

Blaine McGivern  
Assistant Public Defender  
Office of State Public Defender  
Regional Office, Region 9  
207 North Broadway, Ste. 201  
Billings, MT 59101  
Phone: (406) 256-6861

## MONTANA THIRTEENTH JUDICIAL DISTRICT COURT, YELLOWSTONE COUNTY

STATE OF MONTANA,  
Plaintiff,  
v.

RALPH N. DEAVILA,  
Defendant.

Cause No. DC-20-1575

AFFIDAVIT IN SUPPORT OF  
OUT OF TIME APPEAL

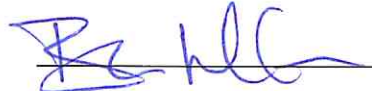
Blaine Bailey McGivern, after being duly sworn, avers as follows:

1. That I have been an attorney for 10 years, with 5 of those years as a criminal defense attorney.
2. That I have been an attorney with the Region 9 Office of the State Public Defender since March of 2017.
3. That I was assigned to the above-captioned case as lead counsel, with Lee Pierce as co-counsel, who at that time was also a Region 9 OPD attorney.
4. Following the second day of trial, on July 26, 2021, the jury convicted Deavila of all counts.
5. In August of 2021, while I was preparing for a deliberate homicide trial set for September 13 (China Davis, DC-20-1672), and another deliberate homicide trial set for October 12 (Benial Davis, DC-20-1473), the Office of the State Public Defender transitioned from JustWare, its former case management system, to a new system called AdvOPD.

6. As a result of my trial calendar, I was unable to attend a number of AdvOPD trainings held throughout that timeframe, and was therefore not aware of the many significant differences between AdvOPD and JustWare.
7. On August 25, 2021, I filed a motion for new trial in this matter, based primarily on evidence discovered after trial; this resulted in a lengthy delay of Deavila's sentencing hearing.
8. China Davis (DC-20-1672) went to trial on September 13, 2021 and was convicted of deliberate homicide on September 17.
9. On September 16, 2021, the State filed its response to Deavila's motion for new trial, and on September 24, the District Court, Honorable Judge Rod Souza, set a hearing on the motion for November 1, 2021.
10. Benial Davis (DC-20-1473) was set for trial on October 12, 2021; however, on October 7, 2021, the District Court, Honorable Judge Rod Souza, granted the State's motion to continue, and Benial Davis' trial was reset to December 13, 2021.
11. After the November 1 hearing on Deavila's motion for new trial, I filed an addendum to the motion for new trial based on testimony at the hearing, and the State filed its response brief on November 19.
12. On December 20, 2021, Benial Davis was acquitted of deliberate homicide but convicted of tampering with evidence.
13. The Honorable Judge Rod Souza subsequently recused himself from Benial Davis, DC-20-1473; that case was reassigned to the Honorable Judge Jessica Fehr, who subsequently recused herself from the matter; the case was then reassigned to the Honorable Judge Ashley Harada, whereupon I filed a motion for substitution of judge and the case was finally reassigned to the Honorable Judge Colette Davies, who set sentencing for March 24, 2022.

14. On February 3, 2022, China Davis was sentenced to 85 years to the Montana Women's Prison.
15. On February 4, 2022, the District Court filed its Order denying Deavila's motion for a new trial.
16. On February 8, 2022, Deavila was sentenced as a persistent felony offender to a net sentence of 8 years to the Montana State Prison.
17. Deavila's Judgment was filed March 17, 2022; however, I was unaware it had been filed.
18. On March 17, I was entirely focused on preparing Benial Davis' sentencing memorandum, which was due the following day.
19. On March 24, 2022, Benial Davis was sentenced to 10 years to the Montana State Prison, with 4 years suspended, for the offense of tampering with evidence.
20. It has been my practice to wait for receipt of the judgment order before filing notice of appeal. Under OPD's former case management software, JustWare, I would have received an e-mail notification confirming receipt of service of Deavila's Judgment; however, to the best of my knowledge and belief, AdvOPD provided me no such notice.
21. Further, it appears that the Montana Courts E-Filing system did not send the undersigned an email notification that the Judgment had been filed in this matter.
22. As a result, the undersigned was unaware that the judgment had been filed on March 17, 2022, and was therefore not cognizant of the notice of appeal filing deadline.
23. However, I do take responsibility for my oversight in this matter. Notwithstanding my busy trial schedule, the transition to a new case management system, and the resulting deficiency of notice of the Judgment, I do acknowledge the severity of my own failure to ensure that this matter was handled in a timely manner.
24. Further your affiant sayeth not.

Dated this 8th day of July, 2022.

  
Blaine Bailey McGivern  
Assistant Public Defender

Subscribed and sworn to before me this 8th day of July, 2022.

