
IN THE SUPREME COURT FOR THE STATE OF MONTANA

No. DA 23-0047

TAMERA CHAMBERLAIN,

Defendant And Appellant,

v.

STATE OF MONTANA,

Plaintiff And Appellee.

ANDERS BRIEF

On Appeal from ,
County, The Honorable Presiding

APPEARANCES:

ATTORNEYS FOR DEFENDANT AND
APPELLANT:

GREGORY D. BIRDSONG
Birdsong Law Office
P.O. Box 4051
Santa Fe, NM 87502

ATTORNEYS FOR PLAINTIFF AND
APPELLEE:

Austin Miles Knudsen
Kathryn Fey Schulz
Montana Attorney General's Office
P.O. Box 201401
Helena, MT 59620-1401

Kirsten Pabst
Missoula County Attorney's Office
200 West Broadway
Missoula, MT 59801

TABLE OF CONTENTS

Table of Authorities ii

Statement of the Issue 1

Statement of the Case..... 1

 Information – March 16, 2021.....2

 Arraignment – April 14, 20214

 Amended Information – January 27, 20224

 Change of Plea Hearing – March 30, 20227

 Status Hearing – May 4, 20227

 Presentence Investigation Report – May 10, 2022.....8

 Sentence and Restitution Hearing – November 7, 202211

 Judgment and Sentence – December 1, 2022.....20

Standards of Review22

Argument.....24

 1. Counsel for Ms. Chamberlain should be permitted to withdraw from this cause in accordance with *Anders v. California* and Mont. Code Ann. §46-8-103.....24

 2. Ms. Chamberlain’s may arguably assert the district court committed reversible error when it sentenced her to two consecutive ten year terms at Montana Women’s Prison.25

 3. Ms. Chamberlain may arguably assert she received ineffective assistance of counsel.27

Conclusion28

Certificate of Compliance29

TABLE OF AUTHORITIES

Montana State Constitution

Article II 24, 27

Montana Code Annotated

Mont. Code Ann. §45-6-301 2, 4, 20

Mont. Code Ann. §46-18-10126

Mont. Code Ann. §46-8-103 1, 24, 25

Montana Cases

Powder River County v. State, 2002 MT 259, 312 Mont. 198, 60 P.3d 35720

State v. Alden, 282 Mont. 45, 934 P.2d 21026

State v. Collier, 277 Mont. 46, 919 P.2d 37626

State v. Crider, 2014 MT 139, 375 Mont. 18727

State v. Finley, 276 Mont. 126, 915 P.2d 208.....23

State v. Garrymore, 2006 MT 245, 334 Mont. 122

State v. Hinshaw, 2018 MT 49, 390 Mont. 372..... 23, 27

State v. Kime, 2013 MT 14, 368 Mont. 261.....27

State v. Kotwicki, 2007 MT 17, 335 Mont. 344.....22

State v. LaField, 2017 MT 312, 390 Mont. 127

State v. Larsen, 2018 MT 211, 392 Mont. 40123

State v. Main, 2011 MT 123, 360 Mont. 470.....23

State v. Megard, 2006 MT 84, 332 Mont. 27, 134 P.3d 9021

State v. Miller, 2022 MT 92, 408 Mont. 316.....23

State v. Morris, 2010 MT 259, 358 Mont. 307.....26

| | |
|--|-----------|
| <i>State v. Nelson</i> , 2008 MT 359, 346 Mont. 366..... | 23 |
| <i>State v. Oropeza</i> , 2020 MT 16, 398 Mont. 379 | 22 |
| <i>State v. Pennington</i> , 2022 MT 180, 410 Mont. 104 | 22 |
| <i>State v. Stratton</i> , 2017 MT 112, 387 Mont. 384..... | 27 |
| <i>State v. Ward</i> , 2020 MT 36, 399 Mont. 16 | 23, 27 |
| <i>State v. Weimer</i> , 2023 Mont. LEXIS 974 | 23 |
| <i>State v. Weisweaver</i> , 2010 MT 198, 357 Mont. 384..... | 23 |
| <i>Whitlow v. State</i> , 2008 MT 140, 343 Mont. 90..... | 27 |
| United States Constitution | |
| Fourteenth Amendment | 24, 27 |
| Sixth Amendment | 27 |
| Federal Cases | |
| <i>Anders v. California</i> , 386 U.S. 738 (1967)..... | 1, 24, 25 |
| <i>Penson v. Ohio</i> , 488 U.S. 75 (1988) | 25 |
| <i>United States v. Atkinson</i> , 297 U.S. 157, 56 S. Ct. 391 | 23 |

STATEMENT OF THE ISSUE

Whether, pursuant to the criteria set forth in *Anders v. California*, 386 U.S. 738 (1967) and Mont. Code Ann. §46-8-103, counsel for Appellant should be permitted to withdraw from this cause of action.

STATEMENT OF THE CASE

Defendant and Appellant Tamera Chamberlain appeals the Judgment, entered by the Missoula County District Court on December 1, 2022, finding her guilty of two counts of Felony Embezzlement exceeding \$10,000. (Appendix A) The judgment was entered pursuant to a plea agreement filed March 29, 2022 and a no-contest plea entered in open court on March 30, 2022. (DC23, DC24)¹ Sentencing was scheduled for June 9, 2022 but was subsequently continued due to withdrawal of defense counsel and the voluminous financial records to be reviewed by replacement counsel. (DC23, DC30, DC31.1, DC41) Both Ms. Chamberlain and the State filed sentencing memoranda prior to sentencing. (DC46, DC51) November 7, 2022, after reviewing exhibits and hearing testimony, the district court pronounced sentence of ten years imprisonment at Montana State Prison, none suspended, for Count One and ten years imprisonment at Montana State Prison, all suspended, for Count Two, with the sentences to run consecutively.

¹ The record of the Missoula County District Court is referenced by the case register number in DC-21-0147. For example, DC01 refers to the first document identified in the district court case register for that case.

