IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 20-0173

STATE OF MONTANA,

Plaintiff and Appellee,

v.

JOSEPH PAUL DEWISE,

Defendant and Appellant.

BRIEF OF APPELLANT

On Appeal from the Montana Eighteenth Judicial District Court,
Gallatin County, The Honorable Holly B. Brown, Presiding

APPEARANCES:

JOSEPH P. HOWARD
Joseph P. Howard, P.C.
P.O. Box 1928
Helena, MT 59624

ATTORNEY FOR DEFENDANT
AND APPELLANT

AUSTIN KNUDSEN
Montana Attorney General
TAMMY K. PLUBELL
Assistant Attorney General
215 North Sanders
P.O. Box 201401
Helena, MT 59620-1401

MARTIN D. LAMBERT
GALLATIN COUNTY ATTORNEY
1709 West College St., Ste. 200
Bozeman, MT 59715

ATTORNEY FOR PLAINTIFF
AND APPELLEE

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

OTHER AUTHORITIES

Statement of the issue

Whether the district court erred in failing to hold an evidentiary hearing, ultimately denying DeWise's request for new counsel, although DeWise presented a surfeit of "seemingly substantial" complaints demonstrating an irreconcilable conflict and complete breakdown in communication with counsel.

Statement of the case

Appellant Joseph Paul DeWise (DeWise) was charged by Information with Count I, deliberate homicide, a felony, in violation of Mont. Code Ann. § 45-5-102, and Count II, attempt to commit deliberate homicide, a felony, in violation of Mont. Code Ann. § 45-4-103 and § 45-5-102. Both offenses were allegedly committed by use of a dangerous weapon and, thus, pursuant to Mont. Code Ann. § 46-1-401 and § 46-18-221, a sentencing enhancement may apply. (D.C. Doc. 4.)

DeWise was indigent and Office of the State Public Defender (OSPD) attorneys Annie DeWolf (DeWolf) and Alex Jacobi (Jacobi) were assigned to his defense. (D.C. Doc. 10.) OSPD investigator Eric Severson (Severson) was assigned to DeWise's defense team.

Following a series of *ex parte* communications and *pro se* pleadings wherein DeWise sought the appointment of new counsel, complaining of *inter alia* conflicts and a breakdown in communication (D.C. Docs. 36, 38 & 83), the district court finally ordered DeWise file a written request outlining his grievances regarding counsel. (D.C. Doc. 145.) DeWise filed his written request and defense counsel filed a joint response. (D.C. Docs. 159, 162.) The district court ultimately found DeWise's complaints were not "seemingly substantial" as to warrant further hearing and denied his request for new counsel. (D.C. Doc. 165, attached as App. A.)

DeWise was convicted of both counts of the Information. The jury also found DeWise used a firearm pursuant to the commission of each offense. (D.C. Doc. 302.) The district court imposed consecutive 100-year sentences pursuant to Counts I and II, consecutive 10-year sentences pursuant to the weapon enhancement, and ordered DeWise ineligible for parole. (Sent. Tr. at 131-33; D.C. Doc. 318, attached as App. B.) It from the district court's denial of his request for new counsel that DeWise now appeals.

Statement of the facts

DeWise was arraigned on February 6, 2018 and nine months later, on November 27, 2018, the district court considered his first grievance regarding counsel. (D.C. Docs. 7, 36.) By *ex parte* communication, DeWise complained: "Counsel has still failed to review discovery with me and when I asked about that [DeWolf] said it wasn't necessary." (D.C. Doc. 36.) DeWise also intimated communication with counsel had broken down. He pled: "Judge, I have had and still have no effective legal counsel" and "I need new counsel and a later trial date." The court provided DeWise with a copy of OSPD's Administrative Policy Number 110, outlining the client grievance procedure. (D.C. Doc. 36.)

On November 29, 2018, the district court issued a follow-up order regarding DeWise's *ex parte* communications. (D.C. Doc. 38.) Apparently, it had overlooked or been unaware of additional grievances DeWise had aired regarding counsel: a two-page letter; a six-page letter; and multiple attachments detailing his complaints concerning counsel. (D.C. Doc. 38.)

Pursuant to the two-page letter, DeWise complained, *inter alia*:

> I have been in jail since January 11, 2018 and still have no reliable access to counsel. I am still being denied access to

> my discovery and my lawyers still have not read my discovery. My understanding is I have a right to counsel . . ..
>
> ***
>
> I have lost all faith in my assigned lawyers and investigator, the harms they have caused me, and the harms I fear they may yet to cause me.
>
> ***
>
> The letter from Annie DeWolf, the only letter I have received from her, will document in her own words her promise to meet with me and then her failure to do so . . . it shows her apparent sincerety [sic] and enthusiasm for representing me which unfortunately never materializes into actions. The closer the trial date comes the more terrified I become that my assigned lawyers are not taking my case seriously.

(D.C. Doc. 38 (two-page letter at 1))

***

> [DeWolf] and [Jacobi] then met with me and told me we would meet once per week . . . I met once per week with [DeWolf] or [Jacobi] until the second week of February. It was a Tuesday. At that meeting they were both present and gave me a thick packet of discovery and said there was much more to come. The packet was several hundred pages of double sided copy. [DeWolf] said to read it by Thursday and we would go over it. I didn't see her again until the end of June or sometime in July. My first recorded meeting is July 30th. Actually, it <u>was</u> the end of June. I did not see counsel again until August 17th. Then 9-7 (1 hr), 9-28 (45 min), Oct 1 (1 hr), Oct 31 (1 hr) to discuss meeting with victims [sic] brother. [DeWolf] said she has the last of my print discovery and will get it to me Monday 11-2-18. I still don't have it. Met again 11-20 (15 min) and was told counsel will call no

> expert witnesses, will go over no discovery with me because they have no time . . ..
>
> ***
>
> Please reset my trial and assign outside counsel. [DeWolf] was also against Supreme Court Justice Kavanaugh being nominated based on allegations and she clearly appears prejudiced against me as well.

(D.C. Doc. 38 (two-page letter at 2)(underlined-emphasis in original).)

Pursuant to the six-page letter, DeWise complained, *inter alia*:

> I have suffered 10 long months and been mostly ignored by my lawyers and investigator. I need legal help but I am ignored or given promises that are soon broken.
>
> ***
>
> This "defense" team has contributed to me attempting suicide once, telling a guard I was considering it a second time, and spending six months in solitary confinement. What happened to a speedy trial? Why can't I see my discovery? All of it? Print and electronic? Why after 10 months won't they let me have contact information from my phone?

