

ORIGINAL

FILED

03/25/2025

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: DA 25-0155

IN THE SUPREME COURT OF THE STATE OF MONTANA

DA 25-0155

STATE OF MONTANA,

Plaintiff and Appellee,

v.

MATTHEW RYAN AILER,

Defendant and Appellant.

ORDER

FILED

MAR 25 2025

Bowen Greenwood
Clerk of Supreme Court
State of Montana

Representing himself, Matthew Ryan Ailer has filed an unverified Petition for an Out-of-Time Appeal, seeking to appeal a September 16, 2024 Order on Motion for Expungement and Certificate of Innocence, as attached and filed in the First Judicial District Court, Lewis and Clark County. M. R. App. P. 4(6). The State of Montana has filed an unsolicited Objection to Ailer's pleading and requests.

Ailer includes three other attachments with his Petition. He attaches a copy of the District Court's September 16, 2024 Order on Motion for Permanent Injunction and Possible Designation as Vexatious Litigant, filed in the same underlying criminal case, dating back to 2014. He also provides a Notice of Appeal and a Notice of a Challenge to the Constitutionality of Acts of the Montana Legislature. Ailer asserts that, due to extraordinary circumstances, he was unable to file a timely appeal. Ailer asserts that there had been a family emergency and that he has several medical conditions with a recent, unrelated hospital stay. Ailer asserts that an appeal is warranted because of the District Court's errors.

The State opposes Ailer's Petition. The State provides more detail to Ailer's history, dating back to the 2014 criminal case, where a jury convicted him for fraudulently obtaining worker's compensation benefits. The State notes that in June 2022, the District Court granted Ailer's motion to dismiss the criminal case because Ailer had completed his

six-year deferred imposition of sentence. The State catalogs Ailer's six appeals with this Court and our decisions affirming the different District Courts.¹ The State notes that in his closed underlying criminal case Ailer filed a "Motion for the Expungement of DNA Records, Photographs, Fingerprints, Arrest Record, All Records and Data of the [CCJI] of Matthew Ailer" as well as a request for a "Certificate of Innocence and Exoner[ating] Matthew" on December 13, 2023. The State points out that Ailer cannot raise a constitutional challenge for the first time on appeal. The State concludes that no basis exists for Ailer's attempt to appeal, and that his criminal conviction has since been vacated.

While this matter was pending, Ailer filed an opposed Motion for the Court to Take Judicial Notice, pursuant to M. R. Evid. 201 and 202, wherein he reiterates the same or similar reasons for this Court to grant his Petition.

M. R. App. P. 4(6) allows this Court to grant an out-of-time appeal "[i]n the infrequent harsh case and under extraordinary circumstances amounting to a gross miscarriage of justice[.]"

Ailer has not demonstrated any extraordinary circumstances. What Ailer has demonstrated is a wanton abuse of the judicial process. As the State correctly references, "[r]es judicata, or claim preclusion, 'bars the relitigation of a claim that the party has already had an opportunity to litigate.'" *Ailer V*, ¶ 11 (citing *Baltrusch v. Baltrusch*, 2006 MT 51, ¶ 15, 331 Mont. 281, 130 P.3d 1267). Ailer has repeatedly waged "piecemeal, collateral attacks against judgments." *Baltrusch*, ¶ 15; *see also Ailer V*, ¶ 13. We declined to declare Ailer a vexatious litigant in *Ailer VI*. *See Ailer VI*, ¶ 13. We admonished Ailer:

Though Ailer has substantially burdened both the court system and parties through his myriad cases and filings, in the exercise of abundant patience we

¹ *See State v. Ailer*, 2018 MT 18, 390 Mont. 200, 410 P.3d 964 (*Ailer I*); *Ailer v. State*, No. DA 21-0367, 2022 MT 115N, 2022 Mont. LEXIS 528 (Jun. 7, 2022) (*Ailer II*); *Ailer v. State*, No. DA 22-0346, 2023 MT 198N, 2023 Mont. LEXIS 1054 (Oct. 24, 2023) (*Ailer III*); *State v. Ailer*, No. DA 22-0347, 2023 MT 231N, 2023 Mont. LEXIS 1187 (Nov. 28, 2023) (*Ailer IV*); *Ailer v. State*, No. DA 23-0155, 2023 MT 237N, 2023 Mont. LEXIS 1224 (*Ailer V*), and *In re Montana State Fund's Application for Release of Department of Justice Confidential Criminal Justice Information Concerning Matthew Ailer*, CDC-2014-98, No. DA 23-0185, 2023 MT 248N, 2023 Mont. LEXIS 1255 (Dec. 19, 2023) (*Ailer VI*).

decline to sanction Ailer. However, Ailer is warned that further such actions may result in a declaration that he is a vexatious litigant.

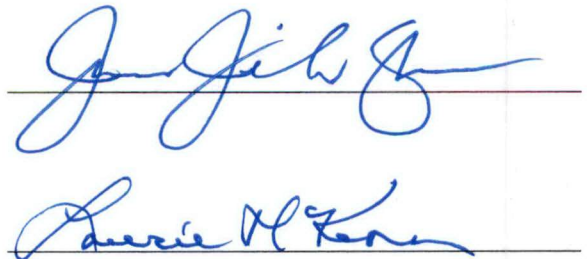
Ailer VI, ¶ 13.

Accordingly,


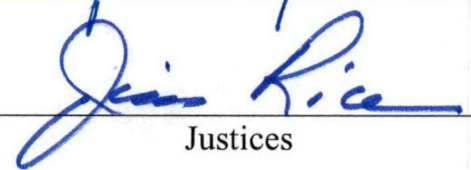
1. IT IS ORDERED that Ailer's Petition for an Out-of-Time Appeal is DENIED and DISMISSED;
2. IT IS ORDERED that Ailer's Motion for the Court to Take Judicial Notice is DENIED.
3. IT IS ORDERED that from this point forward, prior to filing any direct appeal, original petition, or pleading with this Court pertaining in any way to his 2014 criminal case, Ailer must obtain leave of this Court for such filing. Ailer's motion for leave must be sworn under oath before a notary public, may not exceed three pages in length, and must make a preliminary showing that the motion has merit and meets the criteria either under M. R. App. P. 4(1), or stating a prima facie case, pursuant to M. R. App. P. 14(5). Only when this Court has reviewed the motion and issued an order granting leave to file may the Clerk of Court file the pleading. The Clerk shall summarily reject any other pleading that Ailer seeks to file, and shall inform Ailer accordingly.
4. IT IS ORDERED that the Clerk of the Supreme Court is directed to CLOSE this matter as of this Order's date.

The Clerk is directed to provide a copy of this Order to all counsel of record and to Matthew Ryan Ailer personally.

DATED this 25th day of March, 2025.



The block contains two handwritten signatures in blue ink, each written over a horizontal line. The top signature is cursive and appears to read 'John J. ...'. The bottom signature is also cursive and appears to read 'Darius H. ...'.



Justices

Chief Justice Cory Swanson recused himself and did not participate in this matter.