December 1, 2022 the district court entered its written judgment and sentence. (Appendix A) The record from below contains a personal request for reconsideration, with character references, submitted to the court on or about November 17, 2022.² (Appendix B) January 23, 2023 Ms. Chamberlain filed her appeal with the Montana Supreme Court. (DC55, DC56)

Information – March 16, 2021

The case originated March 16, 2021 when the Missoula County Attorney filed an Information charging Ms. Chamberlain with one count of Theft of Property Exceeding \$10,000 by Embezzlement, a Felony, in violation of Mont. Code Ann. §45-6-301(8)(c). (DC01, DC03) In the supporting affidavit, the County Attorney alleges:

1. October 2, 2020 Susan Tiede contacted the Missoula Police Department to report embezzlement from her business, Missoula Pediatric Dentistry. Tiede alleged Ms. Chamberlain had stolen at least \$20,000 using business credit cards for personal transactions.
2. October 20, 2020 Dr. Tiede confirmed to law enforcement that Ms. Chamberlain used several of the business's credit cards for personal transactions including auto insurance, satellite radio, Amazon Prime, travel expenses, gift shop purchases and more.
3. Dr. Tiede said Ms. Chamberlain had been hired as a receptionist and, in August 2018, had been promoted to office manager. Ms. Chamberlain's duties required her to handle financial transactions for the business, so she was issued several credit cards.
4. The embezzlement was first discovered in August 2020 when an employee noticed Ms. Chamberlain had authorized a \$500 refund to a

² The document was produced as "Lodged and Sealed."

customer though the customer had only been authorized for a \$271 refund. When confronted, Ms. Chamberlain said the business accountant, Rita Hansen, knew about it.

5. When contacted, Ms. Hansen undertook an audit of business transactions and discovered “very concerning things. Specifically, she learned that the business’s Capital One card had a balance of \$19,000,” though the card has intended for minor office supplies and “rarely carried a balance in excess of \$100 in the past.”
6. Ms. Hansen further investigation into business credit cards found “many thousands of dollars worth of personal transactions” made by Ms. Chamberlain.
7. Ms. Hansen also discovered Ms. Chamberlain had been diverting monthly finance payments for an x-ray machine to cover her personal expenses and was submitting “doctored financial statements back to the business to cover her tracks. Chamberlain apparently submitted multiple doctored invoices, receipts and credit card statements in an attempt to disguise her personal expenses as legitimate business expenses.”
8. In early November 2021 (sic)³, business completed examination of “two and a half years’ worth of credit card statements” and “had uncovered more than \$120,000 in personal expenditures mad by Chamberlain using the business’s credit cards.” The transactions were documented in a spreadsheet which was provided to law enforcement. Examination of the documentation revealed personal expenditures including airfare, dining, phone bills, DirectTV, furniture purchases and make-up.
9. November 19, 2020 Ms. Chamberlain told law enforcement she had cancer and had not been able to work since October because of her illness. Asked about the credit cards, Ms. Chamberlain claimed they were in her name and were her personal debt. Upon clarification that the cards were issued to the business, Ms. Chamberlain “persisted in her claim that the matter was a civil issue between her and the credit card company.” This claim was disputed by Dr. Tiede, who said the business was responsible for all the charges Ms. Chamberlain had incurred.
10. Ms. Chamberlain admitted to personally receiving \$1000 a month that should have gone toward the x-ray machine payments but maintained

³ This is a scrivener’s error. Since the Information filed on March 15, 2021, it appears the spreadsheet at issue was created in October and November of 2020.

she had “simply used that money to help pay off both personal and business charges on the US Bank credit card.”

11. When asked if she had falsified invoices to “cover her tracks, Chamberlain paused for a long time and replied, ‘Ummm... no... I don’t believe so.’”

(DC01)

Arraignment – April 14, 2021

Ms. Chamberlain was arraigned in district court April 14, 2021. (DC08) The court confirmed Ms. Chamberlain had reviewed a copy of the Information and summarized Ms. Chamberlain’s Acknowledgment of Rights. (*Id.*) Ms.

Chamberlain entered a plea of not guilty. (*Id.*) On July 13, 2020 an

Acknowledgment of Rights form, executed by Ms. Chamberlain, was filed.

(DC07)

Amended Information – January 27, 2022

January 19, 2022 defense counsel advised the district court the parties were “still working toward resolution in this case. It’s really going to come down to the restitution amount. Tammy is dealing with some significant medical issues. She has stomach cancer and has had to have a stem cell transplant...” (1/19/2022 Hrg.

Tr. 3:8-13) January 27, 2022 the Missoula County Attorney filed a Motion and Affidavit for Leave to File Amended Information charging Ms. Chamberlain with a second count of Theft of Property Exceeding \$10,000 by Embezzlement, a

Felony, in violation of Mont. Code Ann. §45-6-301(8)(c). (DC18) The County

Attorney repeated the allegations from the initial Information, and further alleged:

1. December 9, 2021 Dr. Tiede told law enforcement that “on or about Nov. 17, 2021, she received... a ‘collection call’ from US Bank, asking her to bring her account up to date. Dr. Tiede discovered that Ms. Chamberlain had opened at least one more credit card account through US Bank and had requested a substantial credit limit increase on an existing card, both of which were being charged to Susan Tiede and Missoula Pediatric Dentistry.” Neither of these credit cards were in credit reports Dr. Tiede made in late 2020, after the initial discovery of Ms. Chamberlain’s fraudulent activity.
2. One of the US Bank credit cards had a balance of \$9,490 in late November 2021, but had a limit of \$75,000.
3. The second US Bank credit card was “almost maxed out to the credit limit of \$75,000 and accruing thousands of dollars of interest each year at an annual rate of 13.24%.
4. A review of the records on the credit cards showed that from November 2020, when Ms. Chamberlain was notified she was under investigation, she made regular payments on the cards without incurring further charges. “While these payments appear to be significant on the surface, they barely cover the accrued interest each month....” The December 2020 statement for the second card showed \$9,852 in interest charges for 2020.
5. In May 2021, Ms. Chamberlain started using the second card for purchases again, essentially cancelling out any payments she made.
6. In October 2021 Ms. Chamberlain did not make a payment. In November 2021 Missoula Pediatric Dentistry – as the underlying guarantor of the account – received “late payment” phone calls, alerting them to the existence of the two credit cards.
7. By the time Dr. Tiede found out about the credit cards, the second card had a balance of \$67, 429.59, a past-due balance of \$1,413 and a minimum payment of “just under \$3,000.”
8. Dr. Tiede subsequently discovered the cards did not show up on her credit history because they had been issued using her Individual Taxpayer Identification Number which – though linked to her SSN – did not immediately show on her credit report.
9. Dr. Tiede discovered that the first credit card had been issued in 2007, with her knowledge, with a limit of \$600. At some point, Ms. Chamberlain requested a limit increase to \$75,000. She then apparently

