



ORIGINAL

FILED

01/02/2024

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: DA 23-0733

IN THE SUPREME COURT OF THE STATE OF MONTANA

DA 23-0733

STATE OF MONTANA,

Plaintiff and Appellee,

v.

CLEVE SPANG,

Defendant and Appellant.

ORDER

FILED

JAN 02 2024

Bowen Greenwood
Clerk of Supreme Court
State of Montana

Cleve Spang has filed a verified Petition for an Out-of-Time Appeal and has served copies on the Attorney General and the Yellowstone County Attorney. Spang explains that he discussed an appeal with his court-appointed counsel but was unable to maintain contact with counsel or the courts while he was in jail and then transferred to a treatment center. He adds he was prohibited from making phone calls. He states that he “did file [an] appeal after sentence review to the district court in Billings” Spang includes a copy of the Judgment that he seeks to appeal.

In open court, on December 9, 2022, the Yellowstone County District Court sentenced Spang to the Department of Corrections for felony driving under the influence of alcohol or drugs to a term of thirteen months. The court imposed a consecutive, five-year, suspended term and a fine. The Judgment bears a February 2, 2023 filing date.

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 conclude that Spang is entitled to an appeal. Spang has a recent conviction and sentence, and may have been hindered in effectuating an appeal. He also may be entitled to representation of counsel in this appeal. Section 46-8-104, MCA. Therefore,

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

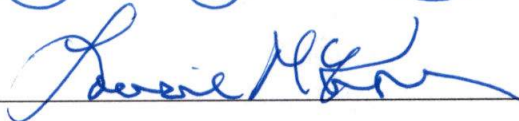
IT IS FURTHER ORDERED that the Appellate Defender Division is APPOINTED to represent Cleve Spang. The Appellate Defender Division shall have thirty days from the date of this Order within which either to file a Notice of Appeal or a Motion to Rescind this Order Appointing Counsel. When Spang qualifies 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, to counsel of record, and to Cleve Spang personally.

DATED this 2nd day of January, 2024.











Justices