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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 OBJECTION TO PETITION FOR REHEARING

Pursuant to Rule 20(2)(b) of the Montana Rules of Appellate Procedure, the Montana Attorney General's Office, on behalf of the State of Montana, hereby objects to the Petition for Rehearing filed with the Court on January 8, 2025, by Skyler Griebel (Griebel).

STATEMENT OF THE CASE

On December 10, 2024, this Court entered its order granting the State's appeal from the district court Order Granting Defendant's Second Motion to Dismiss for Speedy Trial Violation. *State v. Griebel*, 2024 MT 295N.

Since the order dismissing the case was based on Griebel's constitutional right to speedy trial, this Court properly reviewed the district court's order "*de novo* to determine whether the court correctly interpreted and applied the law," and reviewed the court's underlying factual findings for clear error. *Griebel*, ¶ 16 (citation omitted). Just as the district court had, this Court applied the well-settled principles from *State v. Ariegwe*, 2007 MT 204, 338 Mont. 442, 167 P.3d 815, which identified the relevant factors to consider and balance against each other to determine if Griebel's right to speedy trial had been violated. *Griebel*, ¶¶ 17-41.

This Court agreed with the district court's determinations of the length of delay (619 days). *Griebel*, ¶ 19. This Court agreed that the five periods of delay identified by the district court were institutional delays that weighed only slightly against the State. *Id.* ¶¶ 22-29. This Court rejected the State's arguments that Griebel's lack of diligence in seeking recusal of the presiding judge should make the Fourth Period of delay attributable to the defense. *Id.* ¶¶ 23-25. This Court also rejected the State's position that the district court erred by designating the

Fifth and Sixth periods of delay entirely to the State as institutional delay. *Id.* ¶¶ 26-27.

In its analysis, while it explained that, "[g]enerally, the State's failure to secure evidence that causes a delay is deemed negligent and weighs heavily against the State," this Court also recognized that delays in obtaining information may also be out of the State's control, and concluded that the district court did not clearly err when it found the same. *Griebel*, ¶ 27. In finding that the Sixth Period of delay was also institutional and attributable to the State, this Court observed that the additional time had been necessary for the district court to consider the evidence and supplemental briefing, so it weighed only slightly against the State. *Id.* ¶ 29.

This Court disagreed with the district court's conclusion that Factor Three weighed slightly in Griebel's favor, finding that Griebel had "engaged in extensive motion practice that was of, at best, dubious merit." *Griebel*, ¶ 31. This Court correctly observed that Griebel's pretrial motions practice was repetitive and noted the district court consistently rejected his claim that the State was acting in bad faith. *Id*. This Court also reviewed the myriad of pleadings and appeals Griebel filed about alleged missing discovery, as well as ancillary issues that were summarily denied (*e.g.,* motion for probable cause hearing under *Franks v. Delaware*, 438 U.S. 154 (1978); motion to disqualify the presiding judge). As an *example* of Griebel's insincere desire for a speedy trial, this Court cited to defense

counsel's statement that she did not "want there to be a trial," but rather wanted the court to dismiss the case based on lack of probable cause following a *Franks* hearing (a procedure that did not exist). *Id*.

As for prejudice caused by the delay, this Court agreed with the district court that Griebel had not experienced either oppressive incarceration or excessive anxiety. *Griebel*, ¶¶ 33-37. This Court also agreed Griebel had been prejudiced by the loss of three witnesses and the alleged diminished memories of two others.[1] *Id.* ¶¶ 38-40. This Court, however, acknowledged that Griebel's failure to interview the witnesses despite ample opportunity diminished the prejudicial effect of their deaths. *Id*.

After balancing the four factors, this Court concluded that Griebel was not denied his right to a speedy trial. *Griebel*, ¶ 41. This Court noted that although three of the four factors weighed against the State, they weighed only slightly in favor of a speedy trial violation, while "Factor three weigh[ed] heavily against Griebel." *Id.* ¶ 41 (Griebel's actions and words indicated his "clear disinterest in bringing his case to trial").

[1]The State maintains its arguments on appeal that Griebel failed to establish that any of the allegedly "lost" testimony from these witnesses would have been either material or relevant to his defense.

ARGUMENT

I. Applicable Law

This Court will consider a petition for rehearing on only the following grounds:

> i. That it overlooked some fact material to the decision;
>
> ii. That it overlooked some question presented by counsel that would have proven decisive to the case; or
>
> iii. That its decision conflicts with a statute or controlling decision not addressed by the supreme court.

M. R. App. P. 20(1)(a). The Court will not grant a petition for rehearing absent a showing of "clearly demonstrated exceptional circumstances." M. R. App. P. 20(1)(d).

A petition for rehearing is not a forum in which to rehash arguments made in the briefs and considered by the Court. *State ex rel. Bullock v. Philip Morris, Inc.*, 217 P.3d 475, 486 (Mont. 2009) (Order Denying Petition for Rehearing in *State ex rel. Bullock v. Philip Morris, Inc.*, 2009 MT 261, 352 Mont. 30, 217 P.3d 475). Nor will this Court consider new facts or arguments in a petition for rehearing.

> A rehearing in the supreme court will not be granted in order to consider points not made in the argument upon which the case was originally submitted. The supreme court will not consider a petition for rehearing that attempts to discuss the case upon grounds which were not presented in the original argument or discussed in its opinion. New questions cannot be raised for the first time on motion

> for rehearing. Counsel are presumed to have presented on their original argument all the grounds upon which they rely for the affirmance or reversal of the judgment appealed from.

