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COUNSEL FOR PLAINTIFF AND APPELLEE

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 19-0273

STATE OF MONTANA,

Plaintiff and Appellee,

v.

RANDY S. LAEDEKE,

Defendant and Appellant.

**STATE'S RESPONSE TO APPELLANT'S MOTION
TO STAY EXECUTION OF JUDGMENT**

The Appellee, State of Montana, opposes Appellant Randy Laedeke's motion to stay execution of judgment, filed March 5, 2020.

I. Background

On May 25, 2018, Laedeke pleaded guilty to one count of misdemeanor cruelty to animals, in violation of Mont. Code Ann. § 45-8-211(1)(c)(iii). (Docs. 43,

46, 58.) On September 5, 2018, the district court sentenced Laedeke to one year, suspended, in the Yellowstone County Detention Facility. (Docs. 56, 58.) During the suspended sentence, the district court limited Laedeke to the possession of 5 hooved animals, required Laedeke to comply with this condition within 30 days, and subjected Laedeke to periodic inspections by the Yellowstone County Sheriff's Department. (*Id.*) Laedeke did not appeal this conviction.

On October 9, 2018, the State filed a petition and notice for revocation of sentence, because Laedeke still had 9 horses on his property. (Doc. 59.) The State amended its petition on November 7, 2018, alleging Laedeke relocated his animals rather than transferring ownership of them, and he had threatened one of the individuals boarding some of his horses. (Doc. 64.) During a revocation hearing on December 3, 2018, the district court found Laedeke had substantially violated the terms of his probation. (Doc. 68.) Pursuant to the State's request, the disposition hearing was set 60 days out to give Laedeke an opportunity to transfer ownership of enough animals to reduce his herd to 5 animals. (Docs. 68, 71.)

At the first disposition hearing on February 8, 2019, Laedeke had still not complied. (Doc. 72.) Pursuant to the State's request, the district court continued the disposition hearing another 30 days to allow Laedeke to reduce his herd to 5 animals and required Laedeke to provide proof of sale with notarized documents signed by both the buyer and the seller. (Doc. 72; 3/11/19 Hr'g Tr. (Tr.) at 4-5, 20, 25-27,

55-60.) During the disposition hearing on March 11, 2019, Laedeke produced sale documents for some animals, but they were not notarized. (Doc. 72; Tr. at 4-5, 20-27, 55-60.) Laedeke explained to the district court that several brand officers told him a notarized bill of sale was not required. (Tr. at 55-56.) The district court responded, “[t]he notarized document was a requirement of this Court, Mr. Laedeke.” (Tr. at 56.)

The district court found Laedeke had not transferred any of the horses in compliance with the district court’s orders, because Laedeke did not have notarized bills of sale. (Tr. at 58-59.) The district court revoked Laedeke’s sentence. (Docs. 74, App. A (Doc. 77, Order of Revocation and Imposition of Sentence); Tr. at 58-62.) The district court sentenced Laedeke to one year in the Yellowstone County Detention Facility with all but ten days suspended. (*Id.*) The district court ordered all horses removed from Laedeke’s property and prohibited his ownership or possession of any horses during the term of the sentence. (*Id.*) The district court filed its written order of revocation and imposition of sentence on April 5, 2019, but it was orally pronounced on March 11, 2019. (App. A.)

Laedeke filed his notice of appeal with this Court on May 6, 2019. However, Laedeke waited more than 11 months to file a motion to stay execution of judgment in the district court. (Appellant’s Rule 22 Motion at Ex. B; App. B (Doc. 95, District Court Order Denying Defendant’s Motion for Stay of Execution Pending Appeal).) On February 20, 2020, Laedeke filed a motion to stay the March 11, 2019, judgment,

after the State had filed a new petition to revoke his sentence. (App. B.) On February 21, 2020, the district court orally denied Laedeke's motion during a hearing on the State's petition. (*Id.*) Laedeke filed his Rule 22 motion with this Court on March 5, 2020. On March 13, 2020, the district court issued its written order denying Laedeke's motion to stay. (*Id.*)

II. Argument

A. Standard of review

The district court's denial of Laedeke's motion to stay is reviewed for an abuse of discretion. *See City of Missoula v. Mountain Water Co.*, DA 15-0375, Or. at 5-6 (Mont. Aug. 18, 2015).

B. Laedeke has served his one-year suspended sentence and his request to stay is moot.

Laedeke filed his motion to stay execution of the March 11, 2019 judgment on March 5, 2020, which was five days prior to the expiration of his suspended sentence. *See State v. Kroll*, 2004 MT 203, ¶ 18, 322 Mont. 294, 95 P.3d 717 (the oral pronouncement of sentence is the legally effective and valid final judgment). At the time of filing this response, Laedeke's one-year suspended sentence has been served. *See id.* Laedeke's motion is moot, and this Court cannot grant a stay of execution of the judgment, pursuant to Rule 22. *See Shamrock Motors, Inc. v. Ford Motor Co.*,

1999 MT 21, ¶ 19, 293 Mont. 188, 974 P.2d 1150 (“[a] question is moot when the court cannot grant effective relief”).

C. If this Court considers the merits, the district court correctly denied Laedeke’s motion to stay execution of judgment pending appeal.

The stay requested by Laedeke is governed by Mont. Code Ann. § 46-20-204. *See* Mont. R. App. P. 22(6). Laedeke’s appeal challenges the district court’s order revoking his suspended sentence. (Appellant’s Opening Br. at 1-13.) The stay of execution provided in Mont. Code Ann. § 46-20-204 “provides for a stay of execution and relief pending appeal of an original conviction.” *State v. Pease*, 233 Mont. 65, 68, 758 P.2d 764 (1988). The district court’s denial of Laedeke’s motion to stay execution of judgement was correct, because the statute does not provide relief for revocation proceedings. *See id.*

Further, the relief in Mont. Code Ann. § 46-20-204 does not extend to conditions of a suspended sentence. Laedeke acknowledges this multiple times in his Rule 22 motion. Laedeke’s reliance on *Nepstad v. East Chicago Oil Ass’n*, 96 Mont. 183, 189-90, 29 P.2d 634 (1934), is misplaced. Laedeke argues a writ of supersedeas is required to maintain the status quo pending appeal, but this writ only applies when there is no “statute regulating a stay of proceedings on appeal makes no provision for such stay in the particular case.” *Id.* As noted in Mont. R. App. P. 22(6), a stay in this

criminal case is governed by Mont. Code Ann. § 46-20-204, and it does not provide for the relief requested by Laedeke.

For the foregoing reasons, the State requests this Court deny Laedeke's motion to stay execution of judgment.

Respectfully submitted this 16th day of March, 2020.

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this response is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double-spaced except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word for Windows is 1,077 words, excluding certificate of service and certificate of compliance.

/s/ Brad Fjeldheim
BRAD FJELDHEIM

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APPENDIX

Order of Revocation and Imposition of Sentence, Yellowstone County

Cause No. DC 17-0437, dated April 5, 2019 App. A

Order Denying Defendant's Motion for Stay of Execution Pending Appeal

Yellowstone County Cause No. DC 17-437, dated March 13, 2020 App. B

CERTIFICATE OF SERVICE

I, Brad Fjeldheim, hereby certify that I have served true and accurate copies of the foregoing Response/Objection - Response to Motion to the following on 03-16-2020:

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Electronically signed by Kimberly Wollitz on behalf of Brad Fjeldheim
Dated: 03-16-2020