

IN THE SUPREME COURT OF THE STATE OF MONTANA
CAUSE NO. DA 23-0684

STATE OF MONTANA,
Plaintiff and Appellee,
and
TORI NATHANIEL HAMLIN,
Defendant and Appellant.

ANDERS BRIEF

On Appeal from the District Court of the First Judicial District
of the State of Montana, In and For Lewis and Clark County

Before the Honorable Kathy Seeley
Cause No. CDC-21-229

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INTRODUCTION

Upon conscientious examination of the record below, counsel hereby advises this Court that the Appellant, Tori Nathaniel Hamlin (“Hamlin”) has no non-frivolous basis for a direct appeal of the issues arising from his conviction and sentencing for Count I: Sexual Intercourse Without Consent; Count II: Sexual Intercourse Without Consent; Count III: Sexual Intercourse Without Consent; Count IV: Sexual Assault; and Count V: Sexual Assault. Undersigned counsel, therefore, moves this Court to allow him to withdraw from representing Hamlin in this appeal in accordance with *Anders v. California*, 386 U.S. 738 (1967), and Mont. Code Ann. § 46-8-103. If this Court deems there to be issues meriting briefing, counsel requests this Court specify the issues to be briefed and to deny the motion without discharging undersigned counsel.

Pursuant to Mont. Code Ann. § 46-8-103(2), counsel has advised Hamlin of counsel’s decision regarding the merits of this appeal and informed him that he will have the right to file a response to this motion directly with the Court.

Counsel also sent him a copy of this Anders motion at the time of filing.

STATEMENT OF THE ISSUE

Should undersigned counsel be permitted to withdraw from representing Hamlin in accord with the criteria established by the United States Supreme Court in *Anders*?

STATEMENT OF THE CASE

On May 25, 2021, Hamlin was charged with six counts of Sexual Intercourse without Consent. The State alleged that Hamlin had sexual intercourse without consent with his stepsister, who was six years old at the time of the incidents and when Hamlin was 13 or 14 years old.

Later, the State added charges alleging Hamlin had also molested his other stepsister during the same timeframe. Ultimately, Hamlin went to jury trial with the State alleging that between 2014-2019 he had committed the following crimes:

- Count I: Sexual Intercourse Without Consent;
- Count II: Sexual Intercourse Without Consent;
- Count III: Sexual Intercourse Without Consent;
- Count IV: Sexual Assault;
- Count V: Sexual Assault.

The Counts were divided between the two stepsisters, and all were alleged to have occurred when Hamlin was between 13 and 17 years old. Pending trial, Hamlin's counsel filed one substantive motion for discovery sanctions, which was addressed by the district court with discovery being provided to Hamlin.

Thereafter, the case went to trial where no objections of note were made by Hamlin's counsel. After four days, the jury found Hamlin guilty of all counts and he was later sentenced to an aggregate sentence of 60 years in the Montana State Prison.

Hamlin timely appealed his conviction.

STATEMENT OF FACTS

On May 25, 2021, Hamlin was charged with six counts of sexual intercourse without consent, alleging that Hamlin had sexual intercourse with one of his stepsisters on multiple occasions between January 1, 2015 and May 31, 2016. Doc. 1. These incidents were reported to law enforcement in October of 2020 when the stepsister was 12 years old, at the time of the incidents, she would have been 6-7 years old. *Ibid.*

On September 17, 2021, the State amended its information to add five additional counts alleging Hamlin, between January 1, 2015 and July 17, 2029 had molested and had sexual intercourse with a second stepsister. Doc. 26, 27, & 28.

On October 28, 2021, the district court held a transfer hearing pursuant to Mont. Code Ann. § 41-5-206, and determined that Hamlin, 20 years old at the time, would not be transferred to youth court for further proceedings. Doc. 40.

On December 23, 2021, Hamlin filed a motion for discovery sanctions alleging the State had not timely disclosed discovery for the newly added counts contained in the amended information. Doc. 43 & 44. The issue revolved around disclosure of recorded interviews of the second stepsister, which had not been provided to the defense at the time of the motion. Doc. 44. On January 5, 2022, the State responded informing the district court that the requested videos had now been provided to the defense and as such the issue was moot. Doc. 45.

On May 23, 2023, the State filed its Second Amended information, finalizing the charges which Hamlin went before a jury trial for, including:

Count I: Sexual Intercourse Without Consent;
Count II: Sexual Intercourse Without Consent;
Count III: Sexual Intercourse Without Consent;
Count IV: Sexual Assault;
Count V: Sexual Assault.

