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FILED
11/19/2024
Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA
Case Number: OP 24-0655

IN THE SUPREME COURT OF THE STATE OF MONTANA

OP 24-0655

JAMES PARK TAYLOR,

Petitioner,

v.

WRIT OF MANDAMUS

JAMES SALMONSEN, Warden,
Montana State Prison,

Respondent.

James Park Taylor, an attorney licensed to practice law in the State of Montana, has petitioned this Court for a writ of mandamus to direct James Salmonsen, Warden of Montana State Prison (MSP), to allow Taylor to visit his client Joseph Dwayne Matt, an inmate at MSP, without requiring Taylor to submit to a background check.

Taylor has provided an affidavit in accordance with § 27-26-201, MCA. Taylor alleges as follows:

On October 7, 2024, Taylor was assigned to represent Matt as contract counsel via the Appellate Defender Division of the Office of Public Defender. Taylor wrote to Matt to inform him of his representation. Matt then called Taylor on October 21, 2024, but MSP terminated the phone call before Matt and Taylor could have any meaningful discussion regarding Matt's appeal.

Taylor then contacted various Department of Corrections (DOC) personnel to ascertain how he could meet with Matt in person at MSP. Taylor communicated with: Dayna Marie Gilman, a legal assistant in the office of Chief Legal Counsel for DOC; Stacey Leighton, from the Warden's office at MSP; and Andres Haladay, Chief Legal Counsel for DOC. All of them informed Taylor he would have to submit to a criminal history background investigation and be approved before he could meet with his client.

Taylor then wrote a letter to Warden Salmonsen, explaining he was Matt's appointed counsel and that MSP was denying him the right to meet with his client. The letter provided, inter alia:

> I have been told that I will not be allowed to see my client unless I submit to a criminal background investigation under your policy DOC 3.1.5., ENTRANCE PROCEDURES AND DETAINMENT OF NONOFFENDERS. This policy states that all persons (apparently including licensed attorneys wanting to meet with their clients) must first obtain clearance from the facility by submitting to a criminal history background check. Section IV A of that same policy allows the facility administrator to approve any exception to the policy. . . .
>
> I am asking you to approve an exception to DOC 3.1.5. . . . an exception that is mandated by Montana law. . . . [Section 37-61-418, MCA,] does not authorize DOC to require attorneys to submit to a criminal history background check, and for DOC to decide whether to admit or deny an attorney based on the information learned from the background check . . . .

According to Taylor's filing with this Court, Warden Salmonsen denied him access to meet with Matt, advising Taylor, "if he made an exception for me then he would have to make an exception to the policy for all attorneys."

On November 6, 2024, Taylor petitioned this Court for writ of mandamus. He asks this Court to direct Warden Salmonsen to allow Taylor in-person contact with Matt.

M. R. App. P. 14(2) provides that original proceedings commenced in this Court to obtain writs, including writs of mandate or mandamus, shall be commenced and conducted in the manner prescribed by the applicable statutes. Section 27-26-102, MCA, provides in relevant part that this Court may issue a writ of mandamus to compel any lower tribunal, corporation, board, or person to perform an act that the law specially enjoins as a duty resulting from an office, and that the writ must be issued in all cases in which there is no plain, speedy, and adequate remedy in the ordinary course of law.

Taylor argues that § 37-61-418, MCA, guarantees attorneys the right to see their imprisoned clients and that DOC and MSP may not interfere with that right via policy or rule to the contrary. Inter alia, the statute provides:

> All public officers, sheriffs, coroners, jailers, constables, or other officers or person having in custody any person committed, imprisoned, or restrained of the person's liberty for any alleged cause shall admit any practicing attorney in this state whom the person restrained of liberty may desire to see or consult, to see and consult the imprisoned person, alone and in private, at the jail or other place of custody.

We agree with Taylor that this statute precludes DOC or Warden Salmonsen from denying him access to see his imprisoned client or to condition such access on a criminal background check. We have also read DOC 3.1.5. We disagree with Taylor that the policy states that "licensed attorneys wanting to meet with their clients must first obtain clearance from the facility by submitting to a criminal history background check." DOC 3.1.5, Section IV(A) provides:

> 1. All visitors, including volunteers and vendors, must receive clearance through a criminal history background check before entrance to the secure facility is granted. The facility administrator must approve any exceptions to this policy.
>
> 2. **Official visitors, in possession of state identification, may enter the secure facility without advance clearance through a criminal history background check.**

(Emphasis added.) DOC 3.1.5, Section III, conveniently defines "Official Visitors." They are, "Visitors to a facility acting in an official capacity, e.g., law enforcement, correctional personnel, judges, **licensed attorneys**, legislators, and others on official business." (Emphasis added.) Thus, in accordance with DOC 3.1.5, Taylor, a licensed attorney acting in his official capacity as Matt's appellate attorney, may enter MSP without advance clearance through a criminal history background check.

Taylor thus had no need of seeking an exception to DOC 3.1.5, Section IV(A)(1) because he does not need an exception to forgo the background check. DOC 3.1.5, Section IV(A)(2) explicitly exempts him—and every other licensed attorney—from the requirement so long as the attorney is visiting an inmate in their official capacity. Allowing a licensed Montana attorney to enter MSP to meet with his or her client without advance clearance through a criminal history background check is not an exception to the rule; it is—literally

and explicitly—the rule. Although Taylor apparently failed to fully read the policy, both DOC's Chief Legal Counsel and Warden Salmonsen should have known that DOC's own policy specifies that Taylor need not submit to a criminal background check to see his client.

Therefore, in accordance with Title 27, Chapter 26, of the Montana Code Annotated and M. R. App. P. 14(7),

IT IS ORDERED that James Salmonsen, Warden of Montana State Prison, shall comply with DOC 3.1.5, ENTRANCE PROCEDURES AND DETAINMENT OF NON-OFFENDERS, and shall allow James Park Taylor to enter Montana State Prison without advance clearance through a criminal history background check, so long as Taylor meets the policy's definition of "Official Visitor," within five days of the date of this Writ.

IT IS FURTHER ORDERED THAT, Warden Salmonsen shall file return with this Court indicating that he has complied with this writ of mandamus no later than **noon on Tuesday, November 26, 2024.**

The Clerk is directed to immediately provide a copy of this Writ to James Park Taylor, Warden James Salmonsen, and all counsel of record.

DATED this 19th day of November, 2024.

Chief Justice

FILED

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Bowen Greenwood
Clerk of Supreme Court
State of Montana

Justices