

ORIGINAL

FILED

03/25/2025

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: DA 25-0098

IN THE SUPREME COURT OF THE STATE OF MONTANA

DA 25-0098

STATE OF MONTANA,

Plaintiff and Appellee,

v.

WES LEE WHITAKER,

Defendant and Appellant.

ORDER

FILED

MAR 25 2025

Bowen Greenwood
Clerk of Supreme Court
State of Montana

Wes Lee Whitaker moves this Court for leave to file an overlength opening brief because he wants to raise more than four issues, and for production of 2018 audio recordings concerning his criminal case. The State of Montana has not filed a response.

In 2018, the State of Montana charged Whitaker with two counts of felony sexual intercourse without consent (SIWC) and later added the charges of incest and sexual assault of a minor child. A jury found Whitaker guilty of all charges. Whitaker appealed, and this Court affirmed the judgment as to the two counts of SIWC, but reversed his conviction of sexual assault because both convictions of sexual assault and sexual intercourse without consent were based on the same act. *State v. Whitaker*, 2024 MT 255, ¶¶ 2, 36, 418 Mont. 501, 558 P.3d 741.

In response to this Court's opinion, the Missoula County District Court entered an Order Amending Judgment, wherein it dismissed the sexual assault conviction. This is the Order that Whitaker seeks to appeal.

We conclude that Whitaker's appeal is not appropriate because it is beyond the scope of an appeal by a defendant. Section 46-20-104(1), MCA, provides that "[a]n 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." Whitaker had an appeal of

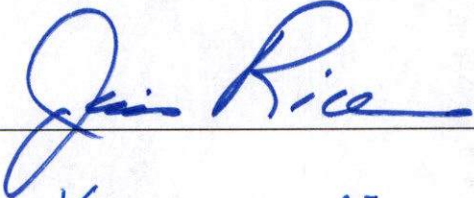
the judgment which addressed his trial issues. The District Court's December 3, 2024 Order Amending Judgment wherein the court dismissed one of Whitaker's felony convictions does not affect his substantial rights. Therefore,

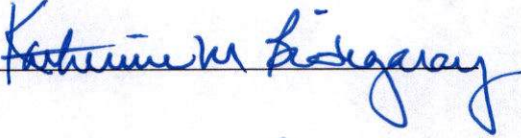
IT IS ORDERED that:


- 1. this appeal is DISMISSED *sua sponte*;
- 2. Whitaker's Motion for Over Length Brief and Motion for Production of Record – Audio Recordings[] are DENIED, as moot; and
- 3. this matter is CLOSED as of this Order's date.

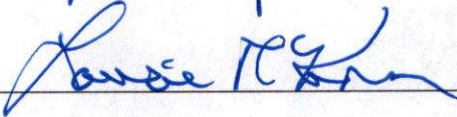
The Clerk is directed to provide a copy of this Order to counsel of record and to Wes Lee Whitaker personally.

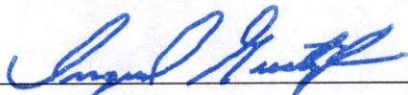
DATED this 25th day of March, 2025.











Justices