

Appendix A

FILED

04/16/2019

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: OP 19-0203

IN THE SUPREME COURT OF THE STATE OF MONTANA

OP 19-0203

CHARLES CLARY,

Petitioner,

v.

LYNN GUYER, Warden,
Montana State Prison,

Respondent.

FILED

APR 16 2019

Bowen Greenwood
Clerk of Supreme Court
State of Montana

ORDER

Charles Clary has filed a document denominated on the cover page as a Petition for a Writ of Habeas Corpus. Attached to the cover page are pages of narrative writing, as well as copies of pleadings filed in a criminal proceeding that named Clary as defendant in the Ninth Judicial District Court, Toole County, including an order dismissing the case upon motion of the Toole County Attorney in February 2019. The narrative pages appear to attack the dismissed criminal proceeding on constitutional grounds, although the assertions are unclear.

Clary is currently serving a thirty-year prison term for aggravated burglary and two counts of assault with a weapon, after a jury convicted him in 2010, in the Eighth Judicial District Court, Cascade County. His petition does not appear to challenge this basis of his incarceration.

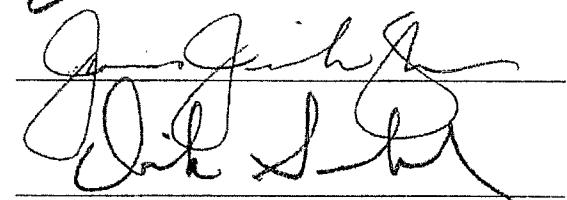
A person imprisoned or otherwise restrained of liberty "may prosecute a writ of habeas corpus to inquire into the cause of imprisonment or restraint and, if illegal, to be delivered from the imprisonment or restraint." Section 46-22-101(1), MCA. Any challenge to the referenced criminal proceeding in Toole County is moot because the case was dismissed. An issue becomes moot when a change in circumstances renders the controversy non-existent. *Cape v. Crossroads*, 2004 MT 265, ¶ 25, 323 Mont. 140, 99 P.3d 171; *Sebastian v. Mahoney*, 2001 MT 88, ¶ 8, 305 Mont. 158, 25 P.3d 163. Clary's

cause of incarceration is due to his 2010 convictions and sentences from Cascade County. He does not challenge this cause of incarceration, and he has not demonstrated an illegal sentence. Therefore,

IT IS ORDERED that Clary's Petition for a 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 Charles Clary personally.

DATED this 6 day of April, 2019.


Chief Justice


Justices

**Additional material
from this filing is
available in the
Clerk's Office.**