maxed it out and opened a second credit card account – also with a \$75,000 limit – associated with Susan Tiede and Missoula Pediatric Dentistry.

10. US Bank refuses to recognize the charges as fraudulent, refuses to waive the ongoing interest accrual – about \$10,000 a year – and holds Missoula Pediatric Dentistry liable for the balance of more than \$77,000 between the two cards.
11. December 13, 2021 Dr. Tiede informed law enforcement she had discovered another fraudulent credit card opened by Ms. Chamberlain with a company called Synchrony Bank. Dr. Tiede reported she was able to get the bank to erase the balance as fraudulent. Dr. Tiede subsequently determined the card had a final balance of \$2,150.44 and a limit of \$10,000. The fraud alert letter from Synchrony Bank had Dr. Tiede's name, Ms. Chamberlain's name and an address believed to Ms. Chamberlain's former address.
12. About half of the charges on the Synchrony Bank Credit card were made after Ms. Chamberlain was informed she was under investigation.
13. Dr. Tiede also informed law enforcement they had discovered more than \$50,000 in fraudulent banking activity comprised of electronic transfers (ACH Payments) from December 2017 until March 2020. Most of the transfers were payments to credit cards used by Ms. Chamberlain and were miscoded in QuickBooks as "equipment or software lease" expenses.
14. One ACH Payment was \$7,565.27 coded to Patterson Dental from US Bank on 12/21/2017. Another ACH payment was \$18,210.25 coded to Patterson Dental from US Bank on 7/23/2018. The \$18,210.25 ACH payment shows as a payment on a credit card used by Ms. Chamberlain. It was not determined what happened to the \$7,565.27 ACH Payment.
15. Accountants helping Missoula Pediatric Dentistry identified \$13,697.60 in fraudulent checks Ms. Chamberlain wrote to herself and family members from July 2019 to June 2020. Ms. Chamberlain entered the checks into QuickBooks as being paid to vendors or other recipients under false accounting codes such as "patient reimbursement."
16. Ms. Chamberlain forged checks to herself for \$2,486.11, \$3,300.18, \$350, \$2,500 and \$500. She entered them into QuickBooks as computer technology purchases, online training or a conference so that they appeared to be legitimate business expenses.

17. In total, accountants identified \$52,112.51 in fraudulent ACH withdrawals from December 2017 to March 2020.

(DC18)

Change of Plea Hearing – March 30, 2022

March 3, 2022 defense counsel requested the district court set a change of plea hearing and an evidentiary hearing for restitution. (DC20) March 29, 2022 Ms. Chamberlain filed Defendant's Waiver of Rights by Pleas of No Contest. (DC23). March 30, 2022 Ms. Chamberlain affirmed she was "able to understand what's going on" and did not believe any of the medical procedures she was undergoing impaired her judgment or ability to understand. (3/30/2022 Hrg. Tr. 4:17-5:20) After reviewing each count of the amended information and the allegations against her, the court accepted Ms. Chamberlain's pleas of no contest, and set the matter for a hearing on sentencing and restitution. (DC24)

Status Hearing – May 4, 2022

April 27, 2022 the district court set a status hearing in accord with the State's motion to do so in order "to address an issue with the Defendant's medical records prior to sentencing...." (DC27, DC28) May 3, 2022 defense counsel filed a motion to withdraw, citing Montana Rule of Professional Conduct §1.16(a)(1), "[A] lawyer shall not represent a client or, where representation has commenced, shall withdraw from representation of a client if the representation will result in violation of the Rules of Professional Conduct or other law." (DC30) Ms.

Chamberlain’s written consent was filed contemporaneously with the motion to withdraw. (DC31)

May 4, 2022 State counsel advised the district court he had asked for documentation of Ms. Chamberlain’s medical condition, in response to which Ms. Chamberlain provided a letter, “purportedly from Western Montana Clinic, from an MD discussing the diagnosis.” (DC31.1, 5/4/2022 Hrg. Tr. 3:14-25) A State detective spoke with the doctor, who “stated that he did not write that, and that his clinic had not produced the document....” (*Id.* 4:3-5) Counsel requested the sentencing be continued to investigate the matter further. (*Id.* 4:11-20) When invited to respond, defense counsel declined to take a position on the request, telling the court, “I think I have to be careful not to disclose any attorney/client privileged information at this time.” (*Id.* 4:20-5:5) Ms. Chamberlain also declined to question or comment on the State’s request. (*Id.* 5:6-11) The district court granted defense counsel’s motion to withdraw, with the Office of the Public Defender to reassign counsel, and ordered the sentencing continued. (*Id.* 5:12, et seq., DC31.1, DC32)

