



ORIGINAL

FILED

02/14/2023

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: DA 23-0075

IN THE SUPREME COURT OF THE STATE OF MONTANA

DA 23-0075

FILED

FEB 14 2023

Bowen Greenwood
Clerk of Supreme Court
State of Montana

STATE OF MONTANA,

Plaintiff and Appellee,

v.

ORDER

JUSTIN SCOTT LOCKE,

Defendant and Appellant.

Justin Scott Locke has filed a verified Petition for an Out-of-Time Appeal. Locke represents that he discussed an appeal with his counsel at the sentencing hearing. He states that he never received any further information in the mail about an appeal. He contacted his former counsel and learned that his counsel did not file an appeal. Locke includes a copy of the October 25, 2021 Amended Judgment and Commitment, issued in the Ravalli County District Court.

M. R. App. P. 4(6) allows this Court to grant an out-of-time appeal “[i]n the infrequent harsh case and under extraordinary circumstances amounting to a gross miscarriage of justice[.]”

We reviewed his attachment. On July 29, 2021, the District Court held a sentencing hearing for Locke’s convictions of two felony burglary offenses, a felony theft offense, and a misdemeanor theft offense. The court committed Locke to a term of incarceration to the Department of Corrections for ten years with five years suspended for all three felonies, to run concurrently. The court issued a Judgment and Commitment in October 2021, and later amended it to include credit for time served.

More than a year and a half has elapsed since his sentencing in open court. Locke does not explain when he first learned that his counsel did not appeal, nor does Locke identify any issues that he could raise on appeal from his conviction and sentence. Locke

pleaded guilty to the charges pursuant to a plea agreement with the State; the District Court's judgment states that it found Locke's pleas to have been entered knowingly, voluntarily, and intelligently. A plea of guilty waives all challenges to non-jurisdictional defects that occurred before entry of the plea, including claims of constitutional violations. *Hagan v. State*, 265 Mont. 31, 35, 873 P.2d 1385, 1387 (1994). Locke has not carried his burden to show extraordinary circumstances or that denial of his Petition will result in a gross miscarriage of justice. M. R. App. P. 4(6).

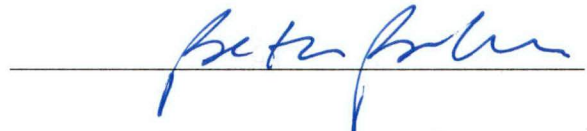
IT IS THEREFORE ORDERED that Locke's Petition for an Out-of-Time Appeal is DENIED and DISMISSED.

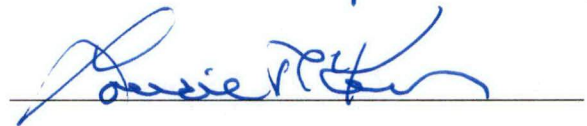
IT IS FURTHER ORDERED that this matter is CLOSED as of this Order's date.

The Clerk of the Supreme Court is directed to provide a copy of this Order to counsel of record and to Justin Scott Locke personally.

DATED this 14th day of February, 2023.


Chief Justice


Justice


Justice


Justice


Justice