

IN THE SUPREME COURT OF THE STATE OF MONTANACause No. DA 23-0100ANTHONY CRAIG WEIMER
Appellant and Defendant,

✓

STATE OF MONTANA
Appellee and Plaintiff.PETITION FOR REHEARING
COURT ORDER DATED **FILED**
APRIL 11, 2023
URGENT

APR 24 2023

Bowen Greenwood
Clerk of Supreme Court
State of Montana

Pursuant to M.R. App. P. 20., Appellant and Defendant, Anthony Craig Weimer, request this Court rehear: 1) Emergency Suspension of the Rules; 2) Emergency Motion to Stay Judgment and for Immediate Release and; 3) Motion for Court Order to Transfer Copy of Record to Defendant, denied April 11, 2023, by this Court. Under Subsection (d) of Rule 20, provides a requisite of exceptional circumstances for this Court to grant rehearing of disposed motions. The following in particular are,

ISSUE 1. There are missing transcripts, and a completed transcript appears to have been filed in the wrong Cause.¹

Attached is 12th Judicial Court Administrator, Devin Kuntz, letter stating in response to a letter Weimer mailed (See Ex. A) to the Court reporters responsible for preparing the transcripts, "All Court proceedings will be included in the transcripts on appeal." See Ex. B. On April 13, 2023, I received the trial transcript from official Court reporter Tom Sapp. He included a letter that indicated that the jury trial and sentencing transcripts were the only transcripts being prepared and provided. No phone calls have answered by the Court reporter and no voice mails can be left from the inmate phone system at Missoula County Detention Facility. A written letter to Mr. Kuntz, Mr. Sapp and Mr. Skid has been mailed regarding the missing transcripts. See Ex. C. Working with the Court Reporters, and the time, for obtaining the rest of the transcripts, and the burden associated with Weimer's incarceration, Weimer is in prayer. The Court granting suspension of the Montana Rules of Appellate Procedure.

ISSUE 2. Stay of Judgment and release pending appeal.

On March 13, 2023, Weimer's motion for Emergency stay and release was filed in this Court, questioning his Section 16, delay and denial of administered, rights and Section 17, deprivation of liberty without due process under Art. II, Part II, of the Montana Constitution. The Montana Supreme Court overlooked this question(s).

Under the exceptional circumstances requisite, rule 20(2)(d), On April 5, 2023, Weimer filed a motion to the Montana Supreme Court, captioned as

¹ The jury trial transcript prepared was filed in Cause No. DA 22-0537, a closed case, instead of this Cause, DA 23-0100.

"Motion for Court to Issue Order on Motion to Stay Judgment and for Immediate Release." This motion was rejected by the Clerk of Court as an "underlying motion" on April 12, 2023, after Weiners confirmation it had been received the previous day. Clerk of Court, Bowen Government stated on a telephone call with me on April 12, at approximately 8:30 PM, that the Court was issuing an order on the motion to stay that day. When I asked of him, had the motion he was rejecting, been sent to the Court, he evaded the question without forthrightness. According to the April 12, order, This Court did in fact review the rejected motion. "The District Court considered Weinert's motion for a stay and immediate release, and Weinert was able to appear for the hearing." Nowhere in the record that is before this Court shows that Weinert appeared before the District Court for the hearing, neither this Court has it came to such determination. No filings I have submitted in the record contain that my appearance at the March 29, 2023, District Court hearing, save the documents rejected by the Clerk of Court for the Montana Supreme Court. Like wise, the Plaintiff in this matter had not responded to any of the requests for relief made by Weinert in this Court, thus ruling out any possibility. The rejected document was inadvertently captioned incorrectly according to the Clerk of Court. It needed to be filed, and construed as a motion pursuant to M.R. App. P. 2a and State v. Schupp, DA 18-0244, (Mont. June 12, 2018). These circumstances for rehearing include the following,

Pursuant to M.R. App. P. 2a(2)(d), it appears that the District Court has not filed a copy of any order made after the filing of the notice of appeal with the Clerk of Court of the Montana Supreme Court. See attached Order denying motion to stay without prejudice, as Ex. D and; Order denying renewed motion to stay, as Ex. E.

In brief, Weinert appeared via, Terry Lerner's, (MASC/DOC employee) laptop on Zoom, at the March 29, 2023, hearing, the State requested Official Court reporter attending. The transcript of the hearing could not be ordered in for support of this petition.

As raised in Weinert's Emergency Motion to Stay, the State requested hearing was nothing more than dilatory. The State made a one minute argument, rehearsing its brief. See State's Response to Renewed Motion to Stay attached to Weinert's Emergency Motion to Stay filed in the Court. Weinert raised jurisdictional issue, for the pending motion to stay before this Court. The District Court proceeded, and Weinert raised the same process violation as raised in his reply. See reply

to States response also attached to stay in this Court.

