

## IN THE SUPREME COURT OF THE STATE OF MONTANA

OP 16-0660

**FILED**

Case Number: OP 16-0660

NOV 22 2016

*Ed Smith*  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

MATTHEW CONVERSE,

Petitioner,

v.

ORDER

LEROY KIRKEGARD,

Respondent.

Matthew Converse, appearing as a self-represented litigant, has filed a petition for writ of habeas corpus. Converse contends that his incarceration is illegal because no search warrant authorized entry into his trailer or the seizure of his personal mail which led to his conviction of failure to verify/keep current violent offender registration. He claims that he “was in jail at the time all this was going on and gave nobody permission . . . .”

In April 2013, the Hill County District Court found Converse guilty of the aforementioned felony, and imposed a four-year sentence with three years suspended to the Department of Corrections. About a year later, Converse’s suspended term was revoked based upon the State’s petition and its proof of Converse’s violations of his conditions. The District Court committed Converse to the DOC for three years. He did not appeal.

Converse’s petition contains claims of constitutional violations for which habeas corpus relief is not the correct remedy. *Gates v. Missoula County Comm’rs*, 235 Mont. 261, 262-63, 766 P.2d 884, 885 (1988). Converse claims that the lack of a search warrant violates his Fourth Amendment right to be free from illegal search and seizure, and states that his counsel was ineffective because his counsel “talked him into a plea . . . .” We conclude his claims are barred.

When Converse pled guilty to the felony offense in 2013, he thereby waived any constitutional challenges and challenges to his conviction. *See State v. Pavey*, 2010 MT 104, ¶ 11, 356 Mont. 248, 231 P.3d 1104, citing *State v. Violette*, 2009 MT 19, ¶ 16, 349 Mont.

81, 201 P.3d 804 (“[A] defendant waives the right to appeal all nonjurisdictional defects upon voluntarily and knowingly entering a guilty plea, including claims of constitutional violations which may have occurred prior to the plea.”). Furthermore, “[t]he writ of habeas corpus is not available 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; *see also Lott v. State*, 2006 MT 279, ¶ 17, 334 Mont. 270, 150 P.3d 337. By not appealing and thus exhausting his appeal rights, Converse is barred procedurally from challenging his 2013 conviction, and he cannot challenge his 2014 sentence upon revocation through a writ for habeas corpus relief. Section 46-22-101(2), MCA. For these reasons,

IT IS ORDERED that Converse’s petition for a writ of habeas corpus is DENIED.

The Clerk is directed to provide a copy of this Order to counsel of record and to Matthew Converse personally.

DATED this 22<sup>nd</sup> day of November, 2016.

  
\_\_\_\_\_  
Chief Justice

  
\_\_\_\_\_

  
\_\_\_\_\_

  
\_\_\_\_\_

  
\_\_\_\_\_

Justices