Presentence Investigation Report – May 10, 2022

The Presentence Investigation Report stated Ms. Chamberlain had been convicted of three counts of Felony Theft in March 2005, and one count of Felony Theft in February 2012. (DC33) Ms. Chamberlain’s statement regarding her arrest

was, “I was allegedly accused of improper use of employer credit card.” (*Id.*) Ms. Chamberlain’s statement as to the reason for her actions was, “I was provided consent to use the cards under my job description however I used the cards for personal use and that was not authorized. Also, with my cancer diagnosis I had extensive medical bills piling up and felt desperate. I was also misdiagnosed in 2005 with depression, mild anxiety, and TPSD (sic). However, in 08/2021 I was properly diagnosed with Bipolar 1, PTSD, anxiety and extreme OCD.” (*Id.*) Ms. Chamberlain stated, “I would like the opportunity to improve my health outside jail so I can recover faster and get back to work so I can pay restitution. My pain priority, after my health, is correcting my wrongdoing as soon as possible.” (*Id.*) The PSI reporter noted, “Ms. Chamberlain’s voice wavered and her eyes teared in what appeared to be genuine remorse and shame in herself regarding her actions in the current offense.” (*Id.*)

The PSI details Ms. Chamberlain’s report that, subsequent to her felony charges in 2005, she was “referred to ‘multiple’ providers and felt she was misdiagnosed with depression.” Ms. Chamberlain is reported to have stated it took over six months for current providers to “find a medication regime that was effective and clarified that the medications are helping – though not completely alleviating – her mental health symptoms.” (DC33). After noting that both a Licensed Clinical Social Worker and a Physician’s Assistant attested to her

compliance with recent treatment, the PSI reporter detailed consideration of Ms. Chamberlain's apparent mental and emotional health concerns – including frequent shows of emotion, coping strategies, PTSD and self-identification as a “victim of sexual and physical abuse as a child.” (*Id.*) The PSI reporter recommended mental health counseling and “any other recommendations made by her providers,” including “medications as prescribed.” (*Id.*)

The PSI reporter noted that restitution was not yet finalized, but that Ms. Chamberlain said, “she has already repaid approximately \$60,000 from her husband's 401K, through insurance, and through her funds.”⁴ (DC33) The PSI's risk assessment for females indicated was that Ms. Chamberlain's risk of reoffending was “Low.” (*Id.*) According to the report, Ms. Chamberlain said her conviction in 2005 was “connected with being the payee for her mother's social security,” and she was placed on electronic monitoring. (*Id.*) Ms. Chamberlain said her conviction in 2012 was for “using multiple cards to cover her spending and being unable to keep up with what she spent.... Pointedly, she indicated she had paid all costs, to include restitution.... To her credit, she had no violation reports either.” (*Id.*)

After lengthy discussion of Ms. Chamberlain's statements and the reporter's

⁴ This statement is not otherwise supported in the record from below.

impressions, the PSI reporter concluded, “Given her overall low risk for continued criminal offense, a probationary sentence would appear appropriate.... Given the substantial amount of restitution, I respectfully recommend the Court consider either a longer-term probation, or to have her counts run consecutively.” (DC33)

Sentence and Restitution Hearing – November 7, 2022

Ms. Chamberlain was present for the hearing. (DC52) Missoula Police Detective Ethan Smith testified regarding his investigation. (11/7/2022 Hrg. Tr. 5:4, et seq.) Detective Smith testified that,

Within three or four weeks, we found about \$120,000 had been embezzled over a two or three year period using multiple credit cards, some of which had been originally intended for office usage, but,... after Ms. Chamberlain was appointed office manager, she began to increase the credit limit on credit cards and also take out additional credit cards that had not been approved.

And, over the next several years, she would use automated clearinghouse transfers to make payments through Missoula Pediatric Dentistry’s checking account. She would falsify invoices to make it appear that they were legitimate invoices... from other companies that Missoula Pediatric Dentistry did normal work with. She wrote thousands of dollars of checks to herself and other family members. She falsified Quickbooks Pro.

Even after being charged officially in this courtroom, she not only did not close out existing credit cards that we were not aware of, she actually opened and increased the credit limit on two other credit cards and racked up another \$50-60,000 in charges over 2021, even after formally being charged by this Court.

(*Id.* 6:17-25)

Detective Smith’s investigation disclosed that Ms. Chamberlain falsified

invoices and had credit card statement sent to her home address or to on-line accounts “to avoid any paper trail being sent to Missoula Pediatric Dentistry,” falsified QuickBooks entries and paid “the monstrous credit card bills she was generating” via ACH transactions from Missoula Pediatric Dentistry’s checking account. (11/7/22 Hrg. Tr. 8:4-13) “Within the first four months of 2017... she had already accumulated \$30,000 in credit card debt.” (*Id.* 8:13-15) Detective Smith testified that, even though Dr. Tiede did credit checks on her social security number, she was vulnerable later violations because she “didn’t know that Ms. Chamberlain had opened other additional lines of credit using her taxpayer identification number and the associated credit limit that one would associate with her small business.... And we were only notified of those additional credit cards when Dr. Tiede got a collection call... in November of 2021, almost a year after Ms. Chamberlain had already been charged.” (*Id.* 10:9-12, 11:1-5) “So, even to this day, we are not a hundred percent sure that there aren’t other lines of credit... opened in her name....” (*Id.* 10:17-19)

Detective Smith found “particularly eye-opening” that Ms. Chamberlain was being paid about \$80,000 a year to work 32 hours a week. “This is not like someone suffering from poverty... These payments were for hockey equipment, for trips – airfare all over the country, including a family trip to Hawaii – all kinds of care payments. She had everything from satellite radio to her homeowner’s

insurance and auto insurance set up to be automatically billed. Thousands of dollars in hockey tickets and hockey gear.... stuff that was completely entertainment related.... Ms. Chamberlain's charges were so egregious that, even by the end of 2021, the credit cards were generating \$10,000 or more a year, just in interest." (11/7/2022 Hrg. Tr. 8:17-9:17) Detective Smith testified that, after Dr. Tiede personally loaned Ms. Chamberlain money to make the down payment on a house in June 2020, "as soon as Ms. Chamberlain closed on her new house, she went and spent \$10,000 at Conlin's Furniture and paid a moving company \$2,000 to move all that furniture into her new house...." (*Id.* 11:8-19)

