

ORIGINAL

FILED

01/06/2022

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: DA 21-0367

IN THE SUPREME COURT OF THE STATE OF MONTANA

SUPREME COURT No. DA 21-0367

MATTHEW RYAN AILER,

Defendant and Appellant,

v.

STATE OF MONTANA,

Plaintiff and Appellee,

FILED

JAN 06 2022

Bowen Greenwood
Clerk of Supreme Court
State of Montana

APPELLANT'S UNOPPOSED FOURTH
MOTION FOR EXTENSION OF TIME

COMES NOW, Matthew Ryan Ailer, Appellant, respectfully requests a 30-day extension of time until February 8, 2022, to prepare, file and serve the Appellant's opening brief in the above-entitled matter. This is Appellant's fourth extension request for the opening brief. Appellant's opening brief is currently due on January 8, 2022. Opposing counsel TAMMY K PLUBELL has been contacted and **does not object**.

The grounds and reason for this Motion is discussed below:

1. Attorney Brooke represented Matthew in No. DA 16-0240 in which this Court granted multiple extensions of time because of Matthew's physical and mental health conditions.

2. Matthew still suffers from the following medical and mental health conditions:

“Based on the current evaluation, it is possible that Mr. Ailer is experiencing persistent concussion-related sequelae;...Results from this evaluation are considered within the context of historical diagnoses most notable for Conversion Disorder and Pain Disorder, Depression, and PTSD symptomology, ...I see no evidence refuting Mr. Ailer's previously established diagnosis of Conversion Disorder....DIAGNOSTIC

IMPRESSIONS: S06.0X1S Concussion with Possible Loss of Consciousness, Possible Sequela, F44.7 Conversion Disorder, with Mixed Symptoms, Pain Disorder, with Psychiatric and possible Medical Contributors, Post-Traumatic Stress Disorder, Major Depressive Disorder, Single Episode, Moderate.” (Kelly Pearce, PhD –

Neuropsychological Evaluation (2016). “This is a 33-year-old man with conversion disorder with secondary right hemiparesis, right hemibody numbness, memory disorder and neurogenic bladder.” Sherry Reid, MD (Neurology-2016). “34 y.o year old male with history significant for conversion disorder and PTSD presents today for follow-up of migraines and conversion disorder.....Has become very severe , with self harm, PTSD, and unable to perform ADL’s...Continue occupational therapy with Jennie Roy for ADL’s” “35 y.o. year old male with history significant for cognitive impairment, conversion disorder, depression presenting today for chronic migraine.” “35 y.o. year old male with history significant for Conversion Disorder, multiple psychiatric diagnoses.... Patient has had intractable chronic migraine since MVA 2011. Over the last few years,

condition has deteriorated in regards to mental health, developing severe conversion disorder” Meadow Summers, PA-C (Neurology-2018).

3. Functional Neurological Symptom Disorder (F44.4), by history, with paralysis, and psychological stressor: 5/18/2011 MVA. Originally diagnosed by William Stratford, MD, (2012), John Harrison, PhD (2013), Eric Ravitz, DO, (2014 to Current), Sean Tollison, PhD (2014), Holly Schleicher, PhD (2015), Sherry Reid, MD (Neurology-2016), Kelly Pearce, PhD (2016), Susan Swierc, PhD (2017), Katie McCall, PhD (2017), Meadow Summers, PA-C (Neurology-2018), Heather Kroll, MD (2018), and Sean Tollison, PhD (2018). “Conversion disorder can be difficult to treat. It is a rare condition. According to DSM-5, “the incidence of individual persistent conversion symptoms is estimated to be 2-5/100,000 per year.” In other terms, 0.002 - 0.005 % of the population will meet criteria for conversion disorder in a given year. Many providers will not take patients with conversion disorder due to the complexity of treatment. To others who are not familiar with the disorder, it can be confusing or sometimes misinterpreted as poor effort or non-compliance. Treatment often involves an intensive multidisciplinary behavioral management approach which very few clinics have the resources to provide.” (Dr. Tollison 2015 Letter).

“Matt has been convicted of Worker's Compensation fraud and will be sentenced by the court in January 2016. Through my professional encounters with Matt over the

last 5 years I honestly don't think he is capable of the deception and criminal behavior that he has been deemed guilty.” (Eric Ravitz, DO 2015 Letter).

“This is Mr. Ailer’s second treatment episode with our clinic having done well the first time but compensating after a trial found him guilty of fraud. I have diagnosed him with somatic symptom disorder with predominant pain (formally pain disorder associated with both psychological factors and a general medical condition) and Conversion Disorder. Mr. Ailer continues to meet criteria for Conversion Disorder, with mixed symptoms, persistent, and with psychological stressors; and Somatic Symptoms Disorder with predominant pain.” (Sean Tollison, PhD 2018 Letter).

After Dr. Tollison and Dr. Ravitz reviewed the trial transcripts in CDC 2014-98, and the briefs filed in No. DA 16-0240, they still confirmed Matthew suffers from Conversion Disorder.

