

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 25-0504

STATE OF MONTANA,

Plaintiff and Appellee,

v.

CLAYTON WILLARD CARTER,

Defendant and Appellant.

**UNOPPOSED MOTION TO REMAND
TO DISTRICT COURT AND STAY APPEAL**

Appellant Clayton Carter respectfully moves the Court to remand this matter to the First Judicial District Court, Lewis and Clark County, for the district court to rule on Carter's pending motion to withdraw his guilty plea filed April 25, 2025. Doc. 99, attached hereto as Exhibit A. The State has been contacted about this motion and does not oppose Mr. Carter's motion.

On January 24, 2025, Mr. Carter pled guilty to assault with a weapon in this matter, DC 24-52. Doc. 114 at 1. On April 3, Mr. Carter filed a pro se letter stating he would like to withdraw his plea and go to trial. Doc. 94. The district court denied the motion because he was

represented by counsel. Doc. 97. On April 25, Mr. Carter, through counsel, filed a motion to withdraw his guilty plea, in which counsel relayed that Mr. Carter contended his plea was coerced and not voluntary and was the result of bad legal advice. *Id.* at 1.

The court sentenced Mr. Carter on April 30. *See* Doc. 114 at 1. The court ordered the Office of the State Public defender to appoint conflict counsel to represent Mr. Carter, issued a *Gilham* order, and set a briefing schedule. *See* Doc. 117 at 1. In the meantime, the court issued its judgment and commitment on May 21, thus starting the clock on Mr. Carter's right to appeal from that judgment. Doc. 114. The court later extended the deadlines associated with Mr. Carter's motion to withdraw. Doc. 119. On July 14, conflict counsel was assigned to represent Mr. Carter below. Doc. 121. Mr. Carter timely filed a notice of appeal of the judgment in this Court on July 15.

This Court has stayed appeals and remanded for the resolution of pending motions to withdraw guilty pleas on several occasions. *See State v. Allen*, DA 22-0651, Order (March 20, 2024); *State v. Collins*, DA 21-0527, Order (January 4, 2022); *State v. Brinson*, DA 07-0392, Order (June 18, 2008); *State v. Moddison*, 278 Mont. 384, 389, 926 P.2d 253,

256 (1996) (noting this Court had remanded for consideration of motion to withdraw guilty plea). Pursuant to this precedent, Mr. Carter requests this Court stay this appeal and remand this case to allow Mr. Carter, through conflict counsel, to finish litigating his pending motion to withdraw his plea. Staying the appeal serves the interests of judicial economy by giving the district court the first opportunity to either allow Mr. Carter to withdraw his pleas and proceed to trial or provide a rationale for denying his request that this Court can review on appeal.

The State does not oppose this motion.

Respectfully submitted this 16th day of July, 2025.

OFFICE OF THE STATE PUBLIC
DEFENDER

Appellate Defender Division
P.O. Box 200147
Helena, MT 59620-0147

By: /s/ Tammy A. Hinderman
TAMMY A. HINDERMAN
Division Administrator

CERTIFICATE OF COMPLIANCE

Pursuant to Rules 11 and 16(3) of the Montana Rules of Appellate Procedure, I certify that this motion is printed with a proportionately spaced Century Schoolbook text typeface of 14 points; is double-spaced except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word for Windows is 473, excluding the Caption, Certificate of Service, and Certificate of Compliance.

/s/ Tammy A. Hinderman
TAMMY A. HINDERMAN
Division Administrator

CERTIFICATE OF SERVICE

I, Tammy Ann Hinderman, hereby certify that I have served true and accurate copies of the foregoing Motion - Unopposed to the following on 07-16-2025:

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Electronically signed by Kim Harrison on behalf of Tammy Ann Hinderman
Dated: 07-16-2025