

Extraordinary Writs

Habeas Corpus

1. The Writ Defined—Rule 14

Habeas corpus is prerogative writ of ancient origin directed to a person detaining another, commanding him to produce the body of the prisoner at a designated time and place, to do, submit to, and receive whatever the court shall decide. [In re Hart](#), 178 Mont. 235, 240, 583 P.2d 411, 414 (1978).

The writ of habeas corpus is the remedy the law offers for the enforcement of the civil right of personal liberty. [In re Hart](#), 178 Mont. 235, 239, 583 P.2d 411, 414 (1978).

From the time of the Magna Charta, the Great Writ of Habeas Corpus has been liberally employed as a means of guaranteeing that justice be accomplished and that a miscarriage of justice will be remedied. The writ acknowledges the principle that the rights of freedom of the individual are worthy of protection. [Lott v. State](#), 2006 MT 279, ¶ 20, 334 Mont. 270, 150 P.3d 337 (citations omitted).

The purpose of the petition is to determine the legality or illegality of the restraint. [In re Hart](#), 178 Mont. 235, 240, 583 P.2d 411, 414 (1978); [Keating v. Sherlock](#), 278 Mont. 218, 924 P.2d 1297 (1996). It is a legal proceeding independent of the proceeding under which the detention is sought to be justified. Habeas corpus is available to inquire into the cause of imprisonment or restraint and, if illegal, to be delivered therefrom. [In re Hart](#), 178 Mont. 235, 240, 583 P. 2d 411, 414 (1978); § 46-22-101(1), MCA.

2. Review on Original Petition—Not Appeal

A writ of habeas corpus may be granted by either a District Court or this Court. Section 46-22-202(1), MCA. A district court's denial of a petition for a writ of habeas corpus is not appealable to this Court. [Morrison v. Mahoney](#), 2002 MT 21, ¶ 3, 308 Mont. 196, 41 P.3d 320. Consequently, this Court will not consider whether a District Court abused its discretion in denying a petition for habeas corpus. [Miller v. Eleventh Jud. Dist. Ct.](#), 2007 MT 58, ¶ 5, 336 Mont. 207, 154 P.3d 1186. A district court's denial of a writ does not constitute res judicata or divest this Court of jurisdiction to grant a subsequent petition. [Thomas v. Doe](#), 2011 MT 283, ¶ 6, 362 Mont. 454. Successive applications for the writ may be brought before this Court until the judicial power of the State has been exhausted. [In re Hart](#), 178 Mont. 235, 243-44, 583 P.2d 411, 415-16 (1978).

The speedy nature of the writ must never be sacrificed by relegating habeas corpus to criminal appellate procedure. [In re Hart](#), 178 Mont. 234, 244, 583 P.2d 411, 416 (1978).

The original prosecution is a criminal proceeding, but an original petition for a writ of habeas corpus initiates a civil proceeding. It is a new suit brought to enforce a civil right against those holding the petitioner in custody based upon the underlying criminal proceeding. [In re Hart](#), 178 Mont. 235, 239, 583 P.2d 411, 413 (1978).

a. Prima Facie Claim

The burden in a habeas corpus proceeding is to persuade the Court that the writ should be issued. The petitioner must present the Court a record that is sufficient to make a prima facie case showing that the order of the District Court constituted a violation, deprivation, infringement or denial of his constitutional, statutory or legal rights. [Miller v. Eleventh Jud. Dist. Ct.](#), 2007 MT 58, ¶ 14, 336 Mont. 207, 154 P.3d 1186, citing [In re Hart](#), 178 Mont. 235, 249-50, 583 P.2d 411, 418-19 (1978) (internal citations omitted).

Once a prima facie claim is filed that demonstrates that if the factual and legal allegations are true, the petitioner might be entitled to relief, the court may require a summary response. No reply is allowed. The Court may order more extensive briefing, oral argument, issue the writ or dismiss the petition. This Court may also order a stay of further proceedings in the other court, pending disposition of the petition. M. R. App. P. 14(7).

b. Generally, No Right to Counsel

This Court will appoint OSPD (Office of State Public Defender) to represent persons seeking habeas relief only upon a demonstration of good cause that affirmatively moves our discretion to appoint. A showing of likelihood that the sentence of the person seeking relief is illegal and will be shortened or terminated should habeas relief be granted will be required before we will make an appointment. A statement that the applicant is untrained or unskilled in the law will be insufficient, without more, to establish good cause. [Dyer v. Mahoney](#), 2008 MT 117, ¶ 6, 342 Mont. 495, 182 P.3d 737.

c. The Procedural Bar

The writ may not be used to attack the validity of the conviction or sentence of a person who has been adjudged guilty of an offense in a court of record and has exhausted the remedy of appeal. Section 46-22-101(2), MCA.