(D.C. Doc. 38 (six-page letter at 1))

***

> I am be [sic] railroaded after being framed. I will not go quietly. I think the Public defender & DA are helping to keep a scandal from going public.

(D.C. Doc. 38 (six-page letter at 1-2).)

DeWise then set forth his "Points of grave concern" highlighting, *inter alia*:

> Annie DeWolf is violating statute by not balancing her cases so that she has sufficient time to represent me. Instead, she tells me she has too many cases.
>
> Annie DeWolf is violating statute by not balancing Alex Jacobi's cases so that he has sufficient time to represent me. Instead, they both say they have too many cases.

(D.C. Doc. 38 (six-page letter at 2))

***

> 11-20-18 [DeWolf] says she doesn't need to go over any discovery with me, she forgot about the photos, and at first said she didn't need them even though they prove a key point that discredits the "eye witness." We are definitely going to trial but she could not articulate a defense and she and [Severson] kept looking at each other like they were just over pacifying me. They think they are too slick for me to notice. There will be no time for any defense to be mounted. No witness statements, character witnesses, no finger printing the ammo cans & containers, no ballistics expert to explain the powder residue, no expert to interview [J.D.] apparently. Just humor Paul DeWise, and send him to prison.
>
> 11-20-18 [Severson] said I can't see my phone contacts "at the moment." It's been 10 months.
>
> A key piece of video, possibly two pieces, are missing from discovery. Why? Why doesn't my defense care?

(D.C. Doc. 38 (six-page letter at 3))

***

Why doesn't my defense want statements from people I've worked with and Lauren has worked with in the past, friends too, to give character statements?

Why don't they want to use the hearts and homes video of me w/ the kids to show my character?

Where is my backseat video from my arrest?

Why won't they give me a lie detector?

Why did [DeWolf] say she was going to move the trial to Sept the day before it was set for February?

Why have they denied my right to attend all of my court hearings as I have requested?

Why does [Severson] say the call to [N.D.] sounded bad according to [DeWolf], but [DeWolf] says it was not bad[?]

(D.C. Doc. 38 (six-page letter at 4))

***

Why no expert witness for shoe prints?

Why no expert witness period?

See enclosed calender [sic] to see the many, many days Lawyers have been no shows.

The Whipple lawyer team said I needed two lawyers and an investigator with 2 to 3 hrs of face to face meetings per week. I couldn't afford them. [DeWolf] said repeatedly she would do that and has not.

> Annie DeWolf is in violation of 47-1-202 (2017) Public Administrator duties in terms of manageable caseloads as is Alex Jacobi. This also puts Annie DeWolf in violation of 47-1-215 Regional offices deputy public defender (b), (c), and (g).
>
> [L]ists of questions for my daughter were created by me at request of counsel. I was promised copies. Never received.
>
> [L]ists of issues w/ discovery were created by me upon request of counsel, made by me, and never reviewed by counsel.
>
> [F]ailure of counsel to consult with me has severely limited my defense.

(D.C. Doc. 38 (six-page letter at 5))

> My counsel has never had a strategy. All burdens have been placed upon me. Every time I manage to meet with counsel and provide suggestions they either brush them off or agree to do them and then do not.
>
> Counsel is interfering with my ability to defend myself while expressing fear of a "deadlocked" jury. If they would perform their duties we would win our case. I have lost all faith in my counsel.

(D.C. Doc. 38 (six-page letter at 6).)

As noted *supra*, DeWise submitted a copy of a letter from DeWolf wherein DeWolf apologized for missing a previously scheduled meeting. (D.C. Doc. 38 (DeWolf Ltr. 7/10/18).) DeWise underlined DeWolf's assurance she would be available to meet the week of July 30, 2018;

however, he complained: "Did not show up until August 17th for 1 hour." (D.C. Doc. 38 (DeWolf Ltr. 7/10/18).)

DeWise also submitted a copy of an August 29, 2018 letter to his defense team. (D.C. Doc. 38 (DeWise Ltr. 8/29/18).) He complained, *inter alia*:

> I am writing to express my concern over the repeated no shows by one or all of the above to discuss my case or to explore discovery . . . I am very concerned that even if we were to unfailingly meet once per week as a team and myself twice per week with [Severson] that we may lack sufficient time to shape my defense by February. As we stand, since this new schedule was proposed, two weeks ago, we have missed one team meeting, [Severson] showed yesterday for a few minutes to explain he had no time to meet until today & then he didn't show today.
>
> ***
>
> Please provide me with a prescription or proscriptive [sic] remedy that will allow us all to know we will have time to achieve our mutual goal.
>
> ***
>
> P.S. Please do not view this as adversarial. I am very concerned not opposed.

(D.C. Doc. 38 (DeWise Ltr. 8/29/18 at 1-2).)

DeWise's November 28, 2018 annotation to the forgoing letter informed the court:

> This letter led to a Sept 7 meeting with a very sympathetic, sincere, and devoted Annie DeWolf and Alex Jakobi [sic]. They said my worry is normal, gave excuses for no shows, and committed themselves to showing up in the future. The [sic] promised that we will review every bit of discovery together and told me to keep taking notes. [DeWolf] was sorry and so was [Jacobi] that I was further in my discovery than they were. Sadly, nothing changed after this meeting until 11-20-18 when [DeWolf] said we will not be going over discovery, they will not be fingerprinting ammo containers and dresser drawers, or call expert witnesses, or any witnesses.

(D.C. Doc. 38 (DeWise Ltr. 8/29/18 at 2 (11/28/18 annotation)).)

DeWise also attached a copy of his July to November 2018 calendar documenting, *inter alia*, the dates and duration of meetings with his defense team. (D.C. Doc. 38 (DeWise calendar).) He also documented the almost weekly "no shows," to apparently scheduled meetings, by his counsel, the investigator, or both. (D.C. Doc. 38 (DeWise calendar).) On the backside of the November 2018 page, DeWise detailed, *inter alia*, his account of a November 30, 2018 meeting:

> Met with [DeWolf] & a hostile Jacobi and [Severson]. All three are obviously so biased against me they can't absorb straight forward [sic] facts. Jacobi still doesn't know 9 shots were fired not 15 or more. He still doesn't understand that the Airbnb guest who threatened me was a single man not a group of people. He doesn't understand the police made him leave not me. The whole team wants to use the various acts

> of self defense I used, which all showed restraint, saved myself, my wife, my baby from harm. All were lawful and an expert witness could explain all that. They can't listen to common sense. They think I have to be guilty just like they thought Judge Kavenaugh had to be guilty. They all should be fired. With a defense team like them who needs prosecutors? Jacobi was not aware that I have not been provided all of my discovery. He claims he has finished but his lack of factual knowledge contradicts him. His hostility was tangible. Same with [Severson] who would not let me finish answering his questions. Justice is not being done here.

