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*Attorneys of record for Appellant/Defendant*

IN THE SUPREME COURT OF THE STATE OF MONTANA

CITY OF MISSOULA,  
  
Appellee/Plaintiff,  
  
-vs-  
  
MATEO WHATLEY,  
  
Appellant/Defendant.

Cause No. DA 24-0438

**RESPONSE TO STATE'S  
OPPOSED MOTION TO DISMISS  
APPEAL**

Appellant Mateo Whatley, by and through his counsel of record, Misty D. Gaubatz of A&M Law, respectfully submits his response to the City's of Missoula's motion to dismiss this appeal.

**RELEVANT FACTS**

On January 19, 2024, Mr. Whatley was convicted of two misdemeanor traffic offenses following a jury trial. On June 26, 2024, the Municipal Court held a Restitution Hearing and issued a Sentencing Order. Following the final judgment of conviction, the City of Missoula filed a Notice of Appeal on June 27, 2024. On July 2, 2024, the District Court issued an Order directing the City to comply with the Montana Uniform Municipal Court Rules of Appeal to District Court, and

included the full text of Rules 12, 13, and 14 as part of that Order. Under these rules, and pursuant to the District Court's Order, the City had until July 17, 2024, within which to file its appellant's opening brief. The City failed to file its opening brief or to request an extension prior to the expiration of time under the rules. On July 18, 2024, Mr. Whatley filed a motion to dismiss the City's appeal, pursuant to Rule 14(c) of the Montana Uniform Municipal Court Rules of Appeal to District Court. On July 22, 2024, the District Court issued an Order denying Mr. Whatley's motion to dismiss the City's appeal. The City has now file a motion seeking to dismiss Mr. Whatley's appeal, claiming that somehow there was no final judgment of conviction in a case that has already passed through a complete jury trial and sentencing hearing.

### **ARGUMENT**

“An appeal may be taken by the defendant only from a final judgment of conviction and orders after judgment which affect the substantial rights of the defendant.” Mont. Code Ann. § 46-20-104.

A final judgement of conviction was issued by the Municipal Court on June 26, 2024, in the form of a Sentencing Order. Following that final judgment of conviction, the District Court issued a judgement which affected Mr. Whatley's substantial rights: the Order denying Mr. Whatley's motion to dismiss the City's

appeal. Pursuant to Mont. Code Ann. § 46-20-104, Mr. Whatley's appeal is proper, and thus the City's motion to dismiss that appeal must be denied.

**I. A Sentencing Order is a final judgement, and Mr. Whatley is entitled to appeal pursuant to statute.**

A judgment and order that imposes a final sentence constitutes a final judgment of conviction. *State v. Bonamarte*, 2006 MT 291, ¶ 6, 334 Mont. 376, 147 P.3d 220.

The City agrees that the conviction and Sentencing Order are final judgments in this case. [State's Opposed Motion to Appeal, p. 5.] With the City's agreement, and pursuant to *Bonamarte*, it is clear that the Municipal Court's Sentencing Order following the Jury Trial conviction and Restitution Hearing is a final judgment of conviction. As such, pursuant to Mont. Code Ann. § 46-20-104, Mr. Whatley has a right to maintain this appeal. The City's motion to dismiss this appeal must therefore be denied.

**II. The District Court's Order denying Mr. Whatley's motion to dismiss affected his substantial rights, and Mr. Whatley is entitled to appeal pursuant to statute.**

Both the Fourteenth Amendment to the United States Constitution and Article II section 17 of the Montana Constitution provide the fundamental right

that no person shall be deprived of life, liberty, or property without due process of law.

“Due process emphasizes fairness between the State and the individual dealing with the State, regardless of how other individuals in the same situation may be treated.” *State v. Jensen*, 2020 MT 309, ¶ 13, 402 Mont. 231, 477 P.3d 335.

“Due process is ultimately measured by the fundamental fairness of the proceeding.” *State v. Cameron*, 2021 MT 198, ¶ 19, 405 Mont. 160, 494 P.3d 314.

In this case, the rule was clear: the City had until July 17, 2014, to file its opening appellate brief. This was made clear by the order issued by the District Court and clear from Rule 14, the entire text of which was provided as part of the District Court’s order. Mr. Whatley has a due process right to depend upon the rules being followed, which is a matter of fundamental fairness of these proceedings. The order denying Mr. Whatley’s motion to dismiss after the City failed to file its appellate brief affects Mr. Whatley’s substantial rights. As such, Mr. Whatley has a statutory right to appeal, and the City’s motion to dismiss must be denied.

## **CONCLUSION**

Because Mr. Whatley’s appeal follows a final judgement after conviction and an order that affects his substantial rights, his appeal is proper pursuant to Mont. Code Ann. § 40-20-104. The City’s motion to dismiss must be denied.

DATED this 6th day of January, 2024

A&M LAW

By /s/ Misty D. Gaubatz

Misty D. Gaubatz

Attorney for Appellant/Defendant

## **CERTIFICATE OF SERVICE**

I, Misty D. Gaubatz, hereby certify that I have served true and accurate copies of the foregoing Response/Objection - Response to Motion to Dismiss to the following on 01-06-2025:

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Electronically Signed By: Misty D. Gaubatz  
Dated: 01-06-2025