ORIGINAL

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Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA
Case Number: OP 26-0273

IN THE SUPREME COURT OF THE STATE OF MONTANA

OP 26-0273

CLAYTON DOUGLAS KIRN,

Petitioner,

v.

BILLIE REICH, Warden,
Crossroads Correctional Center,

Respondent.

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MAY 26 2026
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Clerk of Supreme Court
State of Montana

ORDER

Clayton Douglas Kirn has filed a Petition for Writ of Habeas Corpus, where he claims four violations: (1) ineffective assistance of counsel; (2) a delay of 573 days; (3) erroneous jury instructions; and (4) cumulative error due to jury composition. He requests that this Court reverse and remand his case to the court for consideration.

Kirn has had eight proceedings with this Court since 2019, including four original proceedings. In chronological order, the matters are: (1) *Kirn v. Bodine*, No. OP 19-0106, Order (Mont. Feb. 27, 2019) (*Kirn I*); (2) *State v. Kirn*, 2023 MT 98, 412 Mont. 309, 530 P.3d 1 (*Kirn II*); (3) *State v. Kirn*, No. DA 23-0668, Order dismissing appeal (Mont. Apr. 8, 2025) (*Kirn III*); (4) *Kirn v. Second Judicial District Court*, No. OP 25-0404, Order (Mont. Jun. 24, 2025) (*Kirn IV*); (5) *State v. Kirn*, No. DA 25-0416, Order denying out-of-time appeal petition (Mont. Jun. 24, 2025) (*Kirn V*); (6) *State v. Kirn*, No. 25-0737, Order dismissing appeal upon State's Motion (Mont. Feb. 17, 2026) (*Kirn VI*); and (7) *Kirn v. Second Judicial District Court*, No. OP 26-0135, Order (Mont. Mar. 17, 2026) (*Kirn VII*).

This Court denied his petition for habeas corpus relief on February 27, 2019, wherein he challenged his incarceration in the Yellowstone County Detention Facility because of a pending 2018 criminal case. *Kirn I*, at 1. He alleged ineffective assistance of counsel, denial of a speedy public trial, and due process violations. We stated that Kirn

had counsel to represent him and his constitutional claims were brought through the wrong remedy. "The remedy of habeas corpus relief is not appropriate for alleged claims of due process or other constitutional rights' violations. *Gates v. Missoula County Comm'rs.*, 235 Mont. 261, 262, 766 P.2d 884, 884-85 (1988)." *Kirn I*, at 2. This Court denied his petition because his incarceration was due to the pending case.

As mentioned, this Court has entertained two previous appeals concerning his convictions and sentence from the Second Judicial District Court, Butte-Silver Bow County. *See Kirn II* and *Kirn III*. In April 2021, a jury convicted Kirn of aggravated burglary and obstructing a peace officer. *Kirn II*, ¶ 1. On appeal, Kirn's counsel alleged a violation of speedy trial that the jury was not properly instructed. Kirn also alleged he was sentenced upon incorrect information. After a lengthy review of his speedy trial claim, this Court determined that "the District Court's findings are not clearly erroneous, and we affirm the court's denial of Kirn's Motion to Dismiss." *Kirn II*, ¶ 40. Next, we reviewed the jury instructions. We stated that while there had been some instructional error, Kirn had not established prejudice. *Kirn II*, ¶¶ 42-54. We additionally held that Kirn had not established his counsel was ineffective. *Kirn II*, ¶ 54. However, this Court remanded for resentencing because the court had relied on incorrect sentencing information. We concluded:

> Accordingly, while the District Court could rely on Kirn's juvenile record, it could not base its sentence on an incorrect number of prior felonies or that Kirn was a registered violent offender. We remand for a resentencing that is based on correct sentencing information.

Kirn II, ¶ 59.

Following remand, the District Court sentenced Kirn to the Montana State Prison for forty years for felony aggravated burglary and imposed a jail term of time served for misdemeanor obstructing a peace officer. Through counsel, Kirn appealed and this Court dismissed his appeal on August 8, 2025, after independent examination pursuant to § 46-8-103(2), MCA, and *Anders v. California*, 386 U.S. 738, 87 S. Ct. 1396 (1967). *Kirn III*.