Upon inquiry by the district court, Detective Smith said he could not say with certainty what the total loss could be as it was still accumulating interest and "there are thousands of dollars in charges that, at this late stage in the game, are difficult to pin on Ms. Chamberlain. Whatever restitution Dr. Tiede and her practice receive is probably going to be thousands of dollars less than what they're actually owed." (11/7/2022 Hrg. Tr. 12:6-20)

Dr. Tiede's daughter, Sierra Tiede, testified regarding her involvement in discovering and investigating the embezzlement. (11/7/2022 Hrg. Tr. 13:22, et seq.) Sierra testified to the close personal relationship she felt existed between herself and Ms. Chamberlain, and her feelings of disbelief, shock, and betrayal upon learning of the duration and extent of the embezzlement. (*Id.*) Sierra detailed

the process by which she identified and quantified the funds embezzled before making a statement about the impact of the embezzlement on herself and her mother. (*Id.* 13:22-17:4, 17:4, et seq.)

Dr. Susan Tiede testified at length about her life, her education, building her practice and the financial and emotional impact of the embezzlement on herself, her daughters, her employees and her dental practice. (11/7/2022 Hrg. Tr. 28:19, et seq.)

After clarification by the State that the requested restitution was not connected to a pending civil matter, the parties stipulated to restitution of \$170,000. (DC52)

Physician Assistant Jacklyn Tryhus testified regarding her services as psychiatric service provider to Ms. Chamberlain. (11/7/2022 Hrg. Tr. 52:8, et seq.) Upon stipulation of the parties, Ms. Tryhus was allowed to testify as an expert in general psychology. (*Id.* 54:2-10) Ms. Tryhus testified Ms. Chamberlain had been diagnosed with bipolar disorder and other problems that could lead to impulse control issues. (*Id.* 56:10-59:17)

Ms. Tryhus said behaviors describe by Ms. Chamberlain could “absolutely” be due to impulse control issues and that her embezzlement – specifically use of credit cards, “would kind of happen more cyclically during these periods of

impulsivity.” (11/7/2022 Hrg. Tr. 59:17- 60:3) “She also gave other examples about purchasing things without having the funds, or even hiding bills under her mattress when she did have the funds. She would do things that, looking back in her perspective, she knew they didn’t make sense.... like throwing away all of her towels... and purchasing new towels impulsively because she wanted a new color. All the way up to – I would say – the most severe, is why we’re here today.” (*Id.* 60:2-16)

Ms. Tryhus testified that Ms. Chamberlain had been originally misdiagnosed and that, over the course of a year’s treatment, she and her supervising psychiatrist elevated Ms. Chamberlain’s diagnosis from Bipolar Type 2 – where manic episodes of impulse control can last up to four days, followed by a “major depressive episode – to Bipolar Type 1 – where manic episodes of impulse control can last for “at least seven days.” (11/7/2022 Hrg. Tr. 62:7-63:10) According to Ms. Tryhus, Ms. Chamberlain’s symptoms included “delusions of persecution, delusions of guilt, and also delusions of grandeur. And, obviously, the disorganized behavior was in question with her history of impulsiveness....” (*Id.* 63:17-25) Ms. Tryhus testified that, if she remained engaged in her treatment, the manic episodes underlying Ms. Chamberlain’s impulse control issues could be managed. (*Id.* 69:1-70:6) Ms. Tryhus said she did not see any evidence of “criminal thinking” in Ms. Chamberlain, that Ms. Chamberlain was never manipulative toward her and that

Ms. Chamberlain needed psychiatric care that, “would best be completed in either inpatient [or] outpatient, but something where they prioritize psychiatric care....”

(Id. 70:17-22)

When asked, on cross-examination, if she was aware of the criminal activity testified to by previous witnesses, Ms. Tryhus said she had only a “gross generalization” from Ms. Chamberlain. (11/7/2022 Hrg. Tr. 9-15) “So she told me that she had stolen identity, that she had created multiple credit cards... that she had been fired... and that the extent of the spending on the credit cards was severe. But she didn’t give me a dollar figure or tell me the... extent of her employment and how the employment, the employees were affected.” *(Id.* 73:16-74:3) But, Ms. Tryhus testified, “[S]he felt as though she, looking back, knew exactly what she had done. But she claimed to me that, at the time of starting these credit cards, she was not aware of what she was doing. She felt disassociated, is how it was described to me.” *(Id.* 74:4-12) When asked how someone not aware of what they were doing would be able to “cover their tracks like this,” Ms. Tryhus said she could not “honestly speak to that besides saying [Ms. Chamberlain] definitely felt remorse or anxiety around it and felt that was her knee jerk reaction.” *(Id.* 74:13-20)

Questioned about the duration of the manic phase, Ms. Tryhus said a person with a Bipolar Type 1 diagnosis could maintain a manic phase for up to six

months. (11/7/2022 Hrg. Tr. 75:3-13) Ms. Tryhus ultimately conceded that it would be impossible for a manic episode to last, continuously, for three years. (*Id.* 76:8-20) Ms. Tryhus said that, after hearing the previous testimony, she was aware Ms. Chamberlain was not always honest. (11/7/2022 Hrg. Tr. 76:23-77:1) When asked, Ms. Tryhus testified that the facts underlying her assessment came from a diagnosis from another therapist and “pretty much word of mouth from [Ms. Chamberlain] is what I’ve gone on. (*Id.* 77:2-13) Asked about the possibility Ms. Chamberlain was manipulating her and telling her things that weren’t true, Ms. Tryhus demurred, arguing that, with something like a personality disorder, “where manipulation is a big piece of that,” and after consultations with four colleagues every morning, “I would like to think that they would have pointed something out at that time.” (*Id.* 77:14-78:2)

The State introduced into evidence a copy of a letter from “Western Montana Clinic – Community Campus Family Med,” signed by Frankly Windle Wiley, MD. (DC50) The letter states, “Tamera Chamberlain was seen in my clinic on 11/5/2021. Ms. Chamberlain was diagnosed with Metastatic Gastric Adenocarcinoma on 10/5/2020. If you have any questions or concerns, please do not hesitate to call.” (*Id.*) Detective Smith returned to the witness stand and testified regarding his investigation of the authenticity of the letter. (11/7/2022 Hrg. Tr. 83:18, et seq.) Detective Smith stated that, when he first met with Dr.

