



ORIGINAL

FILED

08/06/2024

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: DA 24-0441

IN THE SUPREME COURT OF THE STATE OF MONTANA

DA 24-0441

STATE OF MONTANA,

Plaintiff and Appellee,

v.

ORDER

THOMAS JOSEPH SCHIFFERNS,

Defendant and Appellant.

Thomas Joseph Schifferns has filed a verified Petition for Out-of-Time Appeal, including a copy of a July 25, 2019 Sentence and Judgment from which he seeks to appeal, filed in the Twenty-Second Judicial District Court, Carbon County. Schifferns states that he failed to file a notice of appeal because he was placed in the prison in Shelby, Montana, where he had no access to paper, pens, and envelopes, as well as being “locked down” due to the COVID-19 pandemic. He adds that he told his attorney that he wanted to appeal. Schifferns asks whether his state remedies have been exhausted.

Our review reveals that counsel for Schifferns filed an appeal on September 24, 2019, with this Court. *State v. Schifferns*, No. DA 19-0554. In July of 2020, counsel moved to withdraw from representation on the ground the appeal would be frivolous or without merit, and filed a brief, pursuant to *Anders v. Ca.*, 386 U.S. 738, 87 S. Ct. 1396 (1967) and § 46-8-103(2), MCA. This Court issued an Order on August 3, 2020, directing Schifferns to respond to his counsel’s brief. This Court did not receive any response and dismissed the appeal on September 29, 2020. *State v. Schifferns*, No. DA 19-0554, Order (Mont. Sept. 29, 2020).

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).

Schiffers filed a timely appeal which this Court later dismissed four years ago after process. He cannot pursue a second appeal of the same judgment, as his state remedy of an appeal is exhausted. Therefore,

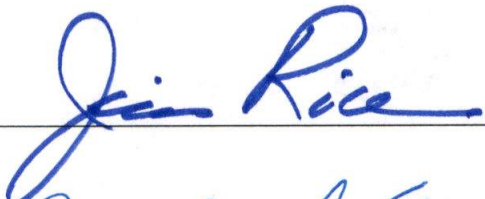
IT IS ORDERED that Schiffers’ s Petition for an Out-of-Time Appeal is DENIED and DISMISSED.

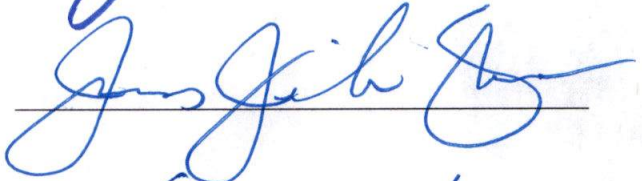
IT IS FURTHER ORDERED that the Clerk is directed to CLOSE this matter as of this Order’s date.

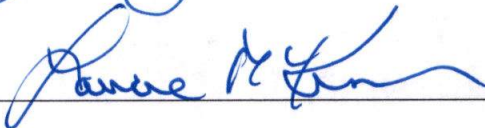
The Clerk is also directed to provide a copy of this Order to counsel of record and to Thomas Joseph Schiffers.


DATED this 6th day of August, 2024.

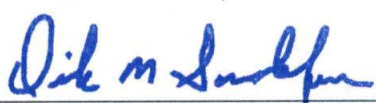
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Clerk of Supreme Court
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Justices