Application of the statutory bar in § 46-22-101(2), MCA, unconstitutionally suspends the constitutional guarantee in Article II, Section 19 of the Montana Constitution to an individual incarcerated on a facially invalid sentence, i.e., a sentence that exceeds the statutory minimum for the crime for which the offender was convicted or that violates the constitutional right to be free from double jeopardy. With respect to a facially invalid sentence, the procedural bar of res judicata (§ 46-22-101(2), MCA above), does not apply and the ends of justice demand that we not permit a facially invalid sentence to stand. [State v. Southwick](#), 2007 MT 257, ¶ 19, 339 Mont. 281, 169 P.3d 698.

3. When is Habeas Corpus Available?

Incarceration of an individual pursuant to a facially invalid sentence—a sentence which, as a matter of law—the court had no authority to impose unconstitutionally suspends the writ. Section 46-22-101(2), MCA. Incarceration pursuant to a facially invalid sentence represents a "grievous wrong" and a miscarriage of justice warranting habeas corpus relief. [Lott v. State](#), 2006 MT 279, ¶ 22, 334 Mont. 270, 150 P.3d 337, citing *Brecht v. Abrahamson*, 507 U.S. 619, 637, 113 S.Ct. 1710, 1721 (1993) and [State v. Perry](#), 232 Mont. 455, 462, 758 P.2d 268, 273 (1988) (overruled on other grounds).

It is unquestionable that a person restrained by the terms of a suspended sentence beyond its lawful completion date is being unlawfully restrained of his or her liberty. [Sebastian v. Mahoney](#), 2001 MT 88, ¶ 8, 305 MT 158, 25 P.3d 163.

When a petition does not challenge the legal sufficiency of the cause for incarceration, and fails to allege the incarceration is unlawful, habeas corpus is not appropriate. It is not within the scope of the writ of habeas corpus to remedy other constitutional claims relating to the conditions of incarceration. [Sage v. Gamble](#), 279 Mont. 459, 463, 929 P.2d 822, 824 (1996), citing [Gates v. Missoula County](#), 235 Mont. 261, 766 P.2d 884 (1988).

A sentence that exceeds the statutory maximum for the crime charged or which either exceeds the statutory maximum for the crime charged or which violated the constitutional right to be free from double jeopardy may be challenged based upon legality. [Lott v. State](#), 2006 MT 279, ¶ 22, 334 Mont. 270, 150 P.3d 337.

A sentence is only valid insofar as the power of the court extends and is invalid as to the excess. [State v. Southwick](#), 2007 MT 257, ¶ 28, 339 Mont. 281, 169 P.3d 698, citing [DeShields v. State](#), 2006 MT 58, ¶ 11, 321 Mont. 329, 132 P.3d 540.

a. Bail

A defendant has a presumptive right to be released on bail before conviction, except when death is a possible punishment for the offense charged. § 46-9-102, MCA. In order to protect the rights of a person accused of a non-capital crime, the defendant shall be released pending trial if reasonable conditions can be imposed to protect the community or any particular individual. Section 46-9-108, MCA; [Miller v. Eleventh Jud. Dist. Ct.](#), 2007 MT 58, ¶¶ 8, 14, 336 Mont. 207, 154 P.3d 1186.

b. Mootness

While release from custody may moot some habeas petitions because the Court can no longer grant the relief a petitioner has requested, release from custody does not necessarily moot a petition for a writ of habeas corpus. A petition becomes moot when a petitioner's release from custody prevents this Court from granting "effective relief." [Sebastian v. Mahoney](#), 2001 MT 88, ¶ 7, 305 Mont. 158, 25 P.3d 163.

c. Relief

It is not premature to consider a habeas petition prior to the time the inmate is entitled to relief. Immediate release is not the only remedy available by way of habeas corpus. [Sebastian v. Mahoney](#), 2001 MT 88, ¶ 7, 305 Mont. 158, 25 P.3d 163.

A petitioner who challenges a sentence by way of habeas corpus, but not the underlying conviction, is not entitled to be released, but only to be resentenced. [Lott v. State](#), 2006 MT 279, ¶ 23, 334 Mont. 270, 150 P.3d 337.

If the illegal portion of a sentence "affects the entire sentence," and we are unable to discern what the district court would have done if it had properly applied the law, we remand for resentencing. [State v. Heath](#), 2005 MT 280, ¶ 7, 329 Mont. 226, 123 P.2d 228.

A person may not be released by way of a writ of habeas corpus due to any technical defect in the commitment not affecting the person's substantial rights. Section 46-22-102, MCA.