

ORIGINAL

FILED

11/23/2021

Bowen Greenwood  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

Case Number: DA 21-0204

IN THE SUPREME COURT OF THE STATE OF MONTANA

DA 21-0204

EMMANUEL F. GOMEZ,

Petitioner and Appellant,

v.

STATE OF MONTANA,

Respondent and Appellee.

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State of Montana

ORDER

Emmanuel Gomez appeals the Fourth Judicial District Court’s March 23, 2021 order denying his request for additional time to file a petition for postconviction relief. A Missoula County jury convicted Gomez in February 2017 of Partner or Family Member Assault and Deliberate Homicide. This Court affirmed the conviction on March 31, 2020. *State v. Gomez*, 2020 MT 73, 399 Mont. 376, 460 P.3d 926. On March 12, 2021, Gomez filed in the underlying criminal action a “Petition for Equitable Tolling Or Extension of Time To File Petition for Postconviction Relief.” The State responded the following week, and the District Court denied the motion after concluding that Gomez had not shown good cause for equitable tolling or extension of time.

Gomez argues, as he did before the District Court, that because of COVID-19 facility lockdowns and quarantines beginning in March 2020, he did not have access to the law library or to other legal research materials until January 2021, when the facility began a tablet program which allowed him access to Lexis-Nexis software. He submits that, because he lacked unrestricted access during months while the clock was running on his postconviction deadline, the limitation period should equitably be tolled or extended to give him sufficient time to file.

The Montana Rules of Appellate Procedure allow a party to appeal from a “final judgment in an action” or from specified “final orders” in civil cases.





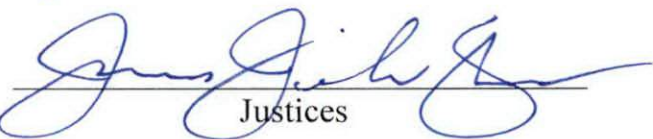
M. R. App. P. 6(3). In a criminal case, a defendant may appeal “only from a final judgment of conviction and orders after judgment which affect the substantial rights of the defendant.” Section 46-20-104(1), MCA.

The order that Gomez attempts to appeal is not a final order in a civil case or a final judgment of conviction, and it is not an order that affects Gomez’s substantial rights. As Gomez correctly acknowledged in his Petition for Equitable Tolling or Extension of Time, the one-year period for him to file a postconviction relief petition “began to run on June 30, 2020 (where the conviction became final 90 days from the March 31, 2020, Supreme Court decision).” Section 46-21-102(1)(b), MCA.<sup>1</sup> When the District Court denied his motion for extension, Gomez still had several months within which to file his petition. The court’s order did not foreclose his opportunity to do so. There being no appealable order for consideration,

IT IS THEREFORE ORDERED that this appeal is DISMISSED.

The Clerk is directed to provide copies of this Order to all parties of record.

Dated this 23<sup>rd</sup> day of November, 2021.

  
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Justices

<sup>1</sup> As the State points out, the time for petitioning the U.S. Supreme Court for review in fact was extended an additional sixty days by order of that Court on March 19, 2020, in response to the pandemic.