

ORIGINAL

FILED

10/18/2021

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: DA 21-0075

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA-21-0075

STATE OF MONTANA,
Plaintiff-Appellee,

v.

ANTHONY WEIMER,
Defendant-Appellant.

FILED

OCT 18 2021

Bowen Greenwood
Clerk of Supreme Court
State of Montana

APPELLANTS PETITION FOR REHEARING THE COURT'S OCTOBER 12
OPINION

On Appeal from the Eleventh Judicial District Court, Flathead County,
Judicial Officer Amy Poehling Eddy, Presiding

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Defendant and Appellant, Anthony Weimer (Anthony), respectively petitions this Court to reconsider its October 12, 2021 opinion granting remand to the District Court for a new trial.

I. BACKGROUND

On February 18, 2021, Anthony filed a notice of appeal to this Court from a felony criminal mischief charge under § 45-6-101(1)(a), MCA, originated in the 11th Judicial District Court, Flathead County. Upon appellate briefing concluding; the clerk of court sent the case to be assigned to a panel on August 24, 2021. On September 15, 2021 this Court Ordered this cause classified to a five-justice panel for submission on the briefs. On October 12, 2021, Justice Ingrid Gustafson delivered the opinion, reversing conviction and sentence and remanding for a new trial.

This Court reviewed Anthony's inessential issue of no written waiver of a jury trial while not reviewing the directed root issues. This Court's remand to the District Court also includes a written prejudicial attack against Anthony, in turn, causing an irreversible bias and prejudice when remanding for a new trial.¹

¹ 2021 MT 266N ¶3 "On June 27, 2020, Weimer backed his dually pickup truck onto the lawn of the courthouse in downtown Kalispell. He put a chain around the Ten Commandments Monument (Monument) and pulled the Monument from its base, dragging it across the lawn, sidewalk, and into the middle of the road in front of the Flathead County Justice Center. He stopped, put the chain back in his truck, and drove toward the Kalispell Police Department. Police officers intercepted him outside the police department building and arrested him. Weimer's actions caused over \$7,000 of damage.

Rehearing is appropriate if the Court (i) “overlooked some fact material to the decision”; (ii) “overlooked some question presented by counsel that would have proven decisive to the case”; or (iii) “its decision conflicts with a statute.”
Mont. R. App. P. 20(1).

II. DISCUSSION

A. Material Facts Overlooked by the Court

At initial observance, it appears this Court sought to dispose of this Case as quickly as possible, assuming this Court overlooked that Anthony appealed for the purpose of reversal of the imposed conviction and sentence or remand for a new trial, although, Court overlooking the issues caused by officers in and of the District Court, including also, settled laws that negate necessity for remand for a new trial as fact material to the decision. In fact, Judge Eddy attacked Anthony’s District Court motion for new trial, the motion sufficient by weight of evidence and justified by law, beyond mere interests of justice, in changing the verdict from guilty to not guilty with affirmative defense of abatement of a public nuisance clarified while also arguing that defense counsel correlated in the prosecution.

Under § 46-16-702(3) and (c), MCA, a motion for new trial covers changing a guilty verdict to not guilty. Judge Eddy encroached Anthony’s substantial rights and made it clear that this Court will decide. Material facts significant to decision must be reviewed as the District Court denied the change

from guilty to not guilty and ordered Anthony to appeal the issues to this Court (Trial Tr. p. 8, L. 6-14, and p. 9, L. 8-12, and p. 10 L. 3 and Dist. Ct. Dkt. 78).

Further, before sentencing, Anthony objected to Judge Eddy's guilty verdict as she acted as a minister of her own judgment and prejudice (Mot. for New Trial/Sent. Tr. p. 8, L. 15). Judge Eddy knew that an appeal would be inappropriate, unnecessary and profligate, as she could have decided the issues. But instead, she chose to violate Anthony's Constitutional rights and statutory protections and put the burden of judgment upon this Court.