The District Court denied Weimer's renewed motion because Weimer had no chemical or mental health evaluation. Weimer responded that Terry Leneer said he would not have either evaluation when she assessed Weimer. Upon this, the District Court resorted to denial of the motion because Weimer did not participate in a Pre-Sentence Investigation interview.

But, 1) that is not a finding that Weimer is "likely to flee or pose a danger to the safety of any person or the community." §46-9-107, MCA.; 2) Weimer invoked his right not to participate in the PSI interview. Dkt. 241. In State v. Shreves, 2002 MT 333, 60 P.3d 991, 313 Mont. 252 (Mont. 2002), Shreves's Counsel, at ¶6, discerned that cooperating in a PSI interview brings a defendant into admitting something when the individual has maintained innocence and would suffer for exercising those legal rights. Constitutional right to remain silent. Id. at ¶10. Self incrimination does not turn upon the type of proceeding in which it's protection is invoked, but rather upon the nature of the statement or admission and exposure which it invites." Id. at ¶14, citing Fuller, 276 Mont. at 160, 915 P.2d at 812 and Estelle v. Smith, (1981), 451 U.S. 454, 462, 101 S. Ct. 1866 1873, 68 L. Ed. 2d 359. Accordingly, the protection against self incrimination extends beyond trial to those already convicted of crime and applies to punishment as well as the determination of guilt. Fuller, 276 Mont. at 160, 915 P.2d at 812; Estelle, 451 U.S. at 462-63, 101 S. Ct. at 1872-73. Similarly to a PSI process, the United States Supreme Court held, "[t]he use of psychiatrist's testimony from a pretrial competency interview violated the defendant's right to silence at sentencing because the defendant was not given Miranda warnings before the interview." Shreves at ¶18. The PSI report in this matter presented baseless recommendations founded on a malicious and false prosecution and arrest.

Justice Jim Rice's dissent sums up in totality the Shreves Opinion. "As was his right, acknowledged by the Court, the [d]efendant had offered nothing [at sentencing]. He offered no evidence to rebut the PSI or to suggest an alternative to its recommendations." Shreves at ¶29.

Five individuals testified of Weimer's character, background, and relationship with the community, and gave opinion for sentencing. This included Weimer noting his practicing at law and actively litigating in the federal court system.² The District Court failed to account this relevant basis, Even when the hearing produced no conduct by Weimer to deny stay.

² The sentencing transcript is being prepared but is not finished to support this circumstance with individuals testifying. Please see Minute Entry, Dkt. 268.

In this matter, both the opinion and Justice Rice's dissent in Shrewes are met. And; 3) Like unto ground 1 of Issue 2, the District Court's rationale for denying stay is unsupported by relevant facts and legal authority. See M.R. App. P. 22(d).

The state requested a hearing to "determine if Weimer was a flight risk or danger to the safety of others and the community." In response to his renewed motion to stay, Dkt. 278, p. 3, lines 11-16. That the "Defendant poses a danger to the safety of others and the community." p. 3, lines 18-19. And "Defendant has communicated his threat to use force to confine the court, the state, and others acting on behalf of the government. Doc. 257, Motion to Dismiss, p. 7, [Lines 6-10]" p. 3, Lines 19-21.

When the District Court imposed sentence, it made findings that Weimer had an unspecified escalating behavior, e.g., Impropriety, and that he has a hostile (very unfriendly) disposition toward the judiciary and judicial process. Dkt. 273, Amended Judgment and Sentence, p. 2. There is a lack of facts that Weimer poses a flight risk or danger to others or the community.

The District Court denied the first motion to stay without prejudice because Weimer had not filed an appeal. See Ex. C. Then the District Court denied the renewed motion because Weimer did not participate in the PST interview. A judge who knows the outcome before a hearing is not partial. In the hearing that took place on March 29, 2023, the judge's partiality influenced the order preferring an outcome that favored the preferred result.

Weimer had been on his own recognizance, from June 9, 2020, until his arrest on December 12, 2022. Dkt. 9 and 264. Weimer was committed to the Department of Corrections for 5 years with recommended conditions of probation. Dkt. 273. The PST's report only recommendation was placement in Missoula Assessment and Sanction Center (MASC) for assessment. Dkt. 261. Consequently, though, he is incarcerated in the Missoula County Detention Facility (MCDF) and incarcerated as a jail inmate in their care and custody. Weimer was not sentenced to imprisonment, and is being wrongfully treated as a prisoner. § 46-2-204(2), of the Montana Code Annotated is a prerequisite for admittance to bail for a sentence of imprisonment only. This is shown true, as, Weimer was not sentenced to prison or another place of confinement, but committed to the Dept of Corrections and transported per § 46-19-101(3), MCA to MCDF whom MASC/DOC contract with.

