalf of any person restrained of liberty within the

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~~the~~ justice's or judge's jurisdiction."

Section 46-22-202(1), MCA.

The Montana Supreme Court held, in Lott v. State, 2006 MT 279, P22, 334 Mont. 270, 150 P.3d 337, "... the writ of habeas corpus shall never be suspended [Art. II, §19, Mont. Const.], we conclude that, as applied to a facially invalid sentence - a sentence which, as a matter of law, the court had no authority to impose - the procedural bar created by § 46-22-101(a), MCA, unconstitutionally suspends the writ."

Further, the Court elucidated, "when the delegates ratified the 1972 Constitution, they intended, at a minimum, that an individual incarcerated pursuant to a facially invalid sentence ... have the ability to challenge its legality." Id.

Opie submits he is subject to a facially invalid sentence; absent sworn testimony or an affidavit from a victim detailing pecuniary loss, the sentencing court had no authority to impose a restitution obligation as part of judgment.

HISTORY

Due to its intrinsic link to another criminal proceeding (Montana Thirteenth Judicial District Court cause no. DC 23-0768), the history of this case is detailed and extensive. In the interest of economy, only relevant facts will be recited.

On June 26, 2023, an information was filed in the Montana Thirteenth Judicial District Court, Yellowstone County, charging Opie with aggravated animal cruelty, a felony, in violation of § 45-8-217, MCA. On September 5, 2023, an amended information was filed adding the offense of criminal contempt, a misdemeanor, in violation of § 45-7-309(1)(c), MCA.

On September 28, 2023, an acknowledgment and waiver of rights by plea of guilty and plea agreement was filed ^{with} the district court. This document was signed by Ingrid Rosenquist, deputy county attorney; Robert Kelleher Jr., defense counsel; and Opie. Within, at item 21, Opie acknowledges by his initials, "I understand that the Court, after a separate hearing or at sentencing has the ability to award restitution to the victim(s) in this matter, which I may be required to pay as part of the sentence imposed by the Court." No specific amount of restitution is mentioned in the plea agreement.

On October 6, 2023, Opie entered a plea of guilty to the offense of aggravated animal cruelty. This was done in accordance with a plea agreement made in concert with a guilty plea in cause no. DC 23-0768.

On January 11, 2024, the Montana Department of Corrections submitted a presentence investigation report prepared by Deanna Zent for cause nos. DC 23-0768 and DC 23-0779. Within are only two references to restitution. The first is on page 4, under the heading co-defendant(s) disposition, states, "Restitution: \$17,358.58, joint and severally with the Defendant." The second appears on page 7, under the heading Restitution: It states, "A Restitution Recap is attached reflecting the amount of \$2,030 by Yellowstone Sheriff's Office." This is supported by an unsigned, typewritten memo from Scott Twito, Yellowstone County Attorney to Judge Harada.

On February 6, 2024, a sentencing hearing was held by the district court. Opie was sentenced to a 2 year Department of Corrections commitment. It was also ordered that Opie pay restitution in the amount of \$17,358.58. See Exhibit A, Minutes Report. Crucial to analysis of this petition is no mention of testimony being taken, evidence being

received, nor the presence of anyone aside from attorneys and Opie, is made in the report.

The written judgment, attached as Exhibit B, was dated and filed fifty-two days later, on March 29, 2024. Within, at pages 4-5, the sentencing court orders Opie to pay restitution, jointly and severally with the co-defendant, in the amount of \$17,358.58. In its Restitution Receipt (P.5), the Court lists monies owed to Yellowstone Valley Animal Shelter and Moore Lane Veterinary Hospital. Notably absent is an analysis of Opie's ability to meet this financial obligation or any reference to an affidavit of pecuniary loss or testimony to that effect. The sentencing court instead rolls into four pages of parole conditions.

Additional relevant facts may be referenced throughout the argument, if necessary.

ARGUMENT

The term "affidavit" is specifically defined in statute. Section 46-1-1001 defines it as "An 'affidavit' is a written declaration under oath, made without notice to the adverse party." Section 46-18-242(1)(b), MCA, requires "an affidavit that specifically describes the victim's pecuniary loss and the replacement value in dollars of the loss, submitted by the victim," be included in the presentence investigation report. No document meeting these standards is included with the PSI report.

Alternatively, "the court shall accept evidence of the victim's loss at the time of sentencing," §46-18-242(2), MCA. The documentation (Exs. A+B) indicates this did not occur on February 6, 2024.

Lacking reliable and substantial evidence, because the affidavit requirement was not met and no testimony taken, the restitution ordered by the sentencing court is clearly erroneous. See State

V. Cleveland, 2018 MT 199, 392 Mont. 338, 423 P.3d 1074. The requirement that the order of a restitution obligation be supported by substantial evidence, affidavit or testimony, is clearly established law. State v Aragon, 2014 MT 89, 374 Mont. 391, 321 P.3d 841; Henry v State, 398 Mont. 445, 484 P.3d 627 (2019); State v Dukerson, 2003 MT 234, 317 Mont. 228, 76 P.3d 1085; State v Muhammad, 2002 MT 47, 309 Mont. 1, 43 P.3d 318; State v Pritchett, 2000 MT 261, 302 Mont. 1, 11 P.3d 539.

Further, Opie's financial resources and future ability to pay restitution have not been addressed in this case. This Court held that the absence of documentation on those subjects as required under § 46-18-242(1)(e), MCA, renders the sentencing court's judgment illegal. See State v Hilgers, 1999 MT 284, P14, 292 Mont. 23, 989 P.2d 866.

CONCLUSION

Section 46-18-242, MCA, requires a victim suffering a pecuniary loss submit either an affidavit or provide testimony describing their pecuniary loss for a district court to impose restitution. See State v Dodge, 2017 MT 318, P15, 390 Mont. 69, 408 P.3d 510. The same statute requires a sentencing court to analyze an offender's ability to meet a financial obligation before imposing restitution. In the instant case, the sentencing court failed to meet these statutory requirements.

THEREFORE, based on the foregoing and with good cause showing, Petitioner prays this honorable Court grant this petition and issue a writ of habeas corpus and grant any further relief the Court deems appropriate.

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Respectfully submitted this 6 day of July, 2025.

Jeremy P. Opie

Jeremy P. Opie

Petitioner, pro se

VERIFICATION

State of Arizona)

: ss.

County of Pinal)

I, Jeremy P. Opie, certify that I am unlawfully imprisoned or restrained of liberty for the reasons specified in the foregoing petition for writ of habeas corpus, and I believe I am entitled to habeas corpus relief for the same. I declare under penalty of perjury that the statements of fact in the foregoing are true and this instrument has been knowingly and willingly executed for the purpose stated therein.

Done and dated this 8 day of July, 2025.

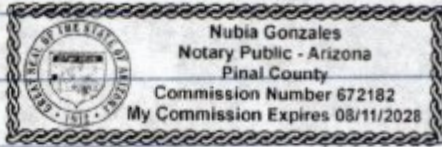
Jeremy P. Opie

Jeremy P. Opie

On the 6 day of July, 2025, before me, the undersigned, personally appeared Jeremy P. Opie, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature

On the instrument, executed the instrument.

SUBSCRIBED AND SWORN TO this 8 day of July, 2025.



Nubia Gonzales
Notary Public for the State of Arizona

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing petition for writ of habeas corpus was placed in the prison system for legal mail, postage prepaid, and addressed as follows:

Office of the Attorney General
for the State of Montana
P.O. Box 201401
Helena, MT 59620-1401

Date and dated this 15. day of July, 2025.

Jeremy P. Opie
Jeremy P. Opie