FILED
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Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA
Case Number: DA 26-0322

IN THE SUPREME COURT OF THE STATE OF MONTANA

DA 26-0322

FILED
MAY 26 2026
Bowen Greenwood
Clerk of Supreme Court
State of Montana

STATE OF MONTANA,

Plaintiff and Appellee,

v.

ZACHARY JOHN NENTWIG,

Defendant and Appellant.

ORDER

Zachary John Nentwig has filed a verified Petition for an Out-of-Time Appeal along with a motion for appointment of counsel. He includes a copy of the final judgment. We amend the caption to comport with the Montana Rules of Appellate Procedure. M. R. App. P. 2(4).

On May 15, 2025, after revoking his suspended sentence, the Twentieth Judicial District Court, Lake County, sentenced Nentwig to a three-year term to the Department of Corrections (DOC) for the 2021 conviction of felony criminal possession of dangerous drugs. The District Court awarded 320 days of credit for time served/street time.[1] The Judgment on First Revocation was filed on the same day.

Nentwig explains that he petitions for an out-of-time appeal because "[t]he Report of Violation in DC-21-18 was for a non-compliance violation of laws and conduct based without exhaustion of the MIIG." Nentwig argues that the non-compliance violation is moot because he did not admit to absconding. He states that his counsel should have filed an appeal.

[1] As explained later in this Order, the court amended the credit to include twenty-five additional days.

This Court is familiar with Nentwig's history. Earlier this year, we issued an Order consolidating and denying his two petitions for habeas corpus relief. *Nentwig v. Salmonsen*, Nos. OP 25-0860 and 25-0885, Order (Mont. Jan. 13, 2026) (*Nentwig III*). Before that Order, this Court had entertained two other writ petitions Nentwig filed in 2025. *Nentwig v. Bell*, No. OP 25-0340, Order, at 1 (Mont. Jun. 3, 2025) (*Nentwig I*); *Nentwig v. Bell*, No. OP 25-0430, Order (Mont. Jul. 22, 2025) (*Nentwig II*). To summarize, the Lake County District Court sentenced Nentwig on April 22, 2021, and committed him to the DOC for a three-year suspended term for felony criminal possession of dangerous drugs, to run consecutively to a prior sentence upon revocation. The court did not award credit for time served. Nentwig began serving his suspended term on May 30, 2022. The State filed a Petition to Revoke on June 7, 2024. In *Nentwig I*, we denied his request for dismissal of the pending revocation petition; and in *Nentwig II*, where he challenged the court's jurisdiction, we reiterated that "Nentwig is not entitled to dismissal of his case or to habeas corpus relief. Section 46-22-101(1), MCA." *Nentwig II*, at 2.

Earlier this year, we denied his requests for additional credit toward his sentence. As mentioned above, Nentwig received a three-year DOC commitment on May 15, 2025. We stated:

> The court initially awarded street time credit of twenty-four days and time-served credit of thirty-two days. After argument, the court awarded a combined total of 320 days of street time and jail time served in the written judgment. On June 24, 2025, the court awarded an additional twenty-five days for credit for jail time served, reaching a total of 345 days.

*Nentwig III*, at 3. We determined that Nentwig was not entitled to additional street time credit in his third petition for a writ of habeas corpus. *Nentwig III*, at 3. We further stated: "The time to raise any claim for additional street time credit was in the District Court or in this Court on appeal. Nentwig did not appeal." *Nentwig III*, at 3.

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[.]"

Nentwig should have timely appealed his sentence upon revocation within sixty days of his written judgment, filed on May 15, 2025. M. R. App. P. 4(5)(b)(i). We advised Nentwig in our June 3, 2025 order that he "retain[ed] a right to appeal any final judgment upon revocation from the District Court." He did not do so. Instead, he sought habeas corpus relief, raising similar arguments. In our January 13, 2026 order, we again observed that Nentwig had not appealed. *Nentwig III*, at 3. He did not petition this Court for an out-of-time appeal for a year following his revocation sentence.

Moreover, we are not persuaded that Nentwig would have a meritorious claim for appeal. The Montana Incentives Intervention Guide (MIIG) did not need to be exhausted for a non-compliance violation, such as absconding, which Nentwig's Probation Officer included in the Report of Violation. *See* § 46-18-203(11)(b), MCA. *See* § 46-23-1001(1), MCA ("'Absconding' means when an offender deliberately makes the offender's whereabouts unknown to a probation and parole officer or fails to report for the purposes of avoiding supervision, and reasonable efforts by the probation and parole officer to locate the offender have been unsuccessful."). *See also* § 46-18-203(11)(a), MCA. It is not determinative of the revocation that Nentwig did not admit to absconding.

Having considered Nentwig's arguments and his case history, we conclude that he has not met his burden to demonstrate extraordinary circumstances for his late attempt to appeal or that denial of his Petition will cause a gross miscarriage of justice.

IT IS THEREFORE ORDERED that:

1. Nentwig's Petition for an Out-of-Time Appeal is DENIED and DISMISSED;
2. Nentwig's Motion for Appointment of Counsel is DENIED, as moot; and
3. this matter is CLOSED as of this Order's date.

The Clerk of the Supreme Court is directed to provide a copy of this Order to: counsel of record and Zachary John Nentwig personally.

DATED this 26th day of May, 2026.

Chief Justice

Justices