

Exhibit A

FILED

04/11/2023

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: DA 22-0626

DA 22-0626

IN THE SUPREME COURT OF THE STATE OF MONTANA

2023 MT 66N

JAMES WILLIAM WALKER,

Petitioner and Appellant,

v.

STATE OF MONTANA,

Respondent and Appellee.

APPEAL FROM: District Court of the Eighteenth Judicial District,
In and For the County of Gallatin, Cause No. DC-15-333C
Honorable John C. Brown, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

James William Walker, Self-Represented, Deer Lodge, Montana

For Appellee:

Austin Knudsen, Montana Attorney General Katie F. Schulz,
Assistant Attorney General, Helena, Montana

Audrey Cromwell, Gallatin County Attorney, Afton M. Jessop,
Deputy County Attorney, Bozeman, Montana

Submitted on Briefs: March 8, 2023
Decided: April 11, 2023

Filed:


Clerk

"APPENDIX A"

¶6 On October 25, 2022, the District Court issued an Order Dismissing Request for Postconviction Relief. The court considered the Motion as a petition for postconviction relief, pursuant to § 46-21-102, MCA. Petitions for postconviction relief must be filed within a year of the date a conviction becomes final. Walker's petition was filed nearly four years after his conviction was made final. The court consequently denied his petition as untimely.

¶7 The District Court did not find cause pursuant to the exceptions under § 46-21-102(2), MCA, to exempt Walker's petition from the statutory deadline.

¶8 We review a district court's denial of postconviction relief to determine if the court's findings of fact are clearly erroneous, and if its conclusions of law are correct. *Kenfield v. State*, 2016 MT 197, ¶ 7, 384 Mont. 322, 377 P.3d 1207.

¶9 A writ of coram nobis is not available as a remedy for postconviction relief. *State v. Barrack*, 267 Mont. 154, 159, 882 P.2d 1028, 1031 (1994). The writ of coram nobis was incorporated into § 46-21-101(1), MCA, which details petitions for postconviction relief, in 1997. 1997 Mont. Laws ch. 378, § 3. This Court abolished the writ of coram nobis, effective October 1, 2011, upon revising the Montana Rules of Civil Procedure.

¶10 The District Court conducted a thorough analysis of the applicable laws and correctly concluded that Walker's petition was time-barred.

¶11 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. In the opinion of the Court, the case presents a question controlled by settled law or by the clear application of applicable standards of review.

Exhibit B

GALLATIN COUNTY CLERK
OF DISTRICT COURT
SANDY ERNARDT

2022 OCT 25 AM 9:51

FILED

BY DA DEPUTY

MONTANA EIGHTEENTH JUDICIAL DISTRICT COURT, GALLATIN COUNTY

* * * *

JAMES WILLIAM WALKER,) Cause No. DC-15-333C
Petitioner,) ORDER DISMISSING REQUEST FOR
) POSTCONVICTION RELIEF
v.)
STATE OF MONTANA,)
Respondent.)

Before the Court is Petitioner's Motion in the Nature of Writ of Error Coram Nobis including Brief and the State's Response and Brief in opposition. Under Montana law, proceedings seeking postconviction relief are governed by statute and "a writ of coram nobis" is no longer available in Montana as a remedy for post-conviction relief. *State v. Barrack*, 267 Mont. 154, 159, 882 P.2d 1028, 1031 (1994). Effective on October 1, 2011, the writ of coram nobis was abolished from Montana jurisprudence by Rule 60(e), M.R.Civ.P. However, a collateral attack on a conviction like that formerly available under coram nobis is specifically provided for by the Montana Postconviction statute, Section 46-21-101 (1), MCA. Therefore, the Court deems Petitioner's Motion for Coram Nobis a Petition for Postconviction Relief, filed pursuant to Section 46-21-101(1) and adjudicates it as such.

The Court finds Petitioner's Petition for Postconviction Relief is untimely and must be dismissed. Thus, no evidentiary hearing is necessary. *Bishop v. State*, 254 Mont. 100, 107-108, 835

P.2d 732, 737 (1992). ("It is not error to deny an application for post-conviction relief without an evidentiary hearing if the allegations are without merit or would otherwise not entitle the petitioner to relief.")

