

IN THE SUPREME COURT OF THE STATE OF MONTANA

OP 16-0708

FILED

Case Number: OP 16-0708

DEC 06 2016

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

JOHNNY RAY COX,

Petitioner,

v.

ORDER

TOM GREEN, Warden,

Respondent.

By way of habeas corpus, self-represented Petitioner Johnny Ray Cox seeks relief from his recent sentence imposed in the Thirteenth Judicial District Court, Yellowstone County. He contends that this sentence is illegal because it exceeds the statutory maximum, violates double jeopardy, and improperly reflects credit for time served. Cox is currently incarcerated in the Dawson County Correctional Facility.

Cox pleaded guilty to felony partner or family member assault and was designated a persistent felony offender (PFO) on December 11, 2014, as stated in the plea agreement. On July 28, 2015, the Yellowstone County District Court committed him to the Department of Corrections (DOC) for five years to run consecutively to two prior sentences issued upon revocation. On the same day, the court also issued an order which modified the plea agreement by removing the PFO designation.

Cox presently has an appeal of this conviction pending before this Court. *See State v. J. Cox*, No. DA 15-0658, Notice of Appeal, filed Oct. 26, 2015. Counsel from the Office of Appellate Defender represents Cox in the appeal. Briefing has not yet begun. Notwithstanding the pendency of the appeal with counsel, Cox has filed the instant *pro se* petition with this Court. Courts may properly refuse to accept *pro se* pleadings from defendants who are represented by counsel. *State v. Samples*, 2005 MT 210, ¶ 15, 328 Mont. 242, 119 P.3d 1191 (internal citations omitted). We caution Cox that while represented by

counsel, only his counsel should file motions and papers with this Court on his behalf. *Samples*, ¶ 15. Once the briefing in his appeal is completed, this Court will decide the issues presented therein in due course.

Habeas corpus does not offer an alternative remedy to a direct appeal, nor does it supplement the appellate process. Cox's pending appeal is the proper forum in which to litigate issues arising from his arrest, conviction, and sentence. *State v. Wright*, 2001 MT 282, ¶¶ 36-37, 307 Mont. 349, 42 P.3d 753. For this reason, and without considering the merits, we must dismiss this petition.

IT IS ORDERED that this petition for a writ of habeas corpus is DISMISSED, without prejudice.

The Clerk is directed to provide a copy of this Order to counsel of record; to Jennifer Hurley, Office of Appellate Defender; and to Johnny Ray Cox personally.

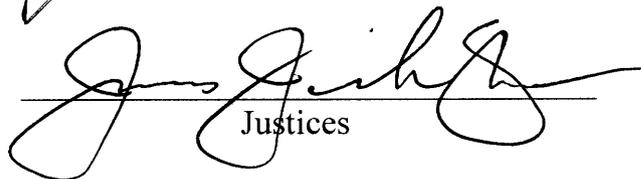
DATED this 4th day of December, 2016.


Chief Justice


Patricia Cotter


Michael E. W. Reed


Justice


Justice