

Wes Whitaker
#3003220
Saguaro Correctional Center
1252 E. Arica Road.
Eloy, Az 85131

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. 25-0098

STATE OF MONTANA,
Plaintiff and Appellee,

v.

WES LEE WHITAKER,
Defendant and Appellant.

**MOTION FOR PRODUCTION OF RECORD
-AUDIO RECORDINGS-**

The Appellant, Wes Lee Whitaker, submits this Motion for production of the Audio Recordings for District Court Cause No. DC 18-468. The current transcripts that the District court provided does not conform to the truth or are inaccurate. Therefore, it is vital that the audio files of all open court hearings be provided so that Whitaker can perfect his appeal and/or subsequent collateral proceedings.

BACKGROUND

Chad Wright, head of Appellant Defender Division, received the transcripts for District Court Cause No. DC 18-468 in the Appeal for Supreme Court Cause No. DA 22-0083, between May and July of 2022. Whitaker did not receive those transcripts in a timely manner so that he could identify potential inaccuracies and attempt to modify the

record pursuant to M. R. App. P. 8(6).

Appellate counsel was provided on April 25, 2023, 14 months after the February 9, 2022 filing of Whitaker's Notice of Appeal, Supreme Court Case No. DA 22-0083. Counsel sent the transcripts between July 25, 2023 and August 25, 2023. See EXHIBIT A and B, respectively. Whitaker sent a list of suspected inaccuracies of those transcripts and directed counsel to fix them before he took anymore steps in the appeal process. Once it became apparent that counsel would not attempt to fix the transcripts for an effective appeal, Whitaker took immediate action with Chad Wright. Mr. Wright, and counsel, decided that the audio recordings would cost too much and implied through their statements that counsel's performance was limited by Whitaker's indigent status. See. Mayor v. City of Chicago, 404 U.S. 189, 198, 92S. ct. 410 (1971).

“It is indisputably true that a criminal defendant has the right to adequate appellate and other review of his conviction based upon a sufficiently complete and accurate record.”

Whitaker filed a substitution of counsel to proceed pro se in September 2023. 1 month after receiving the transcripts, an attempt to gain an accurate record for an effective appeal and was denied October 10, 2023. See EXHIBIT C.

Whitaker filed a Motion to stay with supporting Affidavit, to attempt to gain an accurate record for an effective appeal and was denied. See EXHIBIT D and E.

The State filed an objection to Whitaker's Motion to stay and identified a conspiracy and the need for Whitaker to request the audio files in order to identify the inaccuracies that were in the supporting affidavit. See EXHIBIT F. pg. 5, p. 2 “Whitaker

(Counsel) has not requested the audio files for the proceedings to identify inaccuracies.”
The States reasoning's in its Objection and the courts denial were related to time restraints.

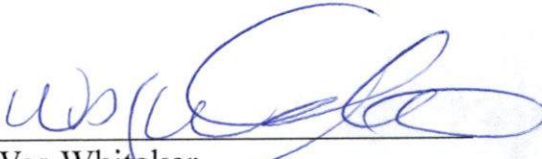
Whitaker received counsel 14 months after the filing of his February 9, 2022 Notice of Appeal. Received transcripts 18 months after the filing of the same appeal. Whitaker cannot file for substitution of counsel before counsel is provided and appropriate action is taken to remedy the problem internally, nor can he be required to make a complaint that the records are inaccurate before he receives those records and steps are taken to remedy the problem internally. Whitaker promptly filed with the Supreme Court with the timetable he was given.

Whitaker filed for a Notice of Appeal February 3, 2025, Case No. DA 25-0098, with a Notice of Audio Recordings Deemed Necessary for Appeal, that request had been denied by the District Court. See EXHIBIT G.

CONCLUSION

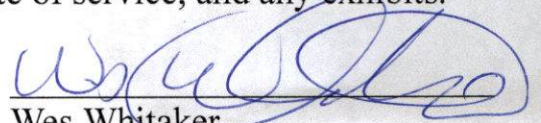
Whitaker respectfully requests that the Court order the Fourth Judicial District Court, Missoula County to produce the Audio recordings of all open court hearings so that he can identify inaccuracies in the record, and to have a sufficiently complete and accurate record for an adequate appeal and to help in litigation in collateral proceedings.

DATED this 18 day of February, 2025.


Wes Whitaker
Pro se Appellant

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; and the word count calculated by OpenOffice Writer is 617, excluding captions, signatures, certificate of compliance, certificate of service, and any exhibits.



Wes Whitaker

Pro se Appellant

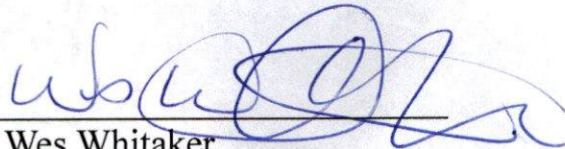
CERTIFICATE OF SERVICE

I, Wes Lee Whitaker, hereby certify that I have served true and accurate copies of the foregoing Motion to the Clerk of The Supreme Court and to the following, by U.S. mail:

Missoula County attorney
200 West Broadway
Missoula, MT 59802

Austin Knudsen Attorney General
Appellant Services
215 North Sanders
Helena MT 59620-1401

DATED this 18th day of February, 2025.



Wes Whitaker
Pro se Appellant