Doc. 149.

On June 5, 2023, the jury trial commenced, at the outset and prior to jury selection, a discussion was had regarding rape shield law and accusations against other people by the victims in Hamlin's case:

STATE: I did want to get just a couple things on the record. So Defense Counsel and myself has had discussions off the record about rape shield. These girls were abused by multiple people in multiple ways over many years.

And Mr. Moog stated to me he does not intend to pierce the rape shield, and so none of the sexual abuse of these children by other people, none of those circumstances or anything like that, would be presented to the jury by questioning or otherwise.

THE COURT: Is that correct, Mr. Moog?

DEFENSE COUNSEL: Yeah. I don't intend to pierce the rape shield statute, Judge. I would have filed a motion to that effect if I had. I don't want the State to be surprised if the names of some of these people come up in questioning, especially with Ken Hamlin.

I believe the circumstances of -- they are growing up in a very tumultuous household is relevant, so his name will come up as well several other names in the investigation. However, I will not be asking about their specific allegations against other people other than my client.

THE COURT: Is that fair, Counsel?

STATE: I -- I just don't want them to be asked, "Were you -- Were you sexually abused by another person?"

DEFENSE COUNSEL: No.

STATE: Okay.

DEFENSE COUNSEL: I will not be asking that.

Tr. Jury Trial, Day 1, 6:9-7:6.

The trial proceeded with no significant objections from Hamlin's counsel, and on day four, Hamlin was found guilty of all counts. Tr. Jury Trial, Day 4, 134:1-135:17.

At sentencing, the district court imposed the following sentence:

Count I: Sexual Intercourse Without Consent – 20 years Montana State Prison, none suspended.

Count II: Sexual Intercourse Without Consent – 20 years Montana State Prison, none suspended.

Count III: Sexual Intercourse Without Consent – 20 years Montana State Prison, none suspended.

Count IV: Sexual Assault – 20 years Montana State Prison, none suspended.

Count V: Sexual Assault – 20 years Montana State Prison, none suspended.

The district court ran Counts I, II and III consecutively and IV and V concurrently with each other and Count III for a total sentence of 60 years Montana State Prison. Doc. 170.

Hamlin timely appealed his conviction. Doc. 174.

ARGUMENT

I. UNDERSIGNED COUNSEL SHOULD BE PERMITTED TO WITHDRAW FROM HAMLIN’S APPLE IN ACCORD WITH *ANDERS*

In *Anders*, the United States Supreme Court concluded that when counsel on appeal finds the case to be wholly frivolous after a conscientious examination, counsel should advise the court and move to withdraw. 386 U.S. at 744.

The request to withdraw must be “accompanied by a brief referring to anything in the record that might arguably support the appeal.” *Anders*, 386 U.S. at 744. These brief addresses those potential matters.

However, there is an inherent dilemma between an appellate defender’s duty to advocate for their client and the obligation of their oath and the rules of procedure and ethics that prohibit them from making non-meritorious claims. The United States Supreme Court addressed this dilemma:

We interpret the discussion rule [of *Anders*] to require a statement of reasons why the appeal lacks merit which might include, for example, a brief summary of any case or statutory authority which appears to support the attorney’s conclusions, or a synopsis of those facts in the record which might compel reaching that same result. We do not contemplate the discussion rule to require an attorney to engage in a protracted argument in favor of the conclusion reached; rather, we view the rule as an attempt to provide the court with ‘notice’ that there are facts on record or cases or statutes on point which would seem to compel a conclusion of no merit.

McCoy v. Court of Appeals of Wisconsin, District 1, 486 U.S. 429, 440 (1988).

Thus, the appellate defender must walk a fine line between advocacy and diligence wherein thorough research is the undoing of their client's appeal. Here, the undersigned is compelled by his duty of candor before the Court in accord with Anders to provide this Court with notice that a review of the entire record and diligent research of the applicable statutes, case law, and rules has yielded just such a result. No non-frivolous issues are present in this appeal.

II. THE RECORD MIGHT ARGUABLY SUPPORT A CALIM HAMLIN RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL

A. Standard of Review

Ineffective assistance of counsel claims are mixed questions of law and fact that this Court reviews de novo. *Foston v. State*, 2010 MT 281, ¶ 10, 358 Mont. 469, 245 P.3d 1103, citing *Worthan v. State*, 2010 MT 98, ¶ 8, 356 Mont. 206, 232 P.3d 380.

