

ORIGINAL

FILED

12/18/2017

Form 4(6)

CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: DA 17-0730

FILED

DEC 18 2017

Ed Smith

CLERK OF THE SUPREME COURT
STATE OF MONTANA

JAMES W LANGLEY

Name

PO Box 5301

Whitefish MT

59931

City

State

Zip

james.langley07@gmail.com

[e-mail address]

Representing self

[Designation of party]

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. _____

[to be assigned by Clerk of Supreme Court]

STATE OF MT

Appellant,

v.

JAMES LANGLEY

Appellee.

PETITION FOR
AN OUT-OF-TIME
APPEAL

[To ask the Court to allow you to file an out-of-time appeal, give the reasons why the appeal was not timely filed. State in the petition or supporting affidavit the issues you wish to raise on appeal and explain in detail the reasons that you did not file a timely appeal. Give only true and accurate explanations that support your petition. Include a copy of the final order or judgment from which you wish to appeal. M. R. App.P. 4(6)]

I petition the Court to allow me to file an out-of-time appeal for the following reason: [Check one]

☐ I improperly filed a timely Notice of Appeal only with the District Court, as more fully explained below.



© Montana Supreme Court

OUT-OF-TIME APPEAL

PAGE 1 OF 4

☒ I discussed filing a timely appeal with my attorney, but he or she failed to file it for me, as more fully explained below.

☐ I failed to file the Notice of Appeal for the following reason:

Please see attached document for explanation

_____.

☒ Attached as Exhibit "A," a copy of the judgment or order from which I wish to appeal.

As legal authority for filing an out-of-time appeal, I cite the following which supports this petition:

_____.

DATED this 14th day of December, 2017.



James W Langley
[Signature]
James W Langley
[Print name]

VERIFICATION UPON OATH OR AFFIRMATION

STATE OF MONTANA)
County of FLATHEAD): ss.

I swear that everything stated in this petition is true and correct to the best of my knowledge.

DATED this 14th day of December, 2017.

James W Langley
[Signature]
James W Langley
[Print name]

Signed and sworn to or affirmed before me on this date by

JAMES W. Langley

[Seal]

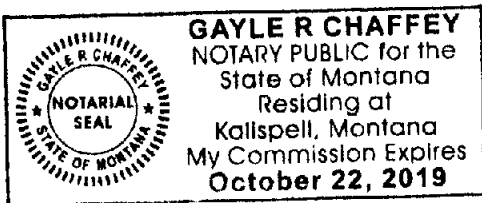
Gayle R. Chaffey
[Signature of Notary Public]

[Typed or printed name]

[Title]

[Residing at]

My Commission expires: _____.



IN THE SUPREME COURT OF THE STATE OF MONTANA

No.

STATE OF MONTANA,

Plaintiff and Appellee,

v.

JAMES WALLACE LANGLEY,

Defendant and Appellant

PETITION FOR OUT-OF-TIME APPEAL

COMES NOW James W Langley and respectfully requests that the Court permit an out-of-time appeal for myself from the Fourth Judicial District Court's September 14, 2017 order in DC 14-062B. Montana Rule of Appellate Procedure 4(6) provides that the Court may grant an out-of-time appeal "[i]n the infrequent harsh case and under extraordinary circumstances amounting to a gross miscarriage of justice."

Following the signing of a plea bargain and sentencing in Flathead County District Court, I had communications with my retained counsel, Mr. Caleb Simpson, in which we discussed the need to appeal part of the judgement issued by Judge Robert Alison of the 11th District Court in Flathead County. Specifically, there is a provision of this judgement which requires that I apply for interstate compact, and upon written denial of interstate, move my residence to a different

district within Montana. My retained counsel had told me that this type of provision - a "banishment clause" - is a direct violation of my constitutional rights. We discussed this in person repeatedly during the plea bargain negotiations, and I had the understanding that Caleb was willing to represent me through the appeal process. I paid roughly \$25,000 up front to Caleb for his services, and in our last face to face meeting on August 10th, he stated that he would continue to represent me through the appeal. He told me that he would begin the appeal process, although he stated that he was unsure of the timeline; he thought I might need to get revoked by probation and parole before I could attempt an appeal. He was very confident the Kalispell probation and parole office wouldn't enforce the banishment clause of the judgement. Unfortunately, I haven't heard from him since August 10th, despite my phone calls to his office and two emails requesting an update and to file an appeal, the first being sent on October 4th and the second being sent on October 29th (exhibits B and C) - both before the deadline date for filing an appeal. As a result of the lack of communication from my retained counsel - despite my honest attempts to speak with him to file a timely appeal - the 60 day deadline to have filed a notice of appeal from the district court's September 14, 2017 order has lapsed.

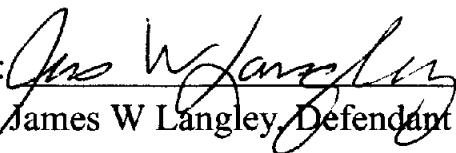
To guarantee my constitutional right to appeal is protected, I am requesting an order permitting me to file an out-of-time appeal. Denying this appeal of a banishment clause due to my retained counsel's negligence in this case would constitute a gross miscarriage of justice and harshly punish me for a mistake that was not mine. If the right to appeal is granted, I will be requesting an Appellate Defender to represent me moving forward.

A copy of the district court's final judgement and copies of my emails attempting to communicate with my counsel are attached to this motion (exhibits A, B, and C, respectively).

Copies of this motion have been sent to the Attorney General's Office as well as the Allison Howard, the Assistant Deputy District Attorney for Flathead County.

Respectfully submitted this the _____ day of December, 2017.

JAMES W LANGLEY
PO Box 5301
Whitefish, MT 59937
(406) 249-3061
james.langley07@gmail.com

By: 
James W Langley, Defendant

CERTIFICATE OF SERVICE

I hereby certify that I have filed the foregoing Petition for Out-of-Time Appeal with the Clerk of the Montana Supreme Court and that I have served true and accurate copies as follows:

ED CORRIGAN

Flathead County Attorney

ALISON E HOWARD

Deputy Flathead County Attorney

820 South Main Street

Kalispell, MT 59901

TIMOTHY C FOX

Montana Attorney General

C. MARK FOWLER

Bureau Chief

Appellate Services Bureau

215 North Sanders

PO Box 201401


Helena, MT 59620-1401

JAMES LANGLEY

PO Box 5301

Whitefish, MT 59937

james.langley07@gmail.com


14th of December 2017