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IN THE SUPREME COURT OF THE STATE OF MONTANA

Cause No. DA 24-0732

KATIE IRENE GARDING,

Defendant and
Appellant,

v.

STATE OF MONTANA,

Plaintiff and Appellee.

**APPELLANT’S MOTION FOR
LEAVE TO FILE AN
OVERLENGTH BRIEF**

Appellant moves this Court for leave to file an overlength brief and increase the word count for her opening brief from 10,000 words to 13,000 words. Counsel for Appellee was contacted and opposes this motion.

The issues included in this appeal are complex and present issues of first impression for this Court. They include issues relating to the deprivation of constitutional rights and statutory rights. Additionally, this appeal will also include a request that this Court overrule prior precedent, to the extent such decisions are not distinguishable. Finally, preparing the issues in this appeal requires extensive reference to proceedings that span roughly fifteen years, including original proceedings in front of this Court and postconviction proceedings, as well as proceedings in the United States District Court and the Ninth Circuit Court of Appeals. Further detail in support of this request is included in the attached Declaration of E. Lars Phillips.

For these reasons, Appellant respectfully requests an additional increase of 3,000 words in her opening brief, for a total of 13,000 words, in order to provide this Court with the legal analysis and factual context needed to resolve the appeal.

DATED this 21st day of February, 2025.

CROWLEY FLECK PLLP

By s/ E. Lars Phillips

E. Lars Phillips

Counsel for Garding

Declaration of E. Lars Phillips

1. I am attorney representing Appellant Katie Irene Garding. I have primary responsibility to draft the opening brief in this matter.
2. Pursuant to Mont. R. App. P. 12(10), Appellant has requested leave to file an overlength brief with a total word count of 13,000 words.
3. The statements included below in support of this request are based on my analysis and review of this matter and my effort to present the issues arising from the underlying proceedings to this Court.
4. First, the issues in this case are complex and include issues relating to the deprivation of constitutional rights, such as the right to speedy trial, and statutory rights, such as the right to an initial appearance, an arraignment, and a probable cause determination.
5. Second, this appeal presents a matter of first impression concerning the requirements imposed upon the State following vacatur of a criminal judgment and subsequent renewal of proceedings against a criminal defendant, including the burden of proof under such circumstances and the related scope of a District Court's jurisdiction.
6. Third, this appeal will include a request that this Court overrule prior precedent, specifically, *Wagner v. State*, 2004 MT 31, 319 Mont. 413, 85 P.3d 750, *State v. Mount*, 2003 MT 275, 317 Mont. 481, 78 P.3d 829, and *State v. Gafford*,

172 Mont. 380, 563 P.2d 1129 (Mont. 1977), for reasons similar to those set forth in former Chief Justice McGrath’s concurring opinion in *State v. Hinman*, 2023 MT 116, 412 Mont. 434, 530 P.3d 1271, to the extent such cases are not distinguishable.

7. Fourth, these issues require an intensive analysis of, and reference to, an extensive factual record from proceedings spanning roughly fifteen years, including original proceedings in front of this Court, postconviction proceedings, and proceedings in the United States District Court and the Ninth Circuit.

Pursuant to § 1–6–105(1), MCA, I declare under penalty of perjury that the foregoing is true and correct.

February 21, 2025 in Bozeman, MT
Date and Place

/s E. Lars Phillips
E. Lars Phillips

CERTIFICATE OF SERVICE

I, E. Lars Phillips, hereby certify that I have served true and accurate copies of the foregoing Motion - Opposed to the following on 02-21-2025:

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Electronically Signed By: E. Lars Phillips
Dated: 02-21-2025