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FILED

OCT 20 2022

Bowen Greenwood
Clerk of Supreme Court
State of Montana

IN THE SUPREME COURT OF THE STATE OF MONTANA

DA 22-0537

STATE OF MONTANA,
Plaintiff-Appellee,

v.

ANTHONY WEIMER,
Defendant-Appellant.

RESPONSE TO MOTION TO DISMISS APPEAL

The Appellant, Anthony Weimer (Weimer), respectfully opposes the relief sought by the State. The State made no objection to the appeal in the district court and was focused solely on sentencing. Even if this appeal were dismissed, the district court cannot achieve correctional and sentencing policy.

ARGUMENT

I. The District Court Sua Sponte Went on Vacation and for Good Reason

A. No judgment hearing was ever set.

Judge Heidi Ulbricht set a sentencing hearing for October 17, 2022 following the district court's oral pronouncement of the jury's guilty verdict. (Appellee's App. 3.). Without a judgment hearing taking place before sentencing

for the purpose of adjudication by the court of whether Weimer is guilty or not guilty, a judgment cannot be had. Appellee explains this in exceptional detail. (See definition of "Judgment" Appellees brief page 3.). Adjudicating whether a defendant is guilty or not guilty by the court bears on a judgment made prior to sentencing. For the purpose of clarity in whom may adjudicate such, "Court" means a place where justice is judicially administered and includes the judge of the court. § 46-1-202(8), MCA. For this reason alone, this Court should deny State's motion to dismiss the pending appeal.

II. The State Made no Prior Objection to Weimer's Appeal, but Rather Wants to Continue to Maliciously Prosecute Him Unconstitutionally

A. The State indicated that it only wants Weimer sentenced.

On October 11, 2022, government attorney and accuser, Stacy Lynne Boman e-mailed Weimer and co-counsel, Public Defender Liam Gallagher, stating a request that would be made at the October 17, 2022 sentencing hearing and of Debbie Messerli testifying, whom Ms. Messerli was quashed by the State after being subpoenaed by the State to testify at trial (*See* e-mail Appx. A.). The State made no indication of objection to the appeal filed on September 19, 2022.

B. No prior objection in the district court was raised in opposition to Weimer's appeal.

Again, Weimer's notice of appeal and notice of transcripts deemed necessary for appeal in DC 20-207C were filed in this Court on September 19, 2022. There was no objection made in the district court or in this Court by Appellee prior to the October 17, 2022 sentencing hearing being vacated by the district court which occurred two business days before on October 12, 2022. The same day the district court vacated sentencing, Weimer filed acknowledgment of the district court's waiver of jurisdiction and now Appellee wants the appeal dismissed.

C. The State states that the jury convicted Weimer of felony criminal mischief causes a constitutional issue.

The Appellee states that the jury convicted Weimer of felony criminal mischief on August 24, 2022 after a three-day trial. (Appellee's brief page 2.). The jury's written verdict solely contains the criminal mischief element of pecuniary loss in excess of \$1500 and not the elements of knowingly or purposely and the element of without consent. (See "Verdict" Appellee's App. 4). The State of Montana's treatment of the conviction that was based on only pecuniary loss infringes Weimer's Fifth Amendment Right of the U.S. Constitution to only answer on presentment or indictment of a Grand Jury (16-23 members). A felony is an infamous crime under the U.S. Constitution. A right to a Grand Jury is guaranteed pursuant to the Fifth Amendment of the U.S. Constitution, applicable to the State's by the Fourteenth Amendment of the U.S. Constitution. Weimer would have invoked the Fifth in pretrial motions had he known he was going to be convicted for an infamous crime on pecuniary loss alone. Objection would have been raised had the district court disclosed that it was using the State's written proposed verdict containing only the pecuniary loss element of criminal mischief. The State has not met all the elements of the crime of criminal mischief according to the written verdict.

The State's motion to dismiss should be denied and the conviction reversed and the cause dismissed for constitutional procedural error and prosecutorial misconduct.

III. Correctional and Sentencing Policy of The State of Montana is Unachievable by the District Court

Pursuant to the correctional and sentencing policy of the State of Montana, sentencing practices must be neutral with respect to an offender's religion and a sentence to the contrary would not be understandable. Sentencing and punishment

must be certain, timely, consistent, and understandable. Sentencing practices must be neutral with respect to the offender's race, gender, religion, national origin, or social or economic status. § 46-18-101(3)(a) and (c), MCA. In this instance, the district court cannot sentence and achieve the policy while remaining neutral as 1) Weimer did not damage religious real property; 2) he is not a member or a part of the Catholic church or any daughter church that branched from her and their anathema toward anyone who does not observe the ten commandments; and 3) his beliefs are other than that of the Tora.

CONCLUSION

This Court should reverse the jury's conviction and dismiss the case in its entirety for failure of a Grand Jury to present or indict Weimer when the conviction was based on solely the pecuniary loss element or deny the State's motion to dismiss appeal as a final judgment would be neutral.

Respectfully submitted this 17th day of October, 2021.



ANTHONY C. WEIMER

Defendant-Appellant, End-User

Dated: 10/17/2022

CERTIFICATE OF SERVICE

The undersigned hereby certifies that true and accurate copies of the foregoing RESPONSE TO MOTION TO DISMISS have been served on the following:

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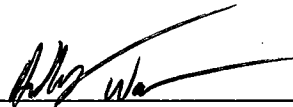
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ANTHONY C. WEIMER

Defendant-Appellant, End-User

Dated: 10/17/2022

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DA 22-0537

STATE OF MONTANA,
Plaintiff-Appellee,

v.

ANTHONY WEIMER,
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APPENDIX

(e-mail) Re: Sentencing Hearing Oct. 17, 2022

Stacy Lynne Boman, DC 20-207C, 10/11/2022.....Appx. A

APPENDIX A



LEX ET ORDO <unitedstatescode@gmail.com>

Sentencing Hearing Oct. 17, 2022

1 message

Stacy Boman <sboman@flathead.mt.gov>

Tue, Oct 11, 2022 at 1:48 PM

To: "unitedstatescode@gmail.com" <unitedstatescode@gmail.com>

Cc: "Gallagher, Liam" <LiamGallagher@mt.gov>

Good afternoon,

The sentencing hearing in State of Montana v. Anthony Weimer DC-20-207 is scheduled for October 17, 2022. At the hearing, the State will request restitution for the costs to repair the Ten Commandments stone. Do you contest the restitution request from Montana Association of Counties Property & Casualty Trust for the repairs to the Ten Commandments stone? If so, do you have any opposition to Debbie Messerli of Montana Association of Counties Property & Casualty Trust testifying via Zoom at the sentencing hearing?

Thank you,

Stacy Boman

Deputy County Attorney

Flathead County Attorney's Office

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