



ORIGINAL

FILED

08/26/2022

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: DA 22-0347

IN THE SUPREME COURT OF THE STATE OF MONTANA

SUPREME COURT No. DA 22-0347

STATE OF MONTANA,

Plaintiff and Appellee,

v.

MATTHEW RYAN AILER,

Defendant and Appellant,

FILED

AUG 26 2022

Bowen Greenwood
Clerk of Supreme Court
State of Montana

**OPPOSED MOTION TO ALLOW THE APPELLANT TO SUBMIT
ELECTRONIC TRANSCRIPTS FROM DA-16-0240 REGARDING CDC-2014-98**

COMES NOW, Matthew Ryan Ailer, Appellant, respectfully requests that the Appellant be allowed to submit electronic transcripts in DA-16-0240 from CDC-2014-98. Pursuant to M. R. App. P. 16 (1) Katie Schulz has been contacted and **does object**.

The grounds and reasons for this Motion are discussed below:

1. On June 20, 2022, the Appellant filed a Notice Of Appeal and Request For Production Of Transcripts (RFPOT) with this Court, District Court (DC) and Court Reporter Vickie Pratt (Pratt). The transcripts were: Initial Appearance (4.19.14); Motions Hearing (3.18.15); Pre-Trial Conference (11.19.15); Jury Trial (12.7-11.15); and Sentencing Hearing (3.24.16).

2. These electronic transcripts have already been prepared by Pratt when attorney Nick Brooke (Brooke) filed a RF POT on April 25, 2016. (Doc. No. 210 and 212). On May 31, 2016, Pratt transmitted the electronic transcripts to this Court in DA 16-0240. (Doc. No. 215). On February 6, 2018, this Court affirmed Matthew's [wrongful conviction] (*State v. Ailer*, 2018 MT 18, 390 Mont. 200, 410 P.3d 964). On February 22, 2018, the Court returned DC record. It's unclear if this Court has retained the transcripts.

3. On August 16, 2022, Pratt stated, *"total pages of transcripts you are requesting be resubmitted to the [MSC] is 883 pages. If I understand correctly, you do not need a copy for yourself; therefore the [MSC] would get two copies per statute and the [AG] would need a copy. The total bill to you would be \$883.00."*

4. Matthew is not currently receiving any social security disability, unemployment, workers compensation, or any other financial benefit and therefore unable to pay the amount requested because Matthew suffers from debilitating Mental Health and Medical Conditions: Conversion Disorder, PTSD (MVA), Major Depression Disorder, Concussion with possible loss of Consciousness Possible Sequela, Memory Loss, Cognitive Impairment, Chronic Migraine, Neurogenic Bladder, Impaired Mobility and ADL's, Pain Disorder, Suicide Ideation, and Social - Pragmatic Language Disorder: by history, with paralysis, and psychological stressor: 5/18/2011 MVA.

5. Given the aforementioned facts, the electronic transcripts should be submitted with this Motion and be part of the record. Pursuant to M. R. App. P. 8 attached hereto

as Exhibit "A." is two DVD's containing the transcripts (in .pdf-format) and a copy will be sent to the AG's office via email.

6. On March 21, 2022 an Opposed Motion For An Order To Have The (Wrongful) Charges Against Matthew And The Deferred Sentence Dismissed Pursuant To 46-18-204 MCA was filed. (Doc. No. 246 and 247); Opposed Motion For Relief From Final Order (April 11, 2016) Pursuant To Mont. R. CIV PRO 60(B) And Requesting A New Trial was filed. (Doc. No. 242 and 243); and Opposed Motion For Relief From Final Order That The State Violated The Montana Rules Of Professional Conduct: Preamble, Rules 3.3, 3.4, 4.1, 3.8, 8.3, 8.4 And Requesting A New Trial were filed. (Doc. No. 244 and 245).

In response to these Motions being filed, the State and AAG Melissa Broch (Broch) filed a Petition To Revoke (PTR) Defendant's Deferred Sentence (Doc. No. 248). On March 23, 2022, an Opposed Motion For The Court To Adjust Or Waive The Restitution Pursuant To §46-18-26, MCA was filed. (Doc. 249,250). By failing to address these issues, the State conceded to Matthew as the facts and evidence were well taken and undisputed.

On March 25, 2022 DC issued a NTA. (Doc. No. 251). On March 30, 2022 Brooke filed a NOA. (Doc. No. 252). On April 22, 2022, Brooke sent AAG Selene Koepke (Koepke) and Broch his Motion To Dismiss PTR with exhibits before filing it with the Court. On April 22, 2022 Broch filed a NOW. (Doc. No. 255). On May 26, 2022, with Broch off the revocation case against Matthew, Koepke filed a Motion To Dismiss PTR. (Doc. No. 264). On May 27, 2022, DC granted the State's Motion to dismiss the PTR.

(Doc. No. 265). DC issued an Order For Dismissal After Deferred Sentence and Order On All Pending Motions By Defendant on June 2, 2022. (Doc. No. 266).

7. On August 17, 2022, Katie Schulz objected to this motion in part, “. . .it does not appear that those five proceedings are relevant to your appeal from the [DC’s] [6.2.22] order that struck the verdict of guilty. . .(because your deferred sentence expired without revocation), which therefore, made any pending motions moot.”

8. Matthew disagrees. This Court recognizes several mootness exceptions, “public interest,” “voluntary cessation,” and “capable of repetition, but evading review.” E.g., *Havre Daily News, LLC v. City of Havre*, 2006 MT 215, ¶¶ 1-48, 333 Mont. 331, 142 P.3d 864 and (adopting the “voluntary cessation” exception); *In re N.B.*, 190 Mont. 319, 323, 620 P.2d 1228, 1231 (1980) (adopting the “capable of repetition, yet could evade review” exception) (citing *Roe v. Wade*, 410 U.S. 113, 125, 93 S. Ct. 705, 713 (1973)). All three exceptions apply and will be argued in the Opening Brief.

9. As the State believes the transcripts are not relevant, it would behoove this Court to evaluate the evidence with the transcripts to determine credibility and proof of arguments in the Opening Brief. The transcripts will prove that the State violated the MRPC and engaged in Rule 60(B): (3) fraud. . . misrepresentation, or misconduct by an opposing party. The following evidence that was provided in discovery by Former AAG Cochenour contradicted the State’s theory: Loretta Wisse did not witness any incidents taking place in front of her residence (1637 Idaho Street) on October 16, 2011. (Doc.

244; P.7, #1). Wisse's neighbors did not see or hear anything regarding the alleged staged accident on October 16, 2011. (Doc. 244; P.7, #2). Nurse Rita Webber at CMC would have testified that Matthew was not present during the alleged staged accident because he was physically sitting in front of Webber at CMC. (Doc. 244; P.7, #3). DCI Agent Poppler submitted his investigation report finding no evidence that Matthew committed Theft. (Doc. 244; P.7, #4). During a deposition, Jerry Davis confirmed with Agent Huesby and Cochenour that there were no safety ramps available, only a two person lift of heavy equipment on October 16, 2011. (Doc. 244; P.8, #9). Russell and Chafee provided interviews that were not consistent with the facts and contradicted themselves and each other. (Doc. 244; P.9-10, #12).

Cochenour violated Matthew's constitutional rights and due process by conducting a bias investigation and prosecution, used perjured testimony from State witnesses, withheld Brady Evidence, submitted altered medical records and bills, and allowed perjured testimony on those records and bills. (Doc. 244; P.10-15, #12-15).

10. It is unclear if this Court has retained the transcripts from DA 16-0240. Matthew respectfully requests this Court to grant this Motion.

Respectfully submitted this 22nd day of August, 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 OPPOSED MOTION TO ALLOW THE APPELLANT TO SUBMIT ELECTRONIC TRANSCRIPTS FROM DA-16-0240/CDC-2014-98** with the clerk of the Montana Supreme Court and that I have served true and accurate copies of the **OPPOSED MOTION** to each party by the following means:

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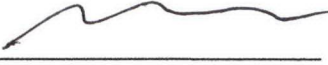
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DATED this 22nd day of August, 2022.

By: 

Matthew Ryan Ailer
Defendant and Appellant