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IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 23-0663

STATE OF MONTANA,

Plaintiff and Appellant,

v.

SKYLER L. GRIEBEL,

Defendant and Appellee.

**STATE'S RESPONSE TO APPELLEE'S
MOTION TO DISMISS**

Pursuant to Rule 16(2) of the Montana Rules of Appellate Procedure, the State hereby responds to the Motion to Dismiss filed March 27, 2024, by Appellee Skylar Leroy Griebel as follows:

RELEVANT PROCEDURAL HISTORY

The State charged Griebel with deliberate homicide, or in the alternative, felony murder, for allegedly causing the death of Tyler Netto in February 2022. (Doc. 4.) On October 20, 2023, the district court granted Griebel's second motion to dismiss based on speedy trial grounds. (Doc. 344.)

The State filed its notice of appeal with this Court on November 9, 2023, appealing from the district court's order dismissing the case. The State simultaneously submitted a notice of 12 transcripts deemed necessary for appeal.

The district court record, consisting of Document Nos. 1-350 and the case register, was filed with this Court on November 29, 2023. The exhibits from the district court record were submitted on December 5, 2023. On December 15, 2023, five of the requested transcripts were submitted.

On December 19, 2023, this Court granted the State's first motion for extension of time for the remaining seven transcripts to be filed by court reporter Robin Lee. This Court granted the State's second motion for extension of time for Ms. Lee to file the transcripts on January 20, 2024. The State filed its most recent motion for extension of time with an accompanying affidavit from Ms. Lee, on March 22, 2024. That same day, this Court granted the motion, giving Ms. Lee until April 5, 2024, to file the transcripts.

Griebel filed his motion to dismiss the State’s appeal on March 27, 2024.

ARGUMENT

Griebel offered no legal authority to support his request. Therefore, this Court may summarily deny his motion. *See State ex rel. Mazurek v. Dist. Court*, 2000 MT 266, ¶ 31, 302 Mont. 39, 22 P.3d 166 (arguments must be supported with citation to legal authority; Court will not address arguments for which legal authority is not advanced).

Further, Griebel misstates the facts relevant to the State’s requests for extensions of time. Griebel incorrectly asserts the State has “requested at least two continuances of its Opening Brief.” (Mot. at 4.) As set forth above, the State has filed only motions for extensions of time for the court reporter to file the requested transcripts. Those requests were properly made and granted by this Court. Also, contrary to Griebel’s claim, under the applicable appellate rules, the State’s opening brief was not due on March 18, 2024.

The Montana Rules of Appellate Procedure do not support Griebel’s motion. Pursuant to M. R. App. P. 8(1), the record on appeal consists of the original papers and exhibits filed in the district court, the transcript of proceedings, and a certified copy of the docket entries prepared by the clerk of the district court.

Under M. R. App. P. 9, the record on appeal is deemed transmitted once the district court record and any necessary transcripts are filed with the Montana Supreme Court Clerk of Court. An appellant's opening brief is due within 30 days of the complete record having been received by the Clerk of Court, unless a motion for extension of time to file the opening brief is granted by this Court. M. R. App. P. 13(1), 26(1).

As evidenced by this Court's March 22, 2024 Order extending the time to file any outstanding transcripts to April 5, 2024, the record on appeal is not complete. Thus, the 30-day time period to file the State's opening brief has not begun to run.

Lastly, the State disputes Griebel's assertion that the State has requested unnecessary transcripts. (Mot. at 4.) As Rule 8(2) states, it is the appellant's "duty to present the supreme court with a record sufficient to enable it to rule upon the issues raised." Rule 8(3)(a) explains further that "the appellant shall order from the court reporter, in writing, a transcript of the proceedings deemed necessary for the record on appeal on the same date the notice of appeal is filed." Finally, while Rule 8(3)(b) permits an appellee to "order additional transcripts deemed necessary," there are no provisions that permit an appellee to determine that any of the transcripts requested by an appellant are not necessary.

The State complied with this Court's rules of appellate procedure by timely requesting the transcripts it deemed necessary to present the issues to this Court and presenting proper motions of extensions of time for Ms. Lee to submit the remaining transcripts. Griebel's motion is unsupported factually and in law.

CONCLUSION

This Court should deny Griebel's motion to dismiss.

Respectfully submitted this 28th day of March, 2024.

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By: /s/ Katie F. Schulz
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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 16(3) of the Montana Rules of Appellate Procedure, I certify that this Response to Appellee's Motion to Dismiss is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double-spaced except for any footnotes and for quoted and indented material; and the word count calculated by Microsoft Word for Windows is 765 words, excluding certificate of service, certificate of compliance, and signatures.

/s/ Katie F. Schulz
KATIE F. SCHULZ

CERTIFICATE OF SERVICE

I, Kathryn Fey Schulz, hereby certify that I have served true and accurate copies of the foregoing Response/Objection - Response to Motion to Dismiss to the following on 03-28-2024:

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Dated: 03-28-2024