

## IN THE SUPREME COURT OF THE STATE OF MONTANA

DA 18-0661

FILED

DEC 11 2018

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

AGUSTIN RAMON,

Plaintiff and Appellant,

v.

## ORDER

ROBY BOWE, in his capacity and his official  
capacity as Sheriff of Lincoln County and  
Administrator of Lincoln County Detention Center,

Defendant and Appellee.

Appellant Agustin Ramon appeals from the November 16, 2018 Order of the Nineteenth Judicial District Court, Lincoln County, Denying his Application for Temporary Restraining Order and Preliminary Injunction. Included within his Notice of Appeal, Ramon makes a cursory request for expedited consideration of his appeal.<sup>1</sup> Pursuant to M. R. App. P. 29, we may, in the interest of expediting a decision or for any other good cause shown, suspend the Rules of Appellate Procedure and direct further proceedings as we deem appropriate.

Ramon is currently scheduled to go to trial on a felony burglary charge in Lincoln County on January 3, 2019. Ramon contends that because there is the possibility that transfer to federal custody will impact the justiciability of this appeal, and because, but for the immigration detainer, he would be released on bond pending trial, this Court should set an expedited briefing schedule. Ramon cites to *Valerio-Gonzales v. Jarrett*, 2017 Mont. LEXIS 764, 390 Mont. 427, 410 P.3d 177, for the proposition that the possibility he might be transferred to federal custody affects the justiciability of this appeal.

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<sup>1</sup> On December 6, 2018, Ramon filed a Motion for Expedited Consideration, in which he reiterates his arguments. This Order resolves Ramon's motion as well.

*Valerio-Gonzales* is distinguishable from the present case. *Valerio-Gonzales* was being held on a misdemeanor charge when he petitioned this Court for a Writ of Habeas Corpus. While his petition was pending, the Justice Court, sua sponte, ordered his release on his own recognizance, thus rendering his petition moot. *Valerio-Gonzales*, 2017 Mont. LEXIS 764, at \*4. In this case, Ramon remains in state custody on a felony burglary charge, and is being held on \$25,000 bail. A timely trial date has been set, and the criminal proceedings in Lincoln County are progressing as scheduled. Ramon's appeal in the instant case will not interfere with the criminal proceedings below. Although Ramon asserts in his recently filed motion that following any final disposition in the form of a plea agreement or trial, he will be transferred to federal custody within one or two days, it is, at best, conjecture as to when that may occur in the usual course of a felony criminal proceeding. Ramon filed his Notice of Appeal nearly three weeks ago, on November 21, 2018. He has failed to establish that the ordinary briefing schedule established by M. R. App. P. Rule 13(1) will affect the justiciability of his appeal. His assertion that there is a "possibility that [his] transfer . . . to federal custody will impact the justiciability of this appeal" is insufficient to establish good cause for suspension of the Rules of Appellate Procedure.

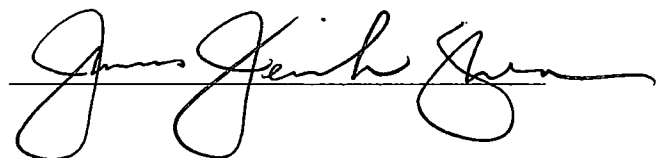
Accordingly,

IT IS HEREBY ORDERED that Ramon's Motion for Expedited Consideration is DENIED.

The Clerk of the Supreme Court is directed to mail a true copy of this Order to all counsel of record in Cause No. DA 18-0661 and Cause No. DV-18-218.

Dated this 11<sup>th</sup> day December 2018.

  
Chief Justice



Augustus Hunt

James R. Hunt

John M. Hendon

Justices