This Court will review ineffective assistance of counsel claims on direct appeal only when the record sufficiently answers "why" counsel did or did not take a certain course of action. *State v. Kime*, 2013 MT 14, ¶ 31, 368 Mont. 261, 295 P.3d 580; Mont. Code Ann. § 46-21-105(2). Claims involving alleged omissions of trial counsel are often ill-suited for consideration on direct appeal. *State v. Briscoe*, 2012 MT 152, ¶ 10, 365 Mont. 383, 282 P.3d 657.

This Court has adopted the two-part test established in *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984), to determine whether counsel rendered ineffective assistance. *Foston*, ¶ 11. Accordingly, the Appellant must demonstrate that counsel's representation was deficient, and that counsel's deficiency prejudiced the defense. *Id.*

B. Discussion

Aside from a general lack of motions or objections, Hamlin's attorney may have misunderstood or misapplied Montana's Rape Shield Law and not brought in evidence which could have been beneficial to the defense.

Based upon the discussion at the outset of trial, it appears that the victim's in Hamlin's case had made allegations against other persons of the same or similar abuse that Hamlin was accused of. While the record does not flesh out the outcome of those allegations or the entire substance of those allegations, they could have been admissible, despite the Rape Shield law.

Montana's Rape Shield law is codified at Mont. Code Ann. § 45-5-511, and reads: "[E]vidence concerning the sexual conduct of the victim is inadmissible in prosecutions under this part except evidence of the victim's past sexual conduct with the offender or evidence of specific instances of the victim's sexual activity to show the origin of semen, pregnancy, or disease that is at issue in the prosecution." However, there are exceptions to this ban on admissibility.

Relevant here is a district court may admit evidence of prior accusations of sexual abuse if the court determines (1) the accusations were in fact made; (2) the accusations were in fact false; and (3) the evidence is more probative than prejudicial. *State v. Hansen*, 2022 MT 163, ¶ 15, 409 Mont. 495, 515 P.3d 799. In order to admit evidence of prior accusations, the district court must hold a separate hearing, outside the presence of the jury to determine whether the evidence requested meets the above criteria. *Ibid.*

Here, based upon the record, it appears that there were prior accusations made by the victim's in Hamlin's case, including against their (and Hamlin's) father who was in the house with all the alleged victims. The record is silent as to the other criteria.

Arguably, Hamlin's counsel should have flushed out this evidence and presented, or attempted to present, it to the jury in Hamlin's defense. This oversight could have been based upon Hamlin's counsel failing to investigate the facts involved in the prior accusations, and/or Hamlin's counsel failing to understand the relevant law involving Rape Shield and the evidence's admissibility. Either of these, if substantiated could support an ineffective assistance of counsel claim.

To prevail on appeal, Hamlin would first need to show the record adequately explains why his counsel did not further pursue the evidence related to the prior

accusations. Hamlin would need to show that this failure were deficient and that Hamlin was prejudiced by this failure to pursue the evidence of prior accusations.

Hamlin could also prevail if he is able to show that his counsel failed to make an objection that he plainly should have. Further, Hamlin would then need to show his counsel's lack of objections were deficient and that Hamlin was prejudiced by that deficiency. To establish prejudice, Hamlin would have to demonstrate that there were valid objections, or motions, and that the trial court would have granted those objections or motions. Finally, Hamlin would need to show the successful outcome of the proposed objections or motions would have impacted the outcome of his conviction.

CONCLUSION

Counsel has been unable to identify any non-frivolous claims. This Court should grant the undersigned's motion to withdraw as counsel on direct appeal. If the Court determines there are issues warranting an appeal brief, counsel requests the Court set them out in its Order and allow undersigned counsel to remain in the case and proceed with briefing.

DATED this 20th day of June, 2025.

PEACE LAW GROUP, LLC

/s/Rufus I. Peace
Rufus I. Peace
Attorney for Appellant/Defendant

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11(4)(e) of the Montana Rules of Appellate Procedure, I certify that this Appellant's Opening Brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double spaced except for footnotes, quoted, and indented material; and that the word count calculated by Microsoft Word Professional Edition is 2,264 words, excluding the Table of Contents, Table of Authorities, Certificate of Service, and Certificate of Compliance.

DATED this 20th day of June 2025.

PEACE LAW GROUP, LLC

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I hereby certify that I caused a true and accurate copy of the foregoing
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DATED this 20th day of June 2025.

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I, Rufus I. Peace, hereby certify that I have served true and accurate copies of the foregoing Brief - Anders to the following on 06-23-2025:

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