Tiede, she raised concerns about whether Ms. Chamberlain actually had cancer, but he did not pursue the issue because it was beyond the scope of a financial investigation, and it was almost unbelievable to him that Ms. Chamberlain might “use a cancer diagnosis to alleviate some of the sentencing here.” (*Id.* 84:17-85:2)

Detective Smith said he was shocked when Dr. Tiede and her daughter continued to voice “legitimate questions” about whether Ms. Chamberlain was “faking cancer in order to draw sympathy or a lighter sentence.... I mean, I’ve seen it all in my job but, especially having my mom die of leukemia.” (11/7/2022 Hrg. Tr. 85:11-15) Observing that, throughout the case, Ms. Chamberlain had been allowed to appear at all hearings via Zoom, Detective Smith testified to reviewing screen captures where, “I noticed that a lot of the medical equipment she had affixed to her body was stuff that you could just order on Amazon. And she had a head scarf and other things.... So, legitimately, if someone has cancer, the Court needs to consider that.” (*Id.* 85:17-86:6)

Detective Smith said, based on these concerns, he asked Ms. Chamberlain to provide a medical release, “and she refused to sign it... and instead sent, via her attorney, this letter as an attachment. (11/7/2022 Hrg Tr. 1-11, DC50) Detective Smith described himself as a subject matter expert for training Department of Revenue “on fake Id’s and other fraudulent documents.” (*Id.* 86:12-14) Detective Smith said his wife and children go to the Western Montana Clinic and, “It’s a

pediatric and general practitioner practice. It's not oncology." (*Id.* 86:15-18) Upon examination of the Clinic website, Detective Smith determined that, though Dr. Wiley was listed, he was not an oncologist and , "If you have cancer, you're not going to be going to a pediatric facility and a general practitioner for cancer treatment." (*Id.* 86:19-25)

Detective Smith said he next conducted an "open-source investigation" of Ms. Chamberlain and her children's social media. (11/7/2022 Hrg. Tr. 86:25-87:3) He found that pictures on Ms. Chamberlain's Facebook page, appearing at the same time she was attending court via Zoom, "did not look like the same woman. She appeared healthy.... She didn't look like she was suffering from stomach cancer. Her skin was healthy. She had all of her hair.... She didn't appear to be wearing a wig. The persona that she was conveying in her Zoom meetings was far different." (*Id.* 87:4-13) Detective Smith testified he then called Dr. Wiley and visited the Western Montana Clinic. (*Id.* 87:14-15) "And Dr. Wiley personally called me back in April of this year, and he confirmed this entire document was fraudulent. Tamy was not diagnosed with cancer there, and she was not being treated for cancer there." (*Id.* 87:21-25) On cross-examination, Detective Smith agreed Ms. Chamberlain had the right to refuse to provide a release of information. (*Id.* 88:7-9) Defense counsel declined to cross-examine Detective Smith. (*Id.* 88:10-12)

After hearing argument and a brief statement by Ms. Chamberlain, the district court pronounced sentence. “[W]ith regard to Count 1, theft of property exceeding \$10,000 by embezzlement, I am going to impose a sentence of ten years to the women’s prison.... I’m not suspending any of that time.... With regard to Count 2, theft of property exceeding \$10,000 by embezzlement, I am going to impose a sentence of ten years to the women’s prison. I will fully suspend that sentence, and it will be consecutive to the sentence in Count 1.” (11/7/2022 Hrg. Tr. 101:19-102:9)

Judgment and Sentence – December 1, 2022

In its written order filed December 1, 2022 (DC53) For Count 1, Theft – Embezzlement Exceeding \$10,000 pursuant to Mont. Code Ann. §45-6-301(6), the Fourth District Court sentenced Tamera Chamberlain to 10 years Department of Corrections. (*Id.*) For Count 2, Theft – Embezzlement Exceeding \$10,000 pursuant to Mont. Code Ann. §45-6-301(6), the Fourth District Court sentenced Tamera Chamberlain to 10 years Department of Corrections.^{5, 6} The court ordered Count 2

⁵ The written judgment entered on December 1, 2022 does not conform with the oral pronouncement issued November 7, 2022. The written judgment incorrectly sentences Ms. Chamberlain to the Department of Corrections instead of the Montana State Women’s Prison. (DC53) December 27, 2023 – while the case was on appeal to the Montana Supreme Court – the district court entered an amended judgment correcting the error. (DC58) The amended judgment is not at issue in this case, since the district court lost jurisdiction to enter the amended judgment when Ms. Chamberlain filed her Notice of Appeal. *See, e.g., Powder River County v. State*, 2002 MT 259, ¶27, 312 Mont. 198, 60 P.3d 357.

⁶ The filing of the amended judgment raises some interesting challenges for appellate counsel. Though the written judgment does not conform with the oral pronouncement, the district court has the authority – and has signaled its intent – to enter the amended judgment correcting the nonconformity once the matter is returned from...

to run consecutively to Count 1. (*Id.*) The reasons the district court set forth for the sentence included:

1. Ms. Chamberlain’s criminal history of offenses “related to financial fraud, theft and embezzlement” continuing despite “opportunities to change her behavior and address any underlying issues....”
2. Ms. Chamberlain’s “inability to abide by the conditions of release and ongoing efforts to defraud the victim during the pendency of this offense.
3. Despite Ms. Chamberlain’s assertion her actions were caused by an untreated mental health condition, examination of her actions “demonstrates significant planning, manipulation and execution of complex financial frauds. The Defendant, even during the pendency of this action, engaged in deceptive conduct, asserting that she was suffering from cancer, appearing with medical equipment that would suggest a need for ongoing community supervision and lenient conditions, and falsifying doctor records to perpetuate this fraud.”
4. Ms. Chamberlain’s actions caused “financial harm to the victim, her business, co-workers, her family, her patients and various credit companies.” Ms. Chamberlain established, then violated, “significant trust” with the victim, her family and coworkers. “[T]he court is convinced that the Defendant’s actions were calculated solely for her own financial gain. She also reported to her employer her false cancer diagnosis to further hide her actions, enlist sympathy and deceive her employer.... [T]he victim expended significant emotional and financial resources to evaluate the magnitude of the crime, to address the unauthorized use of both her business and personal credit and to defend collection actions. The victim continues to learn of unexpected losses and unknown frauds, [which] continues to impact her emotional and financial ability to run her business.”
5. Ms. Chamberlain continued to apply for and access credit to Ms. Tiede’s detriment, “even after being charged with these offenses, violating the conditions of her release and perpetuating the financial nightmare that the

...appeal (DC58) *Also see, e.g., State v. Megard*, 2006 MT 84, ¶19, 332 Mont. 27, 134 P.3d 90. Since diligent research has failed to yield a case where the Court gave guidance on what to do when a district court files an amended judgment while a case is on appeal, counsel expects the Court to limit consideration to the original judgment, but to recognize that the district court intends to deal with the factual error *nunc pro tunc* upon return of jurisdiction. Whether an order to that effect is required is a matter for the Court to decide.

business was working to correct.”

6. The victim asked for Ms. Chamberlain to be incarcerated for three years to protect her business and the community. However, “understanding the general computation of time for purposes of parole eligibility” the recommended sentence may provide for no more than a year of custodial time. “[T]he 10-year custodial sentence... will result in a period of incarceration closer to that recommended by the State and the victims. More importantly, the 10-year custodial sentence provides appropriate punishment and community safety given the Defendant’s repeated criminal conduct and is more in line with the State’s sentencing policy for repeat offenders.”
7. The 10-year custodial sentence, followed by a 10-year suspended sentence will afford Ms. Chamberlain reasonable time to pay the \$170,000 in restitution stipulated by the parties.
8. The sentence balances Ms. Chamberlain’s need for treatment, the needs of the victims and the public interest.

(DC53)

STANDARDS OF REVIEW

The Montana Supreme Court reviews sentences longer than one year for legality. *State v. Garrymore*, 2006 MT 245, ¶9, 334 Mont. 1, 145 P.3d 946. Only where a criminal sentence is alleged to be illegal or in excess of statutory mandates will the Court review an issue on appeal. So long as a sentence falls within the statutory parameters the sentence will be regarded as legal. *State v. Pennington*, 2022 MT 180, ¶16, 410 Mont. 104, 517 P.3d 894 (citing *State v. Kotwicki*, 2007 MT 17, ¶5, 335 Mont. 344, 151 P.3d 892). Statutory interpretation is a matter of law reviewed de novo for correctness. *State v. Oropeza*, 2020 MT 16, ¶14, 398 Mont. 379, 456 P.3d 1023.

An abuse of discretion occurs when a court acts arbitrarily without the

employment of conscientious judgment or exceeds the bounds of reason, in view of all the circumstances, ignoring recognized principles resulting in substantial injustice. *State v. Weimer*, 2023 Mont. LEXIS 974, ¶3 (citing *State v. Nelson*, 2008 MT 359, ¶120, 346 Mont. 366, 195 P.3d 82)

Ineffective assistance of counsel claims presents mixed questions of fact and law that are reviewed de novo. *State v. Ward*, 2020 MT 36, ¶15, 399 Mont. 16, 457 P.3d 955 (citing *State v. Hinshaw*, 2018 MT 49, ¶8, 390 Mont. 372, 414 P.3d 271; *State v. Larsen*, 2018 MT 211, ¶6, 392 Mont. 401, 425 P.3d 694; *State v. Weisweaver*, 2010 MT 198, ¶7, 357 Mont. 384, 239 P.3d 952). The Supreme Court will consider IAC claims on direct appeal only if the claims are based solely on the record. *Id.* (citing *Hinshaw*, ¶21; *State v. Main*, 2011 MT 123, ¶48, 360 Mont. 470, 255 P.3d 1240).

The Montana Supreme Court may, at its discretion exercise plain error review of a case – even where no contemporaneous objection was made – upon an affirmative showing of a plain or obvious error that that implicates a constitutional or other substantial right; and “which will, if not corrected, result in a manifest miscarriage of justice or otherwise prejudicially undermine the fundamental fairness of the proceeding or compromise the integrity of the judicial process.” *State v. Miller*, 2022 MT 92, ¶10, 408 Mont. 316, 510 P.3d 17 (citing *State v. Finley*, 276 Mont. 126, 134-38, 915 P.2d 208, 213-15 (1996), *United States v.*

Atkinson, 297 U.S. 157, 160, 56 S. Ct. 391, 392, 80 L. Ed. 555 (1936)).

ARGUMENT

1. Counsel for Ms. Chamberlain should be permitted to withdraw from this cause in accordance with *Anders v. California* and Mont. Code Ann. §46-8-103.