THE COURT: *“Well, that’s why – in order for me not to stand in judgment of my own rulings, that’s why it is -- inappropriate to -- it is appropriate to appeal that ruling that I did to the Montana Supreme Court, so that they can stand in judgment of that ruling.”*

(Court incorporated Motion to Correct the Record, Attachment B, L. 23).

All issues embody the four (4) questions presented and will decide the case where this Court's Opinion missed.

B. Questions Presented that the Court Ignored or Neglected

At first impression, this Court's opinion is extremely indecisive when three (3) of the four (4) core questions on appeal have been mooted without first

settling those rooted issues that bind directly to any necessity of a new trial as a new trial is returning to the blooming of the tree, and hence the poisonous root issues will remain on a remand. By this Court overlooking Anthony's issues of question that also the prosecution waived, plus demands countered, and then this Court to further declare Anthony as the individual who removed the Ten Commandments Stone also voids the necessity of a new trial and would decapitate the head authority in the judicial process.

C. Statutory Conflict Remains

This Courts quick decision to fast-track Anthony back to the District Court without reviewing the Constitutional and statutory issues of question will: 1) make it physically impossible to proceed with the trial in conformity with law; 2) cause legal defect in the proceedings that would make any judgment entered upon a verdict reversible by law; and 3) the prejudicial conduct will make it impossible to proceed with trial without manifest injustice against him.

This Courts review of Anthony's other remaining binding issues of question is obliged.

D. Judges Judging Judges

In light of this year's affairs between the Legislative and Judicial branches separation of powers, and indication to judges presiding over criminal judges.²

² See, OP 21-0173

Shall Judge Amy Poehling Eddy stand (or sit) before another Judge for consummating such an appeal after ruling in forceful hostile bias and prejudice against Anthony? Let alone her answering to the Deprivation of Rights Under Color Law Complaint attached to Opening Brief?

III. CONCLUSION

With said above, Anthony Weimer respectfully must instruct that this Court quash/retract its remand for a new trial and decide the remaining essential directed issues tasked.

Respectfully submitted this 15th day of October, 2021.

I declare under penalty of perjury (MCA § 45-7-201) that the information contained herein and attached is accurate and true.

State of Montana

County of Flathead

SIGNED AND SWORN (OR AFFIRMED)

to before me on October 15, 2021

by Anthony C. Weimer



Notary Public for the State of Montana

Printed name of notary Arminda C Montes

Title or rank: Public Notary

Residing at Kalispell, MT

My Commission Expires: 12/31/2022

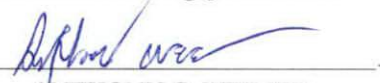
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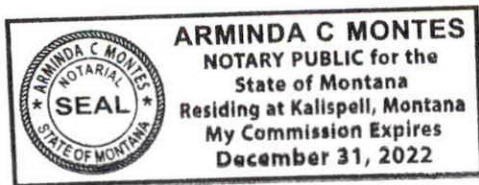
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ANTHONY C. WEIMER

Defendant-Appellant Counsel, Pro Se

Dated: 10/15/2021



CERTIFICATE OF COMPLIANCE

Pursuant to Mont. R. App. P. 11 and 20(b) and (c), I certify that this Brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double spaced; 10 pages or less in length and is no more than 2,500 words, excluding certificate of service and certificate of compliance.

Dated this 15th day of October, 2021.

Signature:  _____.

ANTHONY C. WEIMER

Defendant-Appellant Counsel, Pro Se

Dated: 10/15/2021

CIRTIIFICATE OF SERVICE


Pursuant to Mont. R. App. P. 10, I hereby certify that I have filed this (APPELLANTS PETITION FOR REHEARING REGARDING THE COURT'S OCTOBER 12TH OPINION) with the Clerk of the Supreme Court of Montana and that I have mailed or hand delivered a copy to each attorney of record on 10-15-2021 to the following:

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