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FILED

DEC 19 2025

Bowen Greenwood
Clerk of Supreme Court
State of Montana

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IN THE MONTANA SUPREME COURT

<p>KARSON EUGENE RUSSELL, Appellant, v. STATE OF MONTANA, Appellee.</p>	<p>Case No. OP 25-0723 APPELLANT’S MOTION TO STAY APPEAL PENDING FILING AND RESOLUTION OF PETITION FOR POST-CONVICTION RELIEF</p>
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9 Appellant Karson Eugene Russell, appearing pro se, respectfully moves this
10 Court to stay all proceedings in this appeal pending the preparation and filing of a
11 Petition for Post-Conviction Relief (“PCR”) in the Eleventh Judicial District Court.
12 Newly discovered evidence requires factual development outside the existing
13 record and cannot be adequately addressed on direct appeal.

14 **I. INTRODUCTION AND SUMMARY**

15 After the filing of this appeal, Appellant obtained new, material evidence
16 that was not available at the time of the suppression hearing, plea, or notice of
17 appeal. This evidence concerns the training, qualification, and certification of the

1 arresting officer, Deputy Aaron Westphal, whose radar-based speed confirmation
2 formed a material part of the District Court’s ruling denying suppression.

3 Because this newly discovered evidence requires factual development
4 outside the appellate record, Appellant intends to pursue a Petition for
5 Post-Conviction Relief (“PCR”) in the Eleventh Judicial District Court, where an
6 evidentiary hearing can be conducted and the necessary factual findings made.

7 Appellant therefore seeks a stay of this appeal so that he may prepare and
8 file a PCR addressing the newly discovered evidence and related constitutional
9 issues.

10 **II. The appellant could not have discovered this evidence earlier.**

11 The lack of training documentation and certification required to operate
12 radar, was not in discovery, was not disclosed by the State, and could not have
13 been independently verified by the defense. Appellant obtained this new evidence
14 on November 18, 2025.

15 **III. ARGUMENT**

16 **1. The newly discovered evidence is material and directly affects the validity of**
17 **the suppression ruling.**

1 Although the District Court referenced several factors, it relied on radar
2 confirmation as the objective basis supporting the officer's observation. Without
3 reliable radar evidence, the remaining factors cannot independently establish
4 particularized suspicion.

5 The absence of documented training raises serious concerns regarding:

- 6 a. the reliability of the radar reading,
- 7 b. the accuracy of the speed confirmation,
- 8 c. the admissibility of radar evidence, and
- 9 d. the validity of the factual assumptions underlying the suppression ruling.

10 These concerns are further compounded by the unresolved argument
11 regarding the radar's operating mode.

12 Because these matters require factual development, they cannot be resolved
13 on direct appeal.

14 **2. PCR is the proper vehicle for these issues.**

15 Claims involving:

- 16 a. undisclosed impeachment evidence,
- 17 b. lack of officer qualification,

- 1 c. challenges to technical evidence, and
 - 2 d. ineffective assistance relating to foundational evidence,
- 3 must be raised through PCR, where evidentiary hearings can occur.

4 PCR is the proper vehicle for these issues, and Appellant intends to file his
5 PCR promptly so that the District Court may make the factual findings necessary
6 for meaningful review.

7 **3. A stay prevents inconsistent rulings and promotes judicial efficiency.**

8 Proceeding with the appeal while PCR is pending risks:

- 9 a. inconsistent determinations about officer qualifications,
- 10 b. unnecessary appellate briefing,
- 11 c. confusion about the operative record, and
- 12 d. duplicated judicial effort.

13 A stay ensures factual issues are resolved in the correct forum first.

14 **4. Appellant intends to file PCR promptly, and a stay will permit proper**
15 **factual development.**

16 Appellant is currently preparing a Petition for Post-Conviction Relief. A stay
17 of this appeal is necessary so that the factual issues underlying the newly

1 discovered evidence may be fully developed in the District Court before appellate
2 proceedings resume.

3 **IV. RELIEF REQUESTED**

4 Appellant respectfully requests that this Court:

- 5 1. Stay this appeal (OP 25-0723) pending the filing and resolution of
6 Appellant's forthcoming Petition for Post-Conviction Relief in the Eleventh
7 Judicial District Court;
- 8 2. Grant any other relief this Court deems just and proper.

9 **Statement Under M. R. App. P. 16(1)**

10 Pursuant to M. R. App. P. 16(1), Appellant contacted counsel for the
11 State prior to filing this motion. The State objects to the relief requested.

12 DATED this 17th day of December, 2025.

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in propria persona, sui juris, Karson Eugene Russell

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CERTIFICATE OF SERVICE

I certify that on this 17th day of December, 2025, I served a true and correct copy of the foregoing APPELLANT'S MOTION TO STAY APPEAL PENDING FILING AND RESOLUTION OF PETITION FOR POST-CONVICTION RELIEF upon the following party by depositing the same, postage prepaid, in the United States Mail, addressed as follows:

State of Montana
Office of the Attorney General
Appellate Services Bureau
Justice Building
215 North Sanders
Helena, MT 59620-1401

DATED this 17th day of December, 2025.



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