

IN THE SUPREME COURT OF THE STATE OF MONTANA

DA 23-0398

FILED

AUG 01 2023

Bowen Greenwood
Clerk of Supreme Court
State of Montana

STATE OF MONTANA,

Plaintiff and Appellee,

v.

ORDER

JASON DANIEL SHEWALTER,

Defendant and Appellant.

Representing himself, Jason Daniel Shewalter has filed a verified Petition for an Out-of-Appeal, indicating that he discussed filing a timely appeal with his attorney but that his attorney did not file an appeal. He states that he “protested” in the Lake County District Court when he did not receive any credit for jail time served or time while on probation. Shewalter further states that he has an illegal sentence and that the sentencing Judge did not follow § 46-18-203(7), MCA, when she revoked his suspended sentence.

Shewalter includes copies of the final judgment and register of actions, for a criminal case commenced in March 2006. On October 13, 2022, in open court, the District Court revoked Shewalter’s suspended sentence from December 2018, and sentenced him to the Department of Corrections for a five-year term. The court did not mention any credit for jail time served or address time while on probation, yet it noted that this was Shewalter’s second revocation. The register of actions reveals that Shewalter was arrested in July and September of 2022 after the State filed the Amended Petition to Revoke. Shewalter sought review with the Sentence Review Division (SRD) of this Court, and the SRD affirmed the sentence.

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[.]” “Extraordinary circumstances do not include mere mistake, inadvertence, or excusable neglect.” M. R. App. P. 4(6).

Shewalter has a recent sentence upon revocation that he contends is illegal. We conclude that Shewalter has presented extraordinary circumstances to warrant granting his Petition. M. R. App. P. 4(6). Shewalter also had counsel to represent him in the underlying proceeding. He may be entitled to representation of counsel in this appeal. Section 46-8-104, MCA. Therefore,

IT IS ORDERED that Shewalter’s Petition for an Out-of-Time Appeal is GRANTED.

IT IS FURTHER ORDERED that the Appellate Defender Division is APPOINTED to represent Jason Daniel Shewalter. The Appellate Defender Division shall have thirty days from the date of this Order within which either to file a Notice of Appeal or a Motion to Rescind this Order Appointing Counsel. When Shewalter qualifies for appointed counsel, the Appellate Defender Division shall immediately order the appropriate transcripts, if they have not been already ordered.

The Clerk of the Supreme Court is directed to provide a copy of this Order to: the Appellate Defender Division; Austin Knudsen, Attorney General; James Allen Lapotka, along with a copy of Shewalter’s Petition for an Out-of-Time Appeal; and Jason Daniel Shewalter personally.

DATED this 1st day of August, 2023.

Chief Justice

Justices