The Fourteenth Amendment of the United States Constitution and Article II, Sections 17 and 24 of the Montana Constitution guarantee every criminal defendant the right to a fair trial and due process of law, including fair representation. 386 U.S. 738, 742 (1967). When appellant’s counsel “finds his case to be wholly frivolous” he should, after conscientious examination of the case, advise the court and request permission to withdraw. *Id.* at 744

To ensure protection of appellant’s rights, counsel’s request to withdraw must be accompanied by a brief that references anything in the record that might arguably support an appeal (an *Anders* brief). *Id.* A copy of the brief should be provided to the appellant and the appellant must be afforded the time to respond to counsel’s motion and brief. *Id.*

The State of Montana has codified the requirements of *Anders v. California* in Mont. Code Ann. §46-8-103(2). If, after reviewing the entire record and researching the applicable law, counsel concludes that an appeal would be frivolous or wholly without merit, counsel must file a motion with the Montana Supreme Court requesting permission to withdraw. *Id.* A memorandum discussing

any issues that arguably support an appeal must accompany the motion to withdraw. *Id.* The memorandum must include a summary of the procedural history of the case and any jurisdictional problems with the appeal, along with appropriate citations to the record and the law bearing on each issue. *Id.*

An *Anders* brief meets the requirements of both *Anders v. California* and Mont. Code Ann. §46-8-103(2). The brief is intended to assist the appellate court in determining that counsel has conducted the required detailed review of the case and that the appeal is so frivolous that counsel's motion to withdraw should be granted. *Penson v. Ohio*, 488 U.S. 75, 81–82 (1988). The requirements of an *Anders* brief are not meant to force counsel to argue against appellant. *Anders*, 386 U.S. at 745.

Pursuant to Mont. Code Ann. §46-8-103(2), counsel for Appellant reluctantly advises the Court that, after conducting diligent review of the record and the relevant law, counsel has not found any non-frivolous issues appropriate for appeal in this matter. In accordance with the requirements of *Anders* and Mont. Code Ann. §46-8-103(2), counsel provides this memorandum (Anders Brief) discussing any issues that arguably support an appeal, a summary of the procedural history of the case and any jurisdictional problems with the appeal, and appropriate citations to the record and the law bearing on each issue. *Id.*

2. Ms. Chamberlain's may arguably assert the district court committed

reversible error when it sentenced her to two consecutive ten year terms at Montana Women’s Prison.

To achieve the sentencing policies set forth in Mont. Code Ann. §46-18-101, Montana district courts are granted “judicial discretion to consider aggravating and mitigating circumstances.” Mont. Code Ann. §46-18-101(3)(d). In imposing a sentence, the court “may consider any relevant evidence relating to the nature and circumstances of the crime, the character of the defendant, the defendant’s background history, mental and physical condition, and any evidence the court considers to have probative force.” *State v. Collier*, 277 Mont. 46, 63, 919 P.2d 376, 387 (1996). District courts are consistently granted broad discretion to determine the appropriate punishment. *State v. Alden*, 282 Mont. 45, 51, 934 P.2d 210, 214 (1997). The Montana Supreme Court has consistently recognized that a district court is in the best position to consider the evidence before it. *State v. Morris*, 2010 MT 259, ¶20, 358 Mont. 307, 245 P.3d 512.

In this case, Ms. Chamberlain may argue the sentence imposed by the district court is fundamentally unfair and should be reversed as either an abuse of discretion or as plain error by virtue of being excessively harsh in light of the evidence presented – the recommendations of the presentence investigation report, the testimony of Ms. Chamberlain’s mental health care provider and the numerous letters from character witnesses.

3. Ms. Chamberlain may arguably assert she received ineffective assistance of counsel.

The Sixth Amendment to the United States Constitution, as incorporated through the Fourteenth Amendment, and Article II, Sections 17 and 24 of the Montana Constitution provide criminal defendants the right to counsel. *State v. LaField*, 2017 MT 312, ¶26, 390 Mont. 1, 407 P.3d 682 (citing *State v. Stratton*, 2017 MT 112, ¶9, 387 Mont. 384, 394 P.3d 192).

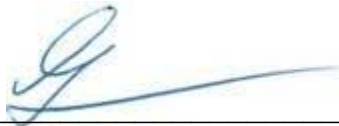
To prove ineffective assistance of counsel before the Montana Supreme Court, Ms. Chamberlain must show, 1) that defense counsel's performance was deficient, 2) that counsel's deficient performance prejudiced her case, and 3) that the reasons for defense counsel's deficient performance – by action or inaction – are apparent from the record on appeal. *State v. Ward*, 2020 MT 36, ¶18, 399 Mont. 16, 457 P.3d 955. (citing *State v. Crider*, 2014 MT 139, ¶34, 375 Mont. 187, 328 P.3d 612; *Whitlow v. State*, 2008 MT 140, ¶10, 343 Mont. 90, 183 P.3d 861; *Hinshaw*, ¶21; *State v. Kime*, 2013 MT 14, ¶31, 368 Mont. 261, 295 P.3d 580).

In this case, Ms. Chamberlain may assert defense counsel was ineffective by virtue of failing to set forth a defense of mental disease or defect, that the failure of counsel to so prejudiced her case, and that the reasons for the failure can be found in the record from below.

CONCLUSION

After thorough review of the entire record and researching applicable statutes, case law, and rules, counsel has determined that Ms. Chamberlain's appeal presents no non-frivolous issues and is, therefore, wholly without merit. Counsel respectfully requests the court grant the motion to withdraw on direct appeal.

Respectfully submitted this February 7, 2024.



Gregory D. Birdsong
Birdsong Law Office
P.O. Box 4051
Santa Fe, NM 87502
406-529-6988
birdsonglaw@gmail.com

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this principal brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double-spaced except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word for Windows is not more than 10,000 words, not averaging more than 280 words per page, excluding certificate of service and certificate of compliance.



Gregory D. Birdsong

CERTIFICATE OF SERVICE

I, Gregory Dee Birdsong, hereby certify that I have served true and accurate copies of the foregoing Brief - Anders to the following on 02-07-2024:

Chad M. Wright (Attorney)
P.O. Box 200147
Helena MT 59620-0147
Representing: Tamara L. Chamberlain
Service Method: eService

Austin Miles Knudsen (Govt Attorney)
215 N. Sanders
Helena MT 59620
Representing: State of Montana
Service Method: eService

Kirsten H. Pabst (Govt Attorney)
200 W. Broadway
Missoula MT 59802
Representing: State of Montana
Service Method: eService

Tamera DOC ID# 3032530 Chamberlain
Montana Women's Prison
701 South 27th Street
Billings MT 59101
Service Method: Conventional

Electronically Signed By: Gregory Dee Birdsong
Dated: 02-07-2024