

IN THE SUPREME COURT OF THE STATE OF MONTANA

DA 19-0057

FILED

APR 24 2020

Bowen Greenwood
Clerk of Supreme Court
State of Montana

DAVID W. NELSON,

Petitioner and Appellant,

v.

ORDER

STATE OF MONTANA,

Respondent and Appellee.

Self-represented Appellant David W. Nelson has filed his opening brief along with a Motion To Withdraw Guilty Plea and a Motion to Receive Assistance of Counsel for Postconviction Relief as a Matter of Law. Nelson requests that these motions be granted in the interest of justice.

Nelson's motions are not appropriate for consideration. Last year, this Court denied Nelson's motion for appointment of counsel because he was not entitled to counsel after he represented himself in his petition for postconviction relief before the Powell County District Court. We stated then: "While this appeal may be his first one related to his Powell County convictions, it is not a criminal appeal nor does it equate to a right of initial appeal. *See* §§ 46-8-103(1) and 46-21-203, MCA, respectively." *Nelson v. State*, No. DA 19-0057, Order at 1 (Mont. Jan. 29, 2019).

In an effort to circumvent the loss of his former rights waived by his plea agreement, Nelson moves for the withdrawal of his guilty plea. He wants to "face trial on the original charges as if the plea agreement had never been entered." Nelson's motion is too late and in the wrong court. Nelson states that he had a 1(b) type of plea agreement, pursuant to § 46-12-211(1)(b), MCA, with an agreed-upon specific sentence. Nelson's opportunity to withdraw his plea was with the District Court during the sentencing hearing. Section 46-12-211(4), MCA; *State v. Nauman*, 2014 MT 248, ¶ 12, 376 Mont. 326, 334 P.3d 368.

Therefore,

IT IS ORDERED that Nelson's Motion to Withdraw Guilty Plea and Motion to Receive Assistance of Counsel for Postconviction Relief as a Matter of Law are both DENIED.

The Clerk is directed to provide a copy of this Order to counsel of record and to David W. Nelson personally.

DATED this 27th day of April, 2020.

For the Court,

By: 
Chief Justice