Under Montana law, the Petitioner had 60 days to appeal his conviction, which began to run on the date the Court filed its written Reasons for Sentence. Rule 5(b)(i), M.R.App.P. On March 8, 2016, Petitioner was tried for the offense of Aggravated Assault, a Felony, in violation of Montana Code Annotated § 45-5-202. A jury found him guilty. Petitioner was sentenced on June 20, 2017. The Court signed and filed its Reasons for Sentence on July 31, 2017. Petitioner failed to appeal his conviction to the Montana Supreme Court by September 29, 2017, 60 days from July 31, 2017, the date the Court filed its Reasons for Sentence. Petitioner thereafter filed his request for post-conviction relief on June 21, 2022.

Pursuant to § 46-21-102(1), MCA, the following time limits apply to filing a petition for postconviction relief:

- (1) Except as provided in subsection (2), a petition for the relief referred to in 45-21-101 may be filed at any time within 1 year of the date that the conviction becomes final. A conviction becomes final when:
 - (a) the time for appeal to the Montana Supreme Court expires;
 - (b) if an appeal is taken to the Montana Supreme Court, the time for petitioning the United States Supreme Court for review expires; or
 - (c) if review is sought in the United States Supreme Court, on the date that that Court issues its final order in the case.

Section 46-21-102(1)(a), MCA, deems convictions to be final when the time expires for filing an appeal to the Montana Supreme Court. Petitioner had 60 days to appeal his conviction, but failed to do so. Petitioner therefore had one year to file his request for postconviction relief after he was sentenced.

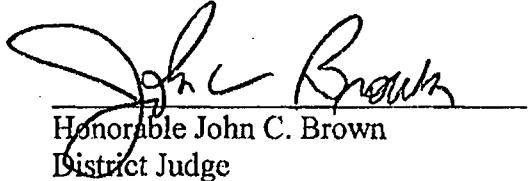
The Reasons for Sentencing were filed on July 31, 2017. Petitioner's conviction therefore became final sixty days later, on September 29, 2017. Petitioner therefore had one year or until

September 28, 2018, to file his request for post-conviction relief. § 46-20-102(1), MCA. Petitioner failed to file his request until June 21, 2022. Petitioner's request, however, was time barred as of September 29, 2019. Section 46-21-102, MCA constitutes a rigid, categorical time prescription that governs post-conviction petitions. *Davis v. State*, 2008 MT 226, 344 Mont. 300, 187 P.3d 654. Petitioner's request must therefore be denied.

THEREFORE, IT IS HEREBY ORDERED:

The Petitioner's Motion in the Nature of Writ of Error Coram Notice is DENIED.

Dated this 25 day of October, 2022.



John C. Brown
Honorable John C. Brown
District Judge

cc: Deputy Gallatin County Attorney Afton Jessop > **EMAILED**
Chief Gallatin County Attorney Eric Kitzmiller
James William Walker, Defendant - **MAILED**

10/25/22

Exhibit C-2
FILED

05/09/2023

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: DA 22-0626

IN THE SUPREME COURT OF THE STATE OF MONTANA

DA 22-0626

FILED

JAMES WILLIAM WALKER,

Petitioner and Appellant,

v.

MAY 09 2023

Bowen Greenwood
Clerk of Supreme Court
State of Montana

ORDER

STATE OF MONTANA,

Respondent and Appellee.

Appellant James William Walker has filed a petition for rehearing in the above-entitled matter. Appellee State of Montana filed a response objecting to the petition.

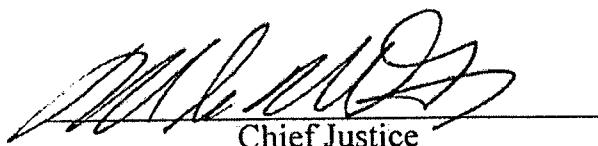
This Court will consider a petition for rehearing only if our initial decision overlooked some fact material to the decision, overlooked a question presented that would have proven decisive to the case, or if the decision conflicts with a statute or controlling decision not addressed by the Court. M. R. App. P. 20(1)(a)(i-iii).

Having fully considered Appellant's petition and the State's response, the Court concludes that rehearing is not warranted under Rule 20. Therefore,

IT IS ORDERED that the petition for rehearing is DENIED.

The Clerk is directed to provide a copy of this Order to James William Walker and all counsel of record.

DATED this 9 day of May, 2023.


Chief Justice

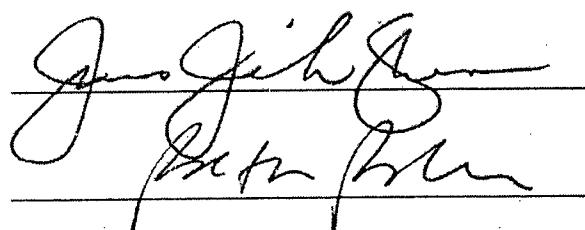

Bowen Greenwood

Exhibit C-3

IN THE SUPREME COURT OF THE STATE OF MONTANA

DA 22-0626

FILED

STATE OF MONTANA,

NOV 09 2022

Plaintiff and Appellee,

Bowen Greenwood
Clk. of Supreme Court
State of Montana

v.

ORDER

JAMES WILLIAM WALKER,

Defendant and Appellant.

James William Walker moves this Court for appointment of counsel. He states that this is a "step in the criminal case" pursuant to a 1954 decision from the United States Supreme Court. Walker provides that he filed a "Motion in the Nature of Writ of Error Coram Nobis Including Brief" in the Gallatin County District Court. He states that he appeals the court's denial on October 25, 2022, but he does not provide a copy.

We secured a copy of the court's register of actions. The District Court sentenced Walker on July 20, 2017. The court's order, issued on October 25, 2022, dismissed his request for postconviction relief.

Walker is not entitled to appointment of counsel. There is no right to the appointment of counsel in a postconviction proceeding for relief, although a court may order the assignment of counsel under the circumstances outlined in § 46-8-104, MCA. Walker represented himself in his proceeding before the District Court. He has not demonstrated the existence of extraordinary circumstances to justify appointment of counsel, pursuant to § 46-8-104(3), MCA.

Therefore,

IT IS ORDERED that Walker's Motion for Appointment of Counsel is DENIED.

The Clerk is directed to provide a copy of this Order to counsel of record and to James William Walker along with a copy of this Court's Appellate Handbook.

DATED this 9th day of November, 2022.

For the Court,

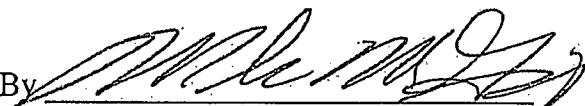
By 
Chief Justice

Exhibit D

FILED

11/29/2022

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: DA 22-0626

IN THE SUPREME COURT OF THE STATE OF MONTANA

DA 22-0626

FILED

JAMES WILLIAM WALKER,

NOV 28 2022

Petitioner and Appellant,

Bowen Greenwood
Clerk of Supreme Court
State of Montana

v.

ORDER

STATE OF MONTANA,

Respondent and Appellee.

Self-represented Appellant James William Walker has filed a petition for rehearing of his motion for appointment of counsel, which this Court denied in a November 9, 2022 Order. We explained at that time that Walker was not entitled to counsel because the Gallatin County District Court's October 25, 2022 Order dismissed his request for postconviction relief. Walker was sentenced in 2017.

"Absent clearly demonstrated exceptional circumstances, the supreme court will not grant petitions for rehearing of its orders disposing of motions or petitions for extraordinary writs." M. R. App. P. 20(1)(d).

Walker contends that this Court and the District Court have erred. He states that, pursuant to *United States v. Morgan*, 346 U.S. 502, 74 S. Ct. 247 (1954), authority exists for "his Motion in the Nature of Writ of Error Coram Nobis, and [petitions] this Court to rehear said Motion for appointment of legal counsel."

Walker is mistaken because no such authority exists. Since October 1, 2011, coram nobis is no longer available as a remedy for postconviction relief. The Montana Legislature consolidated common law statutory remedies to challenge a sentence, conviction, or illegal incarceration under Title 46, Chapter 21, for postconviction proceedings. *In re McNair*, 189 Mont. 321, 323, 615 P.2d 916, 917 (1980); *State v. Barrack*, 267 Mont. 154, 159-60, 882 P.2d. 1028, 1031 (1994). Various bills and writs, including the writ of coram nobis,

Exhibit E

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BUTTE DIVISION

JAMES WILLIAM WALKER,

Petitioner,

vs.

STATE OF MONTANA,

Respondent.

CV 22-081-BU-BMM-JTJ

ORDER

This case comes before the Court on Montana pro se Petitioner James William Walker's petition for writ of habeas corpus under 28 U.S.C. § 2254. (Doc. 2.)

Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts requires courts to examine the petition before ordering the respondent to file an answer or any other pleading. The petition must be summarily dismissed “[i]f it plainly appears from the face of the petition and any attached exhibits that the petitioner is not entitled to relief in the district court.” *Id.*; see also, 28 U.S.C. § 1915A(B)(1),(2) (the court must dismiss a habeas petition or portion thereof if the prisoner raises claims that are legally “frivolous or malicious” or fail to state a basis upon which habeas relief may be granted). As explained below, the Court lacks jurisdiction to consider Walker’s second petition

“APPENDIX F”

petition. See, *Burton v. Stewart*, 549 U.S. 147, 149 (2007) (per curiam). Absent such authorization, Walker may not proceed in this Court.

II. CERTIFICATE OF APPEALABILITY

“The district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant.” Rule 11(a), Rules governing § 2254 Proceedings. A COA should issue as to those claims on which a petitioner makes a “substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). The standard is satisfied if “jurists of reason could disagree with the district court’s resolution of [the] constitutional claims” or “conclude the issues presented are adequate to deserve encouragement to proceed further.” *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003) (citing *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)).

A certificate of appealability will be denied.

Exhibit H.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

JAMES WILLIAM WALKER,

Petitioner,

vs.

STATE OF MONTANA,

Respondent.

CV 23-00045-M-DLC-KLD

ORDER

James William Walker has filed a Petition for a Writ of Mandamus, asking this Court to "require the State of Montana, specifically the Legislature and the Judicial Branches of the State Government," to comply with Walker's understanding of federal law. (Doc. 2 at 1.) The petition will be dismissed.

Walker is a state prisoner proceeding pro se and in forma pauperis. This petition raises the same legal issues that Walker proposed in one of his prior habeas petitions in this Court, whether the State of Montana has properly abolished the Writ of Error Coram Nobis, and whether the Montana Supreme Court has misapplied federal law. (Doc. 2 at 5. *See also Walker v. State of Montana*, CV 22-81-BU-BMM-JTJ.) Walker seeks a determination from this Court that the State of Montana is misapplying federal law, and a writ of mandate requiring it to comply. (Doc. 2 at 8.)

The court must screen any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. *See* 28 U.S.C. § 1915A(a). The court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. *Id.* at 1915A(b)(1),(2). Walker's claim is frivolous, and the Court is without jurisdiction to hear it.

Walker cites the federal mandamus statute, the All Writs Act, as the source of this Court's authority to do what he asks. (Doc. 2 at 8 – 9.) However, that statute applies only to *federal* officers and employees, not *state* officers and employees. *See* 28 U.S.C. § 1361 (“The district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff.”) A petition for a writ of mandamus “to compel a state court or official to take or refrain from some action is frivolous as a matter of law.” *Demos v. U.S. District Court*, 925 F.2d 1160, 1161-62 (9th Cir. 1991); *Givens v. Los Angeles Cnty. Superior Ct.*, 163 F. App'x 514, 515 (9th Cir. 2006). In addition, the All Writs Act “does not operate to confer jurisdiction and may only be invoked in aid of jurisdiction which already exists.” *Malone v. Calderon*, 165 F.3d 1234, 1237 (9th Cir. 1999). This Court is without jurisdiction to hear Walker's petition.

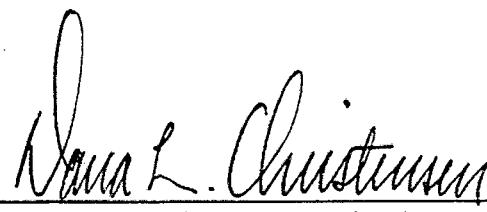
A prisoner seeking to challenge the fact or duration of his incarceration must do so by way of a petition for a writ of habeas corpus. *Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973). Habeas corpus is Walker's exclusive federal remedy to challenge the legality or duration of his custody. *Young v. Kenny*, 907 F.2d 874, 876–78 (9th Cir.1990), *cert. denied*, 498 U.S. 1126 (1991). The Court will not construe Walker's petition for writ of mandate to be a petition for writ of habeas corpus because he specifically intended to file the former. (Doc. 6 (stating the document should be a criminal filing and not a civil filing "like habeas corpus."))

Accordingly, the Court enters the following:

ORDER

1. Walker's petition is DISMISSED. The Clerk of Court is directed to close this matter and enter judgment.
2. The Clerk is directed to have the docket reflect that Walker's filing of this action constitutes a strike within the meaning of 28 U.S.C. 1915(g).

DATED this 17th day of May, 2023.



Dana L. Christensen
Dana L. Christensen, District Judge
United States District Court

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