4. Matthew has been limited in reviewing and assisting in the preparation of the Appellant’s opening brief due to his deteriorating mental, physical, cognitive and emotional issues listed above. Matthew currently suffers from a mental disease or defect, an emotional disability, and is under prescription medicine that would preclude him from making a knowing, intelligent, and voluntary decision on the current legal matter before this Court without additional time to review and approve the brief.

5. Matthew has no criminal history except for the wrongful conviction in CDC 2014-98. Matthew has been assigned three probation officers throughout his probation:

Officers Valerie Chesnut, Justin Bradley, and Casey Eggum. Matthew has been on probation since 12/11/2015 and he has no probation violations or minor infractions.

All of Matthew's probation officers have had no issues with Matthew, but they were concerned that he, at times, has trouble understanding information, legal documents, and legal proceedings because of the complexity of his medical conditions. Below are a few examples of his difficulty understanding information and the probation officers having no issues with him: Based upon these observations, additional time would be reasonable.

- A. Probation Officer Monty Warrington stated this at the sentencing hearing, " I spoke to Mr. Ailer by phone. The interview was conducted by phone. Originally the first date that I setup the interview with him, his Work Comp attorney actually showed up for that one. Conducted half way of the PSI interview, and I was concerned that he wasn't understanding the questions I was asking him regarding the questionnaire he submitted."
- B. Attorney Brooke contacted Probation Officer Justin Bradley, "I finally got a hold of Justin Bradley and discussed Matt with him. Justin is very sorry for the missed meeting, apparently he is new to this position and Matt was assigned to him because Matt is a low-maintenance probationer (as in, Valerie had no problem with him, so they thought it would be good to give to the new guy). I informed Justin about Matt's health issues and stressors

and he was understanding. Justin told me that Matt has nothing to worry about, and if there are any problems, he will contact me directly.”

C. Brooke had the following conversation with Matthew’s current probation officer, “I spoke to Casey Eggum about Matt today. Casey does not need Matt to sign anything related to that, and he understands Matt’s issues with comprehension of those type of documents.”

6. Additional time is warranted in this case as Matthew is in an unfamiliar environment with unfamiliar rules articulated in an unfamiliar language and is a system that is designed primarily for licensed attorneys and extensively trained legal professionals who have devoted time to the intricacies of the judicial arena.

Therefore, Matthew respectfully requests this Court to grant Appellant’s Fourth Motion For Extension Of Time to prepare, file and serve the Appellant’s opening brief in the above-entitled matter.

Respectfully submitted this 3rd day of January, 2022.

By: _____

Matthew Ryan Ailer
Defendant and Appellant

CERTIFICATE OF SERVICE

I, Matthew, hereby certify that I have served true and accurate copy of the foregoing

APPELLANT'S UNOPPOSED FOURTH MOTION FOR EXTENSION OF TIME

with the clerk of the Montana Supreme Court and that I have served true and accurate

copies of the **UNOPPOSED MOTION** to each party by the following means:

Austin Knudsen (Govt Attorney)
Montana Attorney General
215 North Sanders
PO Box 201401
Helena, MT 59620
Representing: State of Montana
Service Method: Mail

C. MARK FOWLER (Govt Attorney)
Assistant Attorney General
215 North Sanders
P.O. Box 201401
Helena, MT 59620-1401
Service Method: cfowler@mt.gov

TAMMY K PLUBELL (Govt Attorney)
Appellate Services Bureau Chief
215 North Sanders
P.O. Box 201401
Helena, MT 59620-1401
Representing: State of Montana
Service Method: tplubell@mt.gov

Kirsten H. Pabst (Govt Attorney)
200 W. Broadway
Missoula, MT 59802
Representing: State of Montana
Service Method: kpabst@missoulacounty.us

Angie Sparks (Clerk of District Court)
228 Broadway
Helena MT 59601
Service Method: asparks@lccountymt.gov

Shirley Faust (Clerk of District Court)
200 West Broadway Street, Missoula, MT 59802
Service Method: sfaust@missoulacounty.us

Honorable Judge Kathy Seeley (First Judicial District Court)
228 Broadway, Helena MT 59601
Service Method: FLOONEY@lccountymt.gov


Attorney Andrew Huppert (Carey Law Firm)
225 W Broadway St, Missoula, MT 59802
Service Method: andrew@carey-law.com

Assistant Attorney General Melissa Broch (Govt Attorney)
215 North Sanders, Helena, MT 59620
Representing: State of Montana
Service Method: melissa.broch@mt.gov

Bureau Chief Dan Guzynski (Govt Attorney)
215 North Sanders, Helena, MT 59620
Representing: State of Montana
Service Method: DGuzynski@mt.gov

Bowen Greenwood (Clerk of the Supreme Court)
215 N. Sanders Room 323, Justice Building
Helena, MT 59620-3003
Service Method: Mail

DATED this 3rd day of January, 2022.

By: 

Matthew Ryan Ailer
Defendant and Appellant