(D.C. Doc. 38 (DeWise calendar (November 2018)).)

On January 8, 2019, the court issued an order regarding a new series of *ex parte* communications and *pro se* motions DeWise had filed. (D.C. Doc. 83.) Pursuant to his December 28, 2018 letter to the court, DeWise pled:

> Please deny the motion to suppress filed in my case. I learned the details in the news this morning. Like every other important point in my case, except for my arrest, I find out through the news rather than my attorneys.
>
> As you know I have asked for a later trial date & new attorneys. These attorneys should have to await a decision before filing motions. They should also discuss motions with me. I have copious notes regarding the CPS interview that my attorneys have yet to take time to see. The interview shows investigators lying when compared to their later statements. It shows coercion by using children to force me to allow them into the interview. I can only see two reasons to suppress. One, to protect the investigators and two, to hide the fact that this is a biased investigation based on

> coercion and creative misportrayal [sic] of facts. This interview shows these things and should not be excluded without counsel consulting with me. Please allow, in the unlikely case counsel has good reason, for refiling in the future. At this time I see only harm to myself coming from this. Also, why am I not allowed to go to my court hearings, ie [sic] this motion? I have asked repeatedly to go to each hearing.
>
> ***
>
> P.S. How are these media leaks not Witness Tampering? How does media find out about my case before me?

(D.C. Doc. 83 (DeWise Ltr. 12/28/18).)

DeWise's January 3, 2019 letter to the court complained, *inter alia*:

> Tonight I received the "States [sic] Response to Defendant's Motion IN LIMINE: Prior Bad Acts.["] This was the first I have heard of this motion and I don't know anything about it other than what I can infer from this response by the State. I can promise that with an attorney I can defend myself. Currently I still do not have access to an Attorney. I still have not been provided my contact information from my phone to contact witnesses on my behalf.
>
> ***
>
> I can do the same discrediting to every point the prosecution has made, but I need a lawyer. At least one. I need access to phone & contact info. Access to my laptop would help so I can type. I am innocent. Please do not rule on any motions

until I have access to a lawyer. Please continue trial. I need a lawyer.

(D.C. Doc. 83 (DeWise Ltr. 1/3/19).)

DeWise's *pro se* "Motion to Continue trial" alleged, *inter alia*:

1. Defendant has not reviewed all discovery including some cited by the State in response motions. Assuming State is giving accurate information.

2. Defendant has not been able to review notes regarding discovery I have seen thus far with defense. I will need to discuss discovery I see in the future with defense also.

3. Defendant has been denied access to potential witnesses for himself that would counter claims by the State.

4. Defendant has been denied effective, available council [sic].

5. Alex Jacobi admitted he has not seen all discovery as of 12-20-18.

6. Investigator [Severson] only views discovery with me so he has not seen all discovery.

7. My current Investigator [Severson] is not allowed to conduct investigations on my behalf.

***

9. I have made official complaint regarding my assigned council [sic] and have not gotten a response yet.

10. I anticipate making complaint to the Montana Bar and any other regulatory agency should my case continue to be bungled and my rights ignored.

(D.C. Doc. 83 (DeWise motion to continue).)

In support of the foregoing motion DeWise offered the following, "[f]urther explanation," asserting, *inter alia*:

> 2. I will also need a defense that is willing to gather evidence on my behalf unlike my current defense. I have provided many tangible avenues with items like photos, books, websites, web searches etc. to my defense team to retrieve. They agreed to do so but never did.
>
> 3. I have no access to my Iphone contact information to contact potential witnesses. I have no contact to Facebook messenger or Facebook friends to contact potential witnesses. I want my character introduced by my defense as it is impeccable.
>
> 4. I have already submitted proof of this claim in the form of calender [sic] pages showing lack of contact with council [sic]. I have asked for future motions and pending motions be held or suspended pending assignment of available council [sic]. Current assigned council [sic] has been mostly absent and unwilling to mount a defense that is cohesive and explanatory. This is not excusable as information is available.
>
> 5. Alex Jacobi also admitted in the first week of December that he wanted to make a deal. If ones [sic] news of my case comes solely from the media I can understand that. If ones [sic] news comes from discovery and my proveable [sic] answers to discovery there is no excuse.
>
> ***
>
> 7. According to [Severson] per Annie DeWolf. This is a major handicap. So is [Severson's] apparent lack of

interest and obvious bias despite him not seeing all discovery and not following up any suggestions I give him.

8. . . . I have local witnesses that I have no way to use because I have no access to a lawyer willing to depose them or whatever must legally be done to preserve their testimony . . . Important witnesses are being denied me by my own defense team due to their lack of accessibility and lack of interest in my defense.

9. Moving forward before an answer is made is not in my best interest as I currently lack effective, available, interested council [sic].

10. This would probably disqualify my council [sic]. I don't know as I have no one to ask. I would ask [N.D.] to find out for me if I was allowed to speak with her.

(D.C. Doc. 83 (DeWise motion to continue).)

DeWise concluded the foregoing *pro se* motion with the following plea:

> My case reminds me of the Satanic Ritual Abuse case from 1993 in Texas where even a police officer was arrested because he dared to go against the overzealous prosecutor. I need help getting council [sic], making a defense and only then going to trial.
>
> I am asking for a trial delay with a date to be determined when the matter of council [sic] is settled. The current trial date was made in bad faith by Annie DeWolf. I asked her for a later date when she offered me a choice for reasons previously explained and she said the next available date after Feb. was in September of 2019. I asked for Sept., she agreed, then went the very next day and chose Feb 19, 2019. She then said we had time to mount a good defense

> and finish all discovery by that time. Then in December she changed her story, asked me to take a deal, and said we would not have time to mount a good defense or go over the discovery. Or obtain expert witnesses.

(D.C. Doc. 83 (DeWise motion to continue).)

Pursuant to his *pro se* "Motion to suspend or hold Motions until such time defendant has access to council [sic]," DeWise asserted:

> I respectfully ask the court to preserve my right to council [sic] and right to attend my court hearings.
>
> Until such time I ask that motions be frozen or suspended so I do not suffer legal injury or lose possible evidence advantageous to my case.

