

No. DA 23-0305

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STATE OF MONTANA,

Plaintiff and Appellee,

v.

NEIL DENNIS COLE,

Defendant and Appellant.

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**NOTICE OF RELATED APPEALS**

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Undersigned counsel for Defendant and Appellant Neil Dennis Cole advises the Court that the sole issue in Mr. Cole's above-captioned appeal is related to the same issue in at least two other pending appeals. All three of appeals challenge a district court's imposition of the mandatory-minimum \$5,000 fine, required by Mont. Code Ann. § 61-8-731(3) (2019), under *State v. Gibbons*, 2024 MT 63, 416 Mont. 1, 545 P.3d 686 (*en banc*), *cert. denied* \_\_\_ U.S. \_\_\_, \_\_\_ S.Ct. \_\_\_, 2024 WL 4427558. *Gibbons* held that the statute authorizing the mandatory-minimum fine was facially unconstitutional. In one of the other appeals, the State has requested the Court to reverse the portion of *Gibbons* declaring the fine facially unconstitutional. The undersigned anticipates the State will argue similarly in Mr. Cole's appeal.

(1) *State v. Vaska*, DA 23-0096: This appeal is fully briefed and awaiting classification. In his opening brief, Mr. Vaska requested the Court to strike Mr. Vaska's mandatory-minimum \$5,000 fine under *Gibbons*. The State responded in opposition, arguing that *Gibbons* is manifestly wrong and should be reversed.

(2) *State v. Jones*, DA 23-0181: The undersigned represents Ms. Jones on appeal. Her opening brief is due on 11/29/2024. Ms. Jones will ask the Court to strike the \$5,000 mandatory-minimum fine pursuant to *Gibbons*. She anticipates the State will argue *Gibbons* should be reversed.

Respectfully submitted this 13th day of November 2024.

OFFICE OF STATE PUBLIC DEFENDER  
APPELLATE DEFENDER DIVISION  
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By: /s/ Deborah S. Smith  
DEBORAH S. SMITH  
Assistant Appellate Defender

## **CERTIFICATE OF SERVICE**

I, Deborah Susan Smith, hereby certify that I have served true and accurate copies of the foregoing Notice - Other to the following on 11-13-2024:

Austin Miles Knudsen (Govt Attorney)  
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Electronically signed by Kim Harrison on behalf of Deborah Susan Smith  
Dated: 11-13-2024