Appellant, Pro Se
MCDF - DOC/MASC
3340 Mullon Rd.
Missoula, MT 59808

The PSI prepared by Roy Boxer, recommended placement in MASC, and provided recommended conditions of supervision. Dkt. 261. But, individuals are incarcerated in MCDF, whom treats such the same as MCDF's County side inmates, depriving them of rights without a legitimate penological interest or authority. Without actual sentence of imprisonment in judgment and sentence, Weiner is wrong-fully incarcerated on misinformation and misjudgment, cabinining his rights, mandatoriously. See, e.g., Blaisdell v. Frawley, 729 F.3d 1237 (9th Cir. 2013). Admittance to bail is not a prerequisite to stay sentence in this matter. Judge Albright stands in her own judgment.

ISSUE 3. There are documents needed from the record from before Judge Amy P. Eddy's "reassignment" and Judge Heidi J. Albright's acceptance in this matter.

The following is a list of documents needed for appeal.

Docket No. 1 - Mtn and Affidavit for leave to file information.
Docket No. 2 - Order granting leave.
Docket No. 4 - Arrest warrant issued. Bond amount: 10K
Docket No. 18 - Amended information.
Docket No. 14 - DMOT for evidentiary hearing.
Docket No. 23 - Order, setting hearing.
Docket No. 26 - D resp. to motion for evidentiary hearing.
Docket No. 28 - Mtn of stipulated facts for purpose of the evidentiary hearing on 10/25/20.
Docket No. 29 - Minute entry / evidentiary, status.
Docket No. 100 - D's Mtc of motions pretrial.
Docket No. 108 - States resp. to D's pretrial mtns.
Docket No. 123 - D's reply to S's resp. to pretrial mtn.

Some of these documents are for an order filed after Albright became judge. Others relevant for appeal.

CONCLUSION

I ask, and again I ask, that the Court grant rehearing. And look not on the outward appearance, but instead look to the heart, and rescue Weiner.

At the hand of Anthony Craig Weiner this 19th day of April, 2023

CERTIFICATE OF COMPLIANCE

I, the undersigned, certify that this petition for rehearing is no more than 10 pages, excluding attachments.

Andy Wh
Appellant, Prose Dated 4/19/2023

CERTIFICATE OF SERVICE

I, the undersigned, certify that I have served true and accurate copies of the foregoing of Petition for Rehearing on the following,

Dept of Justice, MT-AG
215 N. Sanders St.
Helena, MT 59601
Service Method: Conventional

Flathead County Attorney
820 South Main Street
Kali'spell, MT 59901
Service Method: Conventional

Andy Wh
Appellant, Prose Dated: 4/19/2023



ORIGINAL

IN THE SUPREME COURT OF THE STATE OF MONTANA

Cause No. DA 23-0100

ANTHONY CRAIG WEIMER

Appellant and Defendant,

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STATE OF MONTANA

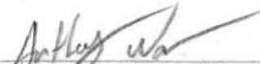
Appellee and Plaintiff,

NOTICE OF FILING

CERTIFICATE OF MAILING

Appellant and Defendant, ANTHONY CRAIG WEIMER, files Certificate of mailing, affixed herewith.

Dated this 21st day of April 2023.


Appellant, Pro se

MCDF - DOC/MASC

2340 Mullan Rd.

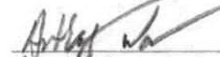
Missoula, MT 59808

CERTIFICATE OF MAILING

The undersigned, Appellant and Defendant, does hereby certify that on the 20th day of April, 2023, a copy of Weimer's Petition for Rehearing a Court order Dated 11 April 2023 Urgent was mailed, first class mail, by Missoula County Detention Facility to the following:

Dept of Justice, MT-AG 215 N. Sanders St., Helena, MT 59601

Flathead County Attorney 820 South Main Street Kalispell, MT 59901


Appellant, Pro se Dated: 04/21/2023

CERTIFICATE OF SERVICE

The undersigned, Appellant and Defendant, does hereby certify that I have Served true and accurate hand written copies of the forgoing Notice - Notice of Filing Certificate of Mailing to the following on 04/21/2023:

Dept of Justice, MT-AG

215 N. Sanders St.

Helena, MT 59601

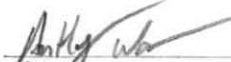
Service Method: Conventional

Flathead County Attorney

820 South Main St.

Kalispell, MT 59901

Service Method: Conventional


Appellant, Pro se Dated: 04/21/2023