(D.C. Doc. 83 (DeWise motion to suspend)(underlined-emphasis in original).) DeWise further argued:

> I also request that Annie DeWolf and Alex Jakobi [sic] be ordered to provide myself with all motions submitted thus far like I am receiving from the prosecution. I called and left messages on 12-28-18 and 12-31-18 and was told these defense motions were not in my file to send by the woman who answered the phone. I asked for copies to be sent when the lawyers returned and was told the message was sent.

(D.C. Doc. 83 (DeWise motion to suspend).)

In response to DeWise's latest barrage of *ex parte* complaints and *pro se* pleadings, the court issued an order. (D.C. Doc. 83.) It advised DeWise: "The Court cannot consider ex-parte documents" and "the

Court cannot accept or consider pro se filings when Defendant is represented by counsel." (D.C. Doc. 83.)

The parties appeared for a final pretrial conference on January 29, 2019. DeWolf advised the court DeWise had filed a formal complaint pursuant to OSPD's grievance procedure and OSPD had denied his request for new counsel. (1/29/19 Hrg. Tr. at 3-4.) She explained: "Mr. DeWise's next step of recourse is to have a hearing before the Court, and he is requesting that." (1/29/19 Hrg. Tr. at 4.)

The court observed trial was scheduled to begin February 19, 2019, and advised DeWise: "I would want to make sure that your issues with counsel has been resolved." (1/29/19 Hrg. Tr. at 4.) Upon inquiry from DeWise regarding his options, the court explained:

> My concern is that if you intend to proceed with an objection to counsel and are requesting an appointment of new counsel, then that has to be addressed independently . . . I need to know how you wish to proceed in regard to your attorneys.
>
> ***
>
> I need to make sure that you're comfortable going forward with counsel.

(1/29/19 Hrg. Tr. at 6-7.) The court further advised, "if you are not comfortable proceeding with Ms. DeWolf and Mr. Jacobi, then we have to set that for a hearing." (1/29/19 Hrg. Tr. at 9.)

DeWolf reiterated DeWise "still wants a change of counsel" and, therefore, "I think we would need to have a hearing on counsel whenever the Court can --." (1/29/19 Hrg. Tr. at 10.) Again, the court advised DeWise if he wanted new counsel, "we have to have a hearing to do that . . .." (1/29/19 Hrg. Tr. at 10.) It then observed:

> I wouldn't be able to set that hearing—I'm not even sure what kind of testimony we need at that hearing . . . So without knowing more about what your complaint is, I can't really address that further today.

(1/29/19 Hrg. Tr. at 11.)

The parties appeared before the court on February 4, 2019. Upon inquiry, DeWise reiterated he was unwilling to proceed to trial with DeWolf and Jacobi. (2/4/19 Hrg. Tr. at 3-4.) DeWise confirmed he had exhausted OSPD's grievance procedure, and it was his understanding: "I have to request that the grievance review officer notify my counsel to file a motion with the court for you to set a hearing for new counsel." (2/4/19 Hrg. Tr. at 4-6.)

A discussion ensued regarding *State v. Schowengerdt*, 2018 MT 7, 390 Mont. 123, 409 P.3d 38, and the court questioned how to determine whether a complaint is "seemingly substantial." (2/4/19 Hrg. Tr. at 6-9.) Ultimately, it instructed: "Mr. DeWise, in order to proceed, I need to know what your concerns are with your attorneys. So I'm going to ask you to file a written motion outlining those concerns." (2/4/19 Hrg. Tr. at 9.) Thereafter, the court ordered DeWise file a written request for new counsel, "outlin[ing] the specific reasons" why new counsel was warranted. (D.C. Doc. 145 at 2.)

DeWise sought extensions within which to file his request. (D.C. Docs. 154, 156.) He noted the court granted his "opponents"—DeWolf and Jacobi—more time to respond than he had received to file his request. (D.C. Doc. 154.) He also complained counsel had refused to provide contact information from his phone until recently:

> They did not want me to have outside help as they wanted to make sure I was isolated for easier cohersion [sic] and sent to prison. DeWolf threatened to blackmail me if I continue my effort to get new counsel and I will submit details with motion.

(D.C. Doc. 156.)

The court granted DeWise's extension requests. (D.C. Docs. 154, 156.) It specifically advised: "the Court only requires that [DeWise] provide an outline of the specific reasons he alleges new counsel is warranted." (D.C. Doc. 156.)

DeWise filed his Motion for New Counsel. (D.C. Doc. 159.) He offered "an outline as advised by the Court" pursuant to its March 15, 2019 order. (D.C. Doc. 159.) As specifically instructed by the court, DeWise presented the following "[o]utline of reasons for the Court to hold hearing":

A. Lack of availability of counsel.

B. Failure to provide adversarial defense.

C. Lies, misinformation and "gas lighting" of myself by Jacobi and DeWolf.

D. Insults directed at myself by Jacobi and hostility directed at myself by Jacobi and [Severson] the Investigator.

E. Retaliatory behavior after OPD complaint.

F. Threats of retaliatory behavior after OPD complaint if I should continue seeking new counsel.

G. Breach of confidentiality by DeWolf and Jacobi and threat of further breach should I continue to proceed with complaint.

H. Assistance to the State in prosecution of myself by DeWolf and Jacobi.

(D.C. Doc. 159.) DeWise also averred: "I have many more pages of evidence that I will provide in Court if the Honorable Judge Holly Brown will be pleased to provide a hearing for me. This includes Calenders [sic] from January to present." (D.C. Doc 159.)

DeWise attached a copy of the "packet" he had previously submitted to the court (D.C. Docs. 36, 38 & 83) and later provided to OSPD pursuant to its grievance procedure. (D.C. Doc. 159.) He also submitted the OSPD complaint forms he filed regarding DeWolf and Jacobi. (D.C. Doc. 159.)

Regarding Jacobi, DeWise complained:

- Failed to review discovery or my notes pertaining to discovery to date. Trial is 2-19-19.
- Failed to appear at scheduled Friday meetings.
- In May, per phone call, promised to see me on a Thursday about Discovery as he was "taking it home tonight" to read. He never appeared and admitted in October that he had not reviewed Discovery.
- Failure to provide all Discovery. Failure to investigate leads.
- Failed to locate missing discovery.

- Witness in my Witness Tampering case. Failed to warn me that paper was wrong and contact was Felony not Misdemeanor. I informed him right after the call that I made, [illegible] saw my shock when he told me it could felony witness tampering. He said he would "take care of it. Just don't do it again." I didn't and neither did he.

- Violation of 47-1-202.

(D.C. Doc. 159 (Jacobi OSPD complaint).)

