

Dale Newbury AO 33441

50 Crossroads Dr.

Shelby, MT 59474

Defendant Pro Se

ORIGINAL

MONTANA STATE SUPREME COURT

DALE NEWBURY)

Appellant,)

v.)

STATE OF MONTANA)

Appellee.)

Cause No. _____

PETITION FOR OUT OF TIME APPEAL

Comes Now, I Dale Newbury, appellant Pro Se, petitioning this honorable Court to allow me to file and out-of-time appeal for the following reason:

" I instructed my attorney to file a timely notice of appeal, nut he faild to file it for me, as more fully explained in the attached affidavit."

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

Roe v. Flores-Ortega, 528 U.S. 470, 145 L. Ed. @d985, 120 S.Ct. 1029 (2000)

p1035, We have long held that a lawyer who disregards specific instruction from the defendant to file notice of appeal acts in a manner that is professionally unreasonable. [Omitted.] This is so because a defendant who instructs counsel to initiate an appeal reasonably relies upon counsel to file the necessary notice. Counsel's failure to do so cannot be considered a strategic decision; filing a notice of appeal is a purely ministerial task, and the failure to file reflects inattention to the defendant's wishes.

p1036. We...hold that counsel has a constitutionally imposed duty to consult with the defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing. In making this determination, courts must take account all the information counsel knew or should have known. See [Strickland, at 590.]

p1038. Accordingly, we hold that, to show prejudice in these circumstances, a defendant must demonstrate that there is a reasonable probability that, but for counsel's deficient failure to consult with him about an appeal, he would have timely appealed.

Dated this 24 day of Fed, 2020

FILED

FEB 28 2020

Bowen Greenwood
Clerk of Supreme Court
State of Montana

Dale Newbury

Dale Newbury, AO 33441

Appellant, Pro Se

VERIFICATION UPON OATH OR AFFIRMATION

STATE OF MONTANA)

: ss.

TOOLE COUNTY)

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

Dated this 24 day of Feb, 2020

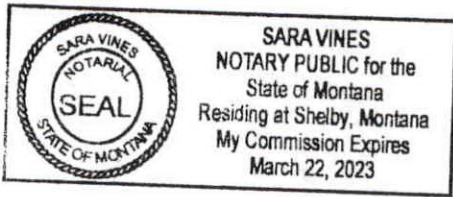
Dale Newbury

Dale Newbury, AO 33441

Appellant and Affiant, Pro Se

SUBSCRIBED AND SWORN to before me this 24 day of Feb, 2020

(seal)



Sara Vines

Notary Public for the State of Montana

Dale Newbury AO 33441

50 Crossroads Dr.

Shelby, MT 59474

Defendant Pro Se

ORIGINAL

MONTANA STATE SUPREME COURT

DALE NEWBURY)

Appellant,)

v.)

STATE OF MONTANA)

Appellee.)

Cause No. _____

AFFIDAVIT IN SUPPORT OF PETITION

FOR OUT OF TIME APPEAL

STATE OF MONTANA)

: SS.

TOOLE COUNTY)

FILED

FEB 28 2020

Bowen Greenwood
Clerk of Supreme Court
State of Montana

I, Dale Newbury, being duly sworn state:

1. Paul Neil was my original attorney for Cause No. BDC-16-280.
2. He took me to trial, and we lost.
3. After trial, I told attorney Paul Neil that I wanted him to put in a notice of appeal emediately.
4. He then told me that he would not be able to put in the notice of appeal until after sentencing.
5. He then told me that he would put in the notice once sentencing was completed.
6. Due to other pending cases at the time I ended up with attorney David Mattingly as my attorney for sentencing.
7. Somehow sentencing for BDC-16-280, and the sentencing for a Global Plea Agreement, attorney David Mattingly forced me to sign were all merged together in the paperwork.
8. From the very first conversation I and David Mattingly had, I expressed my condrns in regards to filing the notice of appeal in BDC-16-280 because sentencing was being merged in the Global Plea Agreement.
9. David mattingly then told me that merging the sentencing under the Global Plea Agreement would not affect the appealability of Cause No. DBC-16-280.

10. I then told him that I wanted him to put in the notice of appeal for me as soon as possible.
11. He then assured me that he would personally file the notice of appeal once sentencing was concluded.
12. Me and David Mattingly spoke again shortly after sentencing, and once again he assured me that the filing of notice of appeal for Cause No. BDC-16-280 would get done in time.
13. Unexpectedly I arrived at Montana State Prison in Deer Lodge, Montana.
14. I was under the impression from my attorney that I would only get treatment and probation time under the Global Plea Agreement.
15. I wrote attorney David Mattingly to follow up with him about filing the notice of appeal several times, as I was extremely concerned about getting it done on time.
16. Attorney David Mattingly failed to file the notice of appeal that I had instructed him to file.
17. Therefor I am filing for a petition for an Out of Time Appeal Pro Se, because my attorney of record David Mattingly failed to file the notice of appeal after he had been instructed to so so several times before the 60 day dead line had elapsed.

DATED THIS 24 day of Feb, 2020

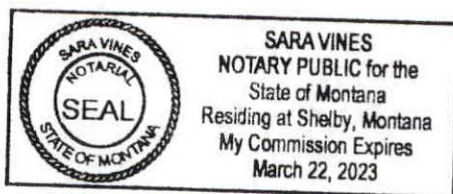
Dale Newbury

Dale Newbury AO 33441

Appellant Pro Se

SUBSCRIBED AND SWORN to before me this 24 day of Feb., 2020

(seal)



Sara Vines

Notary Public for the State of Montana

CERTIFICATE OF SERVICE

I Dale Newbury here by certify that I have served true and accurate copites of the forgoing documents:

Motion to Proceed on Appeal without Paying the Filing Fees
Motion For Court Appointed Counsel, The Appellant Further Certifies,
Notice of Appeal, Affidavit in Support of Petition for out of Time Appeal,
Petition for out of Time Appeals, Sentencing Order and Judgment

to the following party's dated this 24 day of Feb, 2020. Through U.S. first class mail.

MONTANA STATE SUPREME COURT

Clerk of Court

P.O. Box 203003
Helena, MT 59620-3003

ATTORNEY GENERAL

215 North Sanders
P.O. Box 201401
Helena, MT 59620

MONTANA 8TH JUDICIAL DISTRICT COURT

Clerk of Court

415 2nd Ave N
Great Falls, MT 59401

DISTRICT ATTORNEY (Prosecutor)

121 4th St. N
Great Falls, MT 59401

Dale Newbury

Dale Newbury, AO 33441

Appellant, Pro Se