On June 24, 2025, Kirn petitioned this Court for a writ of mandamus against the State of Montana and the Clerk of the District Court for Butte-Silver Bow County. *Kirn IV*. Kirn sought to have "this Court 'compel the Second Judicial District Court to accept the Petitioner's filings, or provide a reason why said filing[s] have not been accepted.'" *Kirn IV*, at 1. We declined his invitation and his writ. We explained:

> This Court will provide Kirn the reasons why his filings were not accepted in the District Court. His motions are inappropriate. The Clerk correctly returned the documents. Pursuant to § 3-1-804(1)(b), MCA, "[i]n a criminal action, a motion for substitution by . . . the defendant must be filed within 10 calendar days after the defendant's arraignment." Kirn's arraignment occurred on November 6, 2019. Kirn's Motion for Substitution of District Court Judge is untimely. Kirn's 2019 criminal case is most likely closed.[] Kirn cannot seek relief in a District Court through the Montana Rules of Civil Procedure in a criminal case, open or closed. M. R. Civ. P. 1.

Kirn IV, at 1-2 (footnote removed).

On the same day, this Court denied his verified Petition for an Out-of-Time Appeal. *Kirn V*.

> Kirn is not entitled to another appeal. *See Kirn [II]* and *Kirn [III]*. "Unless otherwise ordered, the supreme court's dismissal of an appeal or cross-appeal is with prejudice and constitutes the final judgment of the supreme court." M. R. App. P. 19(2). Kirn appealed the District Court's judgment for his "new sentence[,]" and he has a final judgment from this Court. We conclude that Kirn has not demonstrated any extraordinary circumstances to warrant an out-of-time appeal, and the denial of his petition is not a gross miscarriage of justice.

Kirn V, at 2.

On October 20, 2025, Kirn filed a Notice of Appeal, indicating that he appealed a final judgment from the Butte-Siver Bow County District Court, entered on September 5, 2025, for a 2019 criminal case. *Kirn VI*. He did not include a copy of any judgment. In his Appendix, he referenced a postconviction matter, Cause No. DV-25-266, filed on August 5, 2025, and explained that it had been more than thirty days and, according to his calculations, he believed that he should have had an answer or response. On January 22, 2026, the State moved to dismiss the appeal, explaining that Kirn's appeal was premature

because he did not appeal a final order as the postconviction case was pending in the District Court. On February 17, 2026, this Court dismissed Kirn's appeal without prejudice. *Kirn VI*, at 2. We stated that "Kirn may return to this Court when he receives a final judgment or order from the District Court for his petition for postconviction relief." *Kirn VI*, at 1.

Instead, ten days later, Kirn returned to this Court and filed a writ of mandamus. *Kirn VII*. He wanted this Court to force the District Court to rule on his pending petition for postconviction relief that he filed on August 11, 2025. We stated:

> Kirn's Petition lacks merit because he cannot show a clear legal duty by the District Court. Section 27-26-102(1), MCA. Kirn is not entitled to a writ of mandamus, and this Court will not "force" a decision. Issuing a decision in a pending case is a discretionary act, not a legal duty. *See* §§ 46-21-201[,] and -202, MCA (these statutes guide the court's actions for its proceeding on the petition). Given Kirn's instant Petition, we do not reach the conclusion that the District Court has abused its discretion; however, this Court expects that the District Court will issue a ruling in a timely manner. Kirn has an adequate remedy at law with an appeal after he receives a final, written decision from the District Court. Section 27-26-102(2), MCA; *Smith*, ¶ 28. *See also* § 46-21-203, MCA. .

Kirn VII, at 2.

Kirn's instant petition for habeas corpus relief lacks merit. This Court has decided his claims previously. *See Kirn II*. We decline to consider them again. Kirn brings his claims to this Court through the wrong remedy. Kirn had two appeals of his convictions and sentence. *Kirn II* and *Kirn III*. He cannot bring the same arguments through this writ nor challenge his convictions. *See Kirn IV*, *Kirn V*, and *Kirn VI*. Having appealed his convictions and sentence, he is precluded from raising the issues in a writ of habeas corpus because he has exhausted his remedy of appeal. Section 46-22-101(2), MCA. Kirn is not entitled to his requests or habeas corpus relief. Section 46-22-101(1), MCA.

This Court cautions Kirn not to repeatedly challenge his 2019 convictions and 2023 sentence. He may seek an appeal of the court's decision for his petition for postconviction

relief; however, upon the filing of another original proceeding regarding his 2019 convictions, this Court is imposing a prefiling requirement. Therefore,

IT IS ORDERED that Kirn'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 of the Supreme Court is directed to provide a copy of this Order to counsel of record and to Clayton Douglas Kirn personally.

DATED this 26th day of May, 2026.

Chief Justice

Justices