Regarding DeWolf, DeWise complained:

- [DeWolf] has insisted we will review my discovery and discovery notes together for 10 months. Then on 11-20-18 she said we will not go over discovery.

- [DeWolf] has made a schedule of meeting every Friday. Hasn't happened. See attached calender [sic.]

- [DeWolf] has failed to give me all print discovery or review all electronic discovery.

- [DeWolf] has failed to investigate leads in my case.

- [DeWolf] has failed to locate missing discovery.

- [DeWolf] has failed to acknowledge connection to hostile witness. See back→

- [DeWolf] said she would represent me in guardianship hearing and simply did not show up.

- According to Alden Antenucci [sic], [DeWolf] and Alden are friends and they see and talk to each other almost every day at daycare. Alden said [DeWolf] doesn't think my case looks so good. Alden was also in contact with my daughter, [N.D.] Suddenly in April or May, Alden told me there "was no

> hope," but would not say why. Alden stopped accepting my calls and [N.D.] stopped sending money. [DeWolf] was impossible to reach because she went on leave without telling me. Alex Jakobi [sic] would not see me. I believe [DeWolf] poisoned my witnesses.

- Witness in my Witness Tampering case. Failed to advice [sic] contact was Felony not misdeameanor [sic].

- Violation of 47-1-202.

(D.C. Doc. 159 (DeWolf OSPD complaint).)

DeWise also submitted two sections from a postconviction relief prison form. (D.C. Doc. 159 (PCR form).) Relevant to the instant appeal, he asserted a conflict of interest existed, and DeWolf and Jacobi had rendered ineffective assistance. (D.C. Doc. 159 (PCR form).)

DeWise also submitted a copy of OSPD's letter denying his request for new counsel and his rebuttal thereto. (D.C. Doc. 159.) DeWise was instructed, if he disagreed with OSPD's decision, to "please ask Ms. DeWolf and Mr. Jacobi to ask for a hearing before the judge." (D.C. Doc. 159 (OSPD Ltr.).) Pursuant to his rebuttal, DeWise complained, *inter alia*:

> You mention the countless hours my attorneys have spent on discovery when they have told me otherwise . . ..

***

> You say you understand I want to meet with my attorneys more often . . . I want to meet with my attorneys when they say we should meet. You say you understand there are times I may not agree with counsel or like there [sic] advice. This is another red herring . . . I have no counsel and when I see them I get no advice. In fact they ask me for advice!
>
> ***
>
> I have many opportunities or avenues to win my case if I have counsel. You tell me to work with my attorneys. Wow! Have you not read my complaint? I have never stopped trying to work with them. They simply will not work for me.

(D.C. Doc. 159 (DeWise Ltr. at 1).) DeWise pled: "I have no effective counsel and the [sic] do not do anything I ask them to. Even when they say they will." (D.C. Doc. 159 (DeWise Ltr. at 2).)

Finally, in addition to the calendar entries DeWise previously filed (D.C. Doc. 38), he also submitted a copy of his December 2018 calendar. (D.C. Doc. 159.) Again, DeWise documented, *inter alia*, the dates and duration of the meetings with his defense team. (D.C. Doc. 159 (Dec. calendar).) He also documented multiple "no shows," to apparently scheduled meetings, by his counsel, the investigator, or both. (D.C. Doc. 159 (Dec. calendar).) He also set forth the following complaints:

> Channel 4 News had bit about a motion to suppress evidence in my case but the tv was turned off before I could see the whole piece. First I've heard of it.

***

> 12-27 – Why do I keep hearing details about my case in the news before I hear from my lawyer? I know nothing about a motion to suppress evidence and it sounds bad.

(D.C. Doc. 159 Dec. calendar).)

Defense counsel filed a joint response to DeWise's motion and generally averred: "Counsel has provided effective representation to Mr. DeWise, is not in violation of Montana's Rules of Professional Conduct, and communication has not broken down." (D.C. Doc. 162 at 1.)

Counsel insisted the defense team had been "diligent" in preparing DeWise's case for trial, logging 187 hours working on his case. (D.C. Doc. 162 at 2.) Indeed, "Jacobi alone has logged nearly 80 hours of work" and "the defense team has spent over 53 hours with Mr. DeWise." (D.C. Doc. 162 at 2.) Counsel conceded, however, "[m]uch of the time spent with Mr. DeWise was with the investigator, who sat with Mr. DeWise (and will continue to sit with Mr. DeWise) so that he can review the audio/video discovery in this case." (D.C. Doc. 162 at 2.)

Defense counsel also insisted DeWise had received "copies of all paper discovery." (D.C. Doc. 162 at 2.) Counsel did not, however,

provide DeWise with his phone records given the voluminous nature of those reports. (D.C. Doc. 162 at 3.)

Counsel ultimately confessed, "there were times that counsel would tell [DeWise] they would visit and would not be able to meet with him until a few weeks later." (D.C. Doc. 162 at 3.) Moreover, counsel acknowledged, "one of his counsel was on leave from the end of March, 2018—early June, 2018." In that regard: "It is certainly frustrating both counsel and Mr. DeWise that counsel could not always get to the jail to meet with Mr. DeWise." Nevertheless, counsel insisted, "counsel has not been deficient in their representation of Mr. DeWise and has worked diligently toward his defense." (D.C. Doc. 162 at 3.)

Defense counsel also insisted DeWise had "access to counsel" and, moreover, counsel had "reasonably consulted with Mr. DeWise regarding his objectives of his case, and the means by which those objectives will be obtained." (D.C. Doc. 162 at 3.) Counsel represented much of the in-person contact with DeWise was spent discussing discovery and a potential plea agreement. In that regard: "At no time did counsel lie or offer misinformation to Mr. DeWise; nor did they

'gaslight' Mr. DeWise by psychologically manipulating him." (D.C. Doc. 162 at 3.)

Counsel acknowledged DeWise's "displeasure" over the filing of various motions, and confessed they, "did not communicate with Mr. DeWise regarding the filing of a specific suppression motion prior to filing the motion." (D.C. Doc. 162 at 4.) Counsel explained the filing was, *inter alia*, "strategic" and "[h]ad counsel failed to make such motions, counsel would have been deficient." (D.C. Doc. 162 at 4.)

Counsel also insisted there was no breakdown in communication, at least from counsel's perspective. (D.C. Doc. 162 at 4.) Specifically, Jacobi "has been neither hostile, nor insulting toward Mr. DeWise" and "has been able to communicate with Mr. DeWise in a constructive, cooperative, and civil manner." Counsel pledged to "continue to communicate and work with Mr. DeWise." (D.C. Doc. 162 at 4.)

Defense counsel summarily denounced DeWise's complaint counsel was assisting the State in its prosecution and, moreover, denied any violation of the attorney-client privilege. (D.C. Doc. 162 at 5.) Counsel likewise denounced his allegation regarding a conflict of interest. Although counsel acknowledged knowing a State's witness in

another setting, she insisted: "There is no conflict of interest." (D.C. Doc. 162 at 5.) Defense counsel also adamantly denied engaging in any retaliatory behavior because of DeWise's complaints to OSPD. (D.C. Doc. 162 at 6.)

In sum counsel reiterated, from their perspective, "[t]here has been no breakdown in attorney client communication." (D.C. Doc. 162 at 6.) Counsel nevertheless advised: "Counsel will also be available if the Court wishes to have a hearing on Mr. DeWise's complaint and believes a hearing may be appropriate to avoid any appeal issues." (D.C. Doc. 162 at 7.)

The district court concluded DeWise's complaints regarding counsel were not "'seemingly substantial'" as to warrant further hearing. (D.C. Doc. 165 at 9.) It found many of his complaints contemplated "strategic and tactical decision-making" and the "gravamen of these complaints is Defendant's belief that counsel are providing ineffective assistance of counsel." The court reasoned such complaints cannot be considered as a basis for granting a request for new counsel. (D.C. Doc. 165 at 9, *citing State v. Johnson*, 2019 MT 34, ¶ 9, 394 Mont. 245, 435 P.3d 64.)

The court found the remainder of DeWise's complaints, "revolve around his general dissatisfaction with the amount of time counsel is spending with him and his perception that counsel is treating him in a hostile manner." (D.C. Doc. 165 at 9.) It noted, however, nothing in DeWise's allegations indicated, "these issues have resulted in a complete breakdown in communication between Defendant and counsel." The court found, to the contrary, defense counsel represented they had been able, and would continue to, communicate effectively with DeWise and work diligently toward his defense. Finally, the court found DeWise failed to establish, "any irreconcilable conflict between himself and counsel or any actual conflict." (D.C. Doc. 165 at 9, *citing Johnson*, ¶ 19.)

In sum, DeWise's complaints were not "'seemingly substantial,'" no further hearing was warranted, and his request for new counsel was denied. (D.C. Doc. 165 at 10.)

The irreconcilable conflict and complete breakdown in communication between counsel and DeWise is presumptively prejudicial and the court's failure to hold a hearing to address his complaints must be reviewed independently. Accordingly, none of the

subsequent trial evidence regarding the alleged homicide and attempted homicide is relevant to this appeal. *See* Mont. R. App. P. 2 (requiring a statement of those facts "relevant to the issue presented for review").

Standard of review

A request to substitute counsel is within the sound discretion of the district court, reviewed for an abuse of discretion. *Johnson*, ¶ 13 (citations omitted). A court's analysis of whether a defendant's claims are "seemingly substantial," necessitating further inquiry, is likewise reviewed for an abuse of discretion. *Schowengerdt*, ¶ 16 (citations omitted). A court abuses its discretion if it acts arbitrarily without the employment of conscientious judgment or exceeds the bounds of reason, resulting in substantial injustice. *Johnson*, ¶ 13 (citation omitted).

SUMMARY OF THE ARGUMENT

This Court has consistently held when a criminal defendant requests new counsel, and if the defendant's complaints are "seemingly substantial," the trial court *must* conduct an evidentiary hearing to determine the validity of those complaints. Here, over the course of four months, DeWise lodged a series of "seemingly substantial"

complaints demonstrating an irreconcilable conflict and complete breakdown in communication with counsel. Although DeWise presented material facts showing good cause for his substitution, and although counsel at least partially acknowledged a relationship conflict and communication breakdown, the court refused to hold a hearing to test the validity of DeWise's substantial complaints.

The court abused its discretion in denying DeWise's request for new counsel. This matter must be remanded for an evidentiary hearing to test the validity of DeWise's seemingly substantial complaints.

Argument

The district court erred in refusing to hold an evidentiary hearing to test the validity of DeWise's seemingly substantial complaints.

The United States Constitution and the Montana Constitution guarantee criminal defendants the right to effective assistance of counsel. U.S. Const. amend. VI; Mont. Const. art. II, § 24. A defendant's right to substitute counsel is founded in the defendant's constitutional right to effective assistance of counsel. U.S. Const. amend. VI; Mont. Const. art. II, § 24; *Johnson*, ¶ 17, *citing United States v. Smith*, 640 F.3d 580, 588 (4th Cir. 2011).

Although defendants are not entitled to counsel of their choice or even to a meaningful relationship with counsel they are, however, constitutionally entitled to counsel with whom they may mount an adequate defense. *United States v. Cronic*, 466 U.S. 648, 656-57 (1984); *Morris v. Slappy*, 461 U.S. 1, 14 (1983). "'The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel.'" *Johnson*, ¶ 17, *quoting Powell v. Alabama*, 287 U.S. 45, 68-69 (1932). Indeed, this Court has noted when communication between counsel and defendant becomes so compromised that mounting a defense is impossible, the defendant is neither being heard by counsel nor receiving effective assistance. *Johnson*, ¶ 18.

A defendant's right to substitute counsel arises only when a breakdown of the attorney-client relationship becomes so great the principal purpose of the appointment—to provide the defendant with effective assistance—is frustrated. *Johnson*, ¶ 18, *citing Smith*, 640 F.3d at 588 ("[T]he defendant's Sixth Amendment right to successor appointed counsel arises because the initial appointment has ceased to constitute Sixth Amendment assistance of counsel."). In such instances, "the defendant is constructively denied his constitutional right to

effective assistance of counsel and the trial court must grant his request for substitute counsel." *Johnson*, ¶ 18, *citing Daniels v. Woodford*, 428 F.3d 1181, 1196-98 (9th Cir. 2005).

When a defendant requests substitute counsel, the trial court must undertake an "adequate initial inquiry" into the "defendant's factual complaints together with counsel's specific explanations addressing the complaints" to determine whether the defendant's concerns are "seemingly substantial." *Johnson*, ¶¶ 21-22 (citations omitted); *see also Smith*, 640 F.3d at 594 ("the judge has an obligation to inquire thoroughly into the factual basis of defendant's dissatisfaction" with counsel (internal quotations and citations omitted).). If the court determines the defendant's complaint is "seemingly substantial," the court *must* conduct a hearing to address the complaint's validity. *Johnson*, ¶ 22, *citing State v. Happel*, 2010 MT 200, ¶ 14, 357 Mont. 390, 240 P.3d 1016.

The trial court must focus its inquiry on the alleged conflict or breakdown and determine whether the defendant demonstrated good cause justifying substitute counsel. *Johnson*, ¶ 20 (citations omitted). Specifically, the court should focus on whether the defendant presented

"material facts" showing good cause as demonstrated by, *inter alia*: an irreconcilable conflict between counsel and the defendant; or a complete breakdown in communication between counsel and the defendant. *Johnson*, ¶ 20.

The court should also consider the circumstances surrounding the defendant's substitution motion, including the timeliness of the motion and the degree to which the conflict prevented the mounting of an adequate defense. *Johnson*, ¶ 23 (citations omitted). As to timeliness, the court may consider "'whether the conflict complained of is genuine or merely a transparent plot to bring about delay.'" *Johnson*, ¶ 23, *quoting Smith*, 640 F.3d at 591 (internal quotations and citations omitted). If the substitution request is nothing more than a dilatory tactic, the trial court is well within its discretion to deny the request. *Johnson*, ¶ 23.

In analyzing the degree to which the conflict between counsel and defendant prevented the mounting of an adequate defense, the defendant must demonstrate more than his feeling his communication with counsel is unsatisfactory. *Johnson*, ¶ 23 (citations omitted). Instead, the defendant must present material facts showing the

attorney-client relationship has deteriorated to the point where the irreconcilable conflict or breakdown in communication prevents the mounting of an adequate defense. *Johnson*, ¶ 23 (citations omitted). If the relationship between lawyer and client completely collapses, the refusal to substitute new counsel violates the defendant's right to effective assistance of counsel. *State v. Gallagher*, 2001 MT 39, ¶ 9, 304 Mont. 215, 19 P.3d 817 (*Gallagher II*).

Finally, this Court has found disagreement between counsel and defendant over matters such as defense tactics and trial strategy—issues potentially relevant to an ineffective assistance of counsel claim—could certainly lead to an irreconcilable conflict or complete breakdown in communication, justifying substitute counsel. *Johnson*, ¶ 20.

In *State v. Gallagher*, 1998 MT 70, ¶ 23, 288 Mont. 180, 955 P.2d 1371 (*Gallagher I*), defendant argued he raised "seemingly substantial complaints" about his counsel. He asserted, *inter alia*, he demonstrated to the trial court his relationship with his attorney had deteriorated due to a "total lack of communication." Defendant explained to the court he and his attorney had "reached an impasse" with respect to the proper

course of action in his case. Defendant also indicated he felt his attorney had more or less told him he was guilty of a crime he felt he was not guilty of and told the court he believed he and his attorney had been unable to "'work together' on his defense." Defense counsel acknowledged defendant felt he had a "'severe personality conflict' with [counsel]." *Gallagher I*, ¶ 23.

This Court held defendant in fact raised "seemingly substantial complaints" where he told the trial court of the, "ongoing and severe conflict between himself and his attorney, thereby suggesting that they suffered from a total lack of communication." *Gallagher I*, ¶ 25. Accordingly, the trial court erred in failing to hold a second hearing to address the validity of defendant's claims. *Gallagher I*, ¶ 26.

Similarly, in *State v. Hendershot*, 2007 MT 49, ¶ 21, 336 Mont. 164, 153 P.3d 619, defendant argued he made "seemingly substantial complaints" concerning defense counsel's representation, including but not limited to: counsel's failure to appear at a revocation hearing; his failure to respond to defendant's attempts at correspondence; and his meeting with defendant only once in the five months counsel represented him. Defendant pointed out on this occasion, counsel

erroneously informed the court defendant intended to plead guilty when in fact such a plea had never been discussed. *Hendershot*, ¶ 21.

This Court concluded the record supported defendant's complaints regarding counsel. *Hendershot*, ¶ 25. It was apparent from the record the conflict between defendant and counsel arose early in the relationship, during revocation proceedings, "demonstrating that 'client and attorney were at serious odds . . . for some time.'" *Hendershot*, ¶ 30. The attorney-client relationship continued to deteriorate until it reached the "'irreparable state'" described by both client and counsel at the legal representation hearing. For these reasons, this Court concluded the trial court abused its discretion in denying defendant's timely request for substitution of counsel. *Hendershot*, ¶ 30.

Here, the record demonstrates the district court abused its discretion when it did not hold a hearing to address the validity of DeWise's many complaints concerning counsel. As is *Gallagher I*, DeWise clearly raised seemingly substantial complaints where he informed the court "of the ongoing and severe conflict between him and his attorney[s], thereby suggesting that they suffered from a total lack of communication." *Gallagher I*, ¶ 25.

Indeed, DeWise repeatedly informed the court his relationship with counsel had deteriorated due to a lack of communication, *e.g.*: "I have been in jail since January 11, 2018 and still have no reliable access to counsel" (D.C. Doc. 38 (two-page letter at 1)); "[F]ailure of counsel to consult with me has severely limited my defense" (D.C. Doc. 38 (six-page letter at 5)); "I am writing to express my concern over the repeated no shows by one or all of the above to discuss my case or to explore discovery" (D.C. Doc. 38 (DeWise Ltr. 8/29/18 at 1)); and "Like every other important point in my case, except for my arrest, I find out through the news rather than my attorneys" (D.C. Doc. 83 (DeWise Ltr. 12/28/18).) *Gallagher I*, ¶ 23.

DeWise also explained to the court he and his defense team had for all intents and purposes "reached an impasse" with respect to the proper course of action in his case, *e.g.*: "I have lost all faith in my assigned lawyers and investigator, the harms they have caused me, and the harms I fear they may yet to cause me" (D.C. Doc. 38 (two-page letter at 1)); "I need legal help but I am ignored or given promises that are soon broken" (D.C. Doc. 38 (six-page letter at 1)); "We are definitely going to trial but [DeWolf] could not articulate a defense and she and

[Severson] kept looking at each other like they were just over pacifying me" (D.C. Doc. 38 (six-page letter at 3)); "My counsel has never had a strategy. All burdens have been placed upon me. Every time I manage to meet with counsel and provide suggestions they either brush them off or agree to do them and then do not" (D.C. Doc. 38 (six-page letter at 6)); "I will also need a defense that is willing to gather evidence on my behalf unlike my current defense . . . Current assigned council [sic] has been mostly absent and unwilling to mount a defense that is cohesive and explanatory" (D.C. Doc. 83 (DeWise motion to continue)); and "I have many opportunities or avenues to win my case if I have counsel . . . I have never stopped trying to work with them. They simply will not work for me." (D.C. Doc. 159 (DeWise Ltr. at 1).) *Gallagher I*, ¶ 23.

DeWise likewise informed the court to the effect he felt his attorneys believed he was guilty, and he also believed he and his attorneys had been unable to "'work together' on his defense," *e.g.*: "[DeWolf] was also against Supreme Court Justice Kavanaugh being nominated based on allegations and she clearly appears prejudiced against me as well" (D.C. Doc. 38 (two-page letter at 2)); "Counsel is interfering with my ability to defend myself while expressing fear of a

'deadlocked' jury. If they would perform their duties we would win our case. I have lost all faith in my counsel" (D.C. Doc. 38 (two-page letter at 6)); "Met with [DeWolf] & a hostile Jacobi and [Severson]. All three are obviously so biased against me they can't absorb straight forward [sic] facts"; "They think I have to be guilty just like they thought Judge Kavenaugh had to be guilty. They all should be fired. With a defense team like them who needs prosecutors?"; "[Jacobi's] hostility was tangible. Same with [Severson] who would not let me finish answering his questions" (D.C. Doc. 38 (DeWise calendar (November 2018)); "Alex Jacobi also admitted in the first week of December that he wanted to make a deal. If ones [sic] news of my case comes solely from the media I can understand that. If ones [sic] news comes from discovery and my proveable [sic] answers to discovery there is no excuse" (D.C. Doc. 83 (DeWise motion to continue)); and "They did not want me to have outside help as they wanted to make sure I was isolated for easier cohersion [sic] and sent to prison." (D.C. Doc. 156.) *Gallagher I*, ¶ 23.

Finally, as in *Gallagher I*, ¶ 23, defense counsel at least partially confirmed the conflict and communication breakdown. Again, DeWise submitted a copy of a letter from DeWolf wherein she apologized for

missing a previously scheduled meeting. (D.C. Doc. 38 (DeWolf Ltr. 7/10/18).) Defense counsel conceded, "[m]uch of the time spent with Mr. DeWise was with the investigator . . .." (D.C. Doc. 162 at 2.) Counsel also admitted to failing to provide DeWise with his phone records given the voluminous nature of those reports. (D.C. Doc. 162 at 3.)

Defense counsel also confessed, "there were times that counsel would tell [DeWise] they would visit and would not be able to meet with him until a few weeks later." (D.C. Doc. 162 at 3.) Moreover, counsel acknowledged, "one of his counsel was on leave from the end of March, 2018—early June, 2018." In that regard: "It is certainly frustrating both counsel and Mr. DeWise that counsel could not always get to the jail to meet with Mr. DeWise." (D.C. Doc. 162 at 3.)

Finally, defense counsel acknowledged DeWise's "displeasure" over the filing of various motions. Counsel confessed they, "did not communicate with Mr. DeWise regarding the filing of a specific suppression motion prior to filing the motion." (D.C. Doc. 162 at 4.)

The foregoing record plainly demonstrates DeWise raised "seemingly substantial" complaints where he told the trial court of the, "ongoing and severe conflict between himself and his attorney, thereby

suggesting that they suffered from a total lack of communication." *Gallagher I*, ¶ 25. Likewise, the record before this Court supports DeWise's complaints regarding counsel. *Hendershot*, ¶ 25. It is apparent from the record the conflict between DeWise and counsel arose early in the relationship, "demonstrating that '[DeWise] and [counsel] were at serious odds . . . for some time.'" *Hendershot*, ¶ 30. The attorney-client relationship continued to deteriorate until it reached the "'irreparable state'" described by DeWise pursuant to his Motion for New Counsel and at least partially confirmed by counsel's joint response. *Hendershot*, ¶ 30.

Equally important, there is nothing in the record to suggest DeWise's complaints and request for new counsel were, "merely a transparent plot to bring about delay." *Johnson*, ¶ 23 (citation omitted). As noted *supra* he lodged his first grievance with the court nine months after his arraignment (D.C. Docs. 7, 36.) and, thus, as to "timeliness" it cannot be said his substitution request was "nothing more than a dilatory tactic." *Johnson*, ¶ 23.

This Court should hold DeWise presented seemingly substantial complaints demonstrating an irreconcilable conflict and complete

breakdown in communication with counsel. Indeed, he presented a surfeit of material facts showing the attorney-client relationship had deteriorated to the point where the irreconcilable conflict and breakdown in communication prevented the mounting of an adequate defense. *Johnson*, ¶ 23. The foregoing should be obvious where he viewed DeWolf and Jacobi as his "opponents" (D.C. Doc. 154) and informed the court: "I have many more pages of evidence that I will provide in Court if the Honorable Judge Holly Brown will be pleased to provide a hearing for me. This includes Calenders [sic] from January to present." (D.C. Doc 159.)

Accordingly, this matter must be remanded for an evidentiary hearing to determine the validity of his complaints. If the district court ultimately finds DeWise was denied effective assistance of counsel by the irreconcilable conflict and breakdown in communication between attorney and client, a new trial must be ordered. *Johnson*, ¶ 18 (citations omitted); *Gallagher I*, ¶ 26.

Conclusion

DeWise respectfully requests this Court hold the district court erred in denying his request for new counsel and to remand for an

evidentiary hearing to determine the validity of his seemingly substantial complaints.

Respectfully submitted this 3rd day of November, 2021.

/s/ Joseph P. Howard
Joseph P. Howard
Joseph P. Howard, P.C.

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 27 of the Montana Rules of Appellate Procedure, I certify that this principal brief is printed with a proportionately spaced Century Schoolbook 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 9063 words, not averaging more than 280 words per page, excluding certificate of service and certificate of compliance.

/s/ Joseph P. Howard
Joseph P. Howard

APPENDIX

CERTIFICATE OF SERVICE

I, Joseph Palmer Howard, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant's Opening to the following on 11-03-2021:

Chad M. Wright (Attorney)
P.O. Box 200147
Helena MT 59620-0147
Representing: Joseph Paul Dewise
Service Method: eService

Martin D. Lambert (Govt Attorney)
1709 W. College
Bozeman MT 59715
Representing: State of Montana
Service Method: eService

Austin Miles Knudsen (Govt Attorney)
215 N. Sanders
Helena MT 59620
Representing: State of Montana
Service Method: eService

Electronically Signed By: Joseph Palmer Howard
Dated: 11-03-2021