Merchant's Nat'l Bank v. Greenhood, 16 Mont. 395, 460-61, 41 P. 851, 852 (1895) (internal citations omitted).

II. Griebel has failed to clearly demonstrate exceptional circumstances to justify granting his Petition for Rehearing.

Griebel's Petition does not assert that this Court "overlooked some question presented by counsel that would have proven decisive to the case" or that the opinion "conflicts with a statute or controlling decision not addressed by the supreme court." (Pet.) Rather, Griebel asserts that this Court "overlooked facts" and "misapprehended facts." (*Id.* at 7.) Only the former, if material, is an appropriate conduit for granting a rehearing. M. R. App. P. 20(1)(a)(i).

First, the State disputes Griebel's recitation of the "facts," including his claim that the district court found his repetitive and overlapping motions for discovery "meritorious" and that he had shown a "sincere desire" in exercising his right to a speedy trial. (Pet. at 5-6.) It was in its order denying his first motion to dismiss that the court stated Griebel's "responses to the delays [] show a sincere desire to be brought to trial." (Doc. 249 at 8.) That is not the order at issue here.

In the order at issue—the October 2023 order granting Griebel's second motion to dismiss—the district court altered its earlier determination, finding that

Griebel exhibited "a desire to be brought to trial" with the additional finding that, while the court had not deemed his discovery motions to be frivolous, some of Griebel's "conduct indicated a desire to delay the trial." (Doc. 344 at 5.)

Regardless, this Court was not bound by the district court's findings but, rather, was charged with determining if the district court's findings were erroneous following a *de novo* review. Which is what this Court did. Griebel has not identified any material facts that this Court overlooked. Rather, Griebel challenges this Court's interpretation of the facts from the record. Such a challenge is not a proper basis for rehearing.

Second, Griebel asserts that this Court erroneously found some of his motions were of dubious merit because none of his motions for discovery were denied. (Pet. at 9.) That assertion is inaccurate. Prior to the March 2023 trial, the district court issued several orders rejecting the majority of Griebel's claims that the State was not providing discovery in a timely and complete manner. (*See* Docs. 149, 165, 169, 170, 171, 172, 194.)[2]

[2]For instance, the court rejected Griebel's October 18, 2022 motion to dismiss, concluding the State had not failed to produce exculpatory evidence. (Doc. 171 (finding delay in testing Griebel's clothing for GSR did not violate due process because it was unlikely to change the outcome of the proceeding, and Griebel failed to establish the exculpatory nature of the social media accounts or GSR testing from Summer). The court found the State had not "withheld" cell phone data and social media records and but had made good faith efforts to obtain/distribute discovery and that it lacked sufficient cause to obtain additional social media records. (Docs. 85, 90, 170.) In denying Griebel's motion to dismiss,

But, more to the point, Griebel's focus on his discovery motions misses the point this Court was making when it described Griebel's cumulative motion practice, which included petitions for writs of supervisory control and untimely appeals to both the United States District Court and the Ninth Circuit that were filed four months after the court's decisions. *Griebel*, ¶¶ 9-14, 31. Apart from discovery issues, this Court noted Griebel's repeated demands for a *Franks* hearing were frivolous. As were his efforts to disqualify the presiding judge. This Court further correctly recognized that Griebel's practice of repeating alleged discovery violations despite them being resolved unduly complicated and arguably mispresented the status of discovery. Notably, even in his Petition, Griebel continues to misrepresent that the State delayed providing the victim's phone records. It was these actions that constituted "[c]onduct that demonstrates a defendant's desire to avoid trial." *Griebel*, ¶ 30 (citation omitted).

Finally, Griebel asserts that this Court "misapprehended" a comment made by defense counsel during a pretrial hearing as indicative of his disinterest in a speedy trial. (Pet. at 9.) First, this argument fails to appreciate that this Court's reference constituted an example of Griebel's focus on meritless issues such as the

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the court found that the State "has provided all law enforcement video and audio that is in its possession" and that the State's failure to secure Trooper Wager's recording was not a violation of due process because other comparable evidence was available and it was not obvious that the recording would have been material, of substantial use, or exculpatory. (Doc. 170.)

Franks hearing that he continued to pursue even to the Ninth Circuit one month before his trial date. Griebel's misguided belief otherwise is not a sufficient basis to grant a rehearing. Moreover, under M. R. App. P. 20(1)(a), alleged "misapprehension" of information is not a basis for this Court to grant a rehearing.

Griebel offers no substantive argument as to how this Court's decision overlooked some fact material to the issues that would have proven decisive to the case. This Court accurately presented the arguments raised by the State and Griebel before setting forth its own specific rationale and ruling. *See Griebel*, *supra*. This Court has already conducted its de novo review and considered the arguments raised by Griebel in his Petition, and a rehearing is unnecessary. *See Philip Morris*, 217 P.3d at 486.

CONCLUSION

Griebel's dissatisfaction or disagreement with this Court's holding is not a basis for rehearing. Griebel has failed to demonstrate any exceptional

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circumstances that meet the criteria in M. R. App. P. 20(1)(a). The State respectfully requests that this Court deny the Petition.

Respectfully submitted this 22nd day of January 2025.

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

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this response 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 1,959 words, excluding caption, signatures, certificate of compliance, certificate of service, and any exhibits.

/s/ *Katie F. Schulz*
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CERTIFICATE OF SERVICE

I, Kathryn Fey Schulz, hereby certify that I have served true and accurate copies of the foregoing Response/Objection - Objection to Petition for Rehearing to the following on 01-22-2025:

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Dated: 01-22-2025