



ORIGINAL

FILED

11/30/2022

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANAForm 4(6)
Case Number DA 22-0639

Name Rex Allen
700 Conley Lake Rd
Deer Lodge MT 59722
City State Zip
[e-mail address]
Appellant, pro se
[Designation of party]

FILED

NOV 16 2022

Bowen Greenwood
Clerk of Supreme Court
State of Montana

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. _____
[to be assigned by Clerk of Supreme Court]

Rex Allen,

Appellant,

v.

State of Montana,

Appellee.

**PETITION FOR
AN OUT-OF-TIME
APPEAL**

[To ask the Court to allow you to file an out-of-time appeal, give the reasons why the appeal was not timely filed. State in the petition or supporting affidavit the issues you wish to raise on appeal and explain in detail the reasons that you did not file a timely appeal. Give only true and accurate explanations that support your petition. Include a copy of the final order or judgment from which you wish to appeal. M. R. App.P. 4(6)]

I petition the Court to allow me to file an out-of-time appeal for the following reason: [Check one]

☐ I improperly filed a timely Notice of Appeal only with the District Court, as more fully explained below.



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OUT-OF-TIME APPEAL
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☒ I discussed filing a timely appeal with my attorney, but he or she failed to file it for me, as more fully explained below.

☐ I failed to file the Notice of Appeal for the following reason:

On October 19, 2022 nearly two weeks from my 60 day deadline secretary Veonca Budell emailed my attorney Tyler Rugger informing him that I wished to appeal my cases with him to the Supreme Court. I verbally requested the whole 60 day period and didn't believe that he would do so because he was ineffective throughout my proceedings so I requested a copy of the email sent to him to verify my requests and his ineffectiveness. I attempted to file previously but failed to notify the Attorney General as I am ignorant in the appeal process and didn't fully understand the procedure. Please see attached email. I intend to present the following issues: 1) Ineffective counsel, 2) conflict of interest, 3) Violation of due process, 4) Res judicata/claim preclusion, 5) Involuntary pleas entered, 6) actual innocence through prosecutor admittance at sentencing.

☐ Attached as Exhibit "A," a copy of the judgment or order from which I wish to appeal.

As legal authority for filing an out-of-time appeal, I cite the following which supports this petition: McClanahan v. Kirkegard, 2012 U.S. Dist. LEXIS 97011

["A] lawyer who disregards specific instructions from the defendant to file a notice of appeal acts in a manner that is professionally unreasonable." Roe v. Flores-Ortega, 528 U.S. 470, 477, 120 S.Ct. 1029, 145 L.Ed.2d 985 (2000) (citing Rodriguez v. United States, 395 U.S. 327, 89 S.Ct. 1715, 23 L.Ed.2d 340 (1969); Bequero v. United States, 526 U.S. 23, 119 S.Ct. 961, 143 L.Ed.2d 18 (1999)).
when counsel fails to file an appeal upon client's instruction, "counsel's deficient performance has deprived respondent of more than a fair judicial proceeding; that deficiency deprived respondent of the appellate proceeding altogether." Flores-Ortega, 528 U.S. at 485; see also Rodriguez, 395 U.S. at 330.

Also long before sentencing in March 2022 I began requesting my entered pleas be withdrawn because I was innocent of what was being charged. Tyler refused to file

DATED this 9th day of November, 2022. that motion but I have twice the District Court or clerk says they don't have any record of them.



Rex Allen

[Signature]

Rex Allen

[Print name]

VERIFICATION UPON OATH OR AFFIRMATION

STATE OF MONTANA)

: ss.

County of Beaumont)

I swear that everything stated in this petition is true and correct to the best of my knowledge.

DATED this 9th day of November, 2022.

Rex Allen

[Signature]

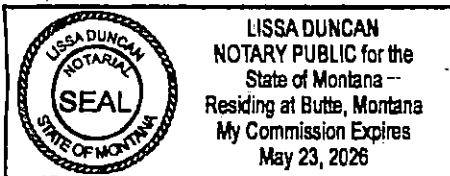
Rex Allen

[Print name]

Signed and sworn to or affirmed before me on this date by

Rex Allen

[Seal]



Lissa Duncan

[Signature of Notary Public]

Lissa Duncan

[Typed or printed name]

Case Manager

[Title]

Butte, Montana

[Residing at]

My Commission expires: 5/23/2026



CERTIFICATE OF SERVICE

I certify that I have filed a copy of this Petition for an Out-of-time Appeal with the Clerk of the Montana Supreme Court and that I have mailed copies to the Clerk of District Court, County Attorney and the Attorney General.

DATED this 9th day of November, 2022.

Terry Haplin
Clerk of District Court
P.O. Box 35030
Billings, MT 59107

Scott Prudhomme
Billings County Attorney
P.O. Box 35025
Billings, MT 59107-5025

State of Montana
Office of Attorney General
P.O. Box 201